

CONFIDENTIAL

**BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT**

Judicial Complaint No. 11-21-90092

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 28 2021

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District Judge _____ of the United States District Court for the _____ District of _____, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against United States District Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

The record shows that in June 2015 a federal grand jury issued an indictment charging _____ (“_____”), who is apparently Complainant’s son, with one count of possession with intent to distribute cocaine base. The case proceeded to trial, and a jury found _____ guilty as charged. In March 2016 the Subject Judge sentenced _____ to a term of 120 months of imprisonment. _____ appealed, and this Court later issued an opinion affirming his conviction.

In January 2019 _____ filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, raising challenges to his conviction and noting he was arrested after officers stated they found drugs on him when he was sitting in the passenger seat of a car. In April 2020 the Subject Judge issued an opinion an order denying _____ § 2255, finding it was untimely and, in any event, the arguments raised were meritless and one claim was procedurally defaulted.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant sets out a list of “Reasons why the Habeas corpus was written,” including that the Subject Judge “refused to address the Habeas corpus for the passenger who did not have any drugs in

his possession.” He asserts that _____ civil and constitutional rights were violated “under the guidance of” the Subject Judge, and he requests “an expungement of records.” He attached documents to his Complaint.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in the above-described cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B), and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.

Chief Judge