

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-22-90069

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JAN 24 2023

CIRCUIT EXECUTIVE

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW

Before: ROSENBAUM, BRANCH, and GRANT, Circuit Judges;
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on August 13, 2021, the order of Acting Chief United States Circuit Judge Charles R. Wilson filed on June 22, 2022, and the petition for review filed by petitioner on July 11, 2022. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

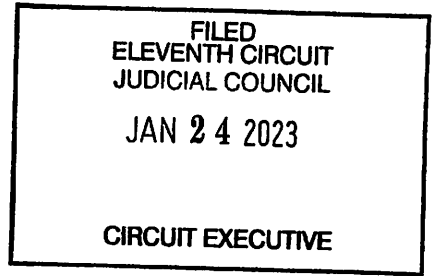
The Judicial Council Review Panel hereby **AFFIRMS** the disposition of this matter by Acting Chief Judge Wilson. The petition for review is **DENIED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-22-90070



**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW

Before: ROSENBAUM, BRANCH, and GRANT, Circuit Judges;
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on August 13, 2021, the order of Acting Chief United States Circuit Judge Charles R. Wilson filed on June 22, 2022, and the petition for review filed by petitioner on July 11, 2022. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby **AFFIRMS** the disposition of this matter by Acting Chief Judge Wilson. The petition for review is **DENIED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 22 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Acting Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-22-90069 and 11-22-90070

IN THE MATTER OF A COMPLAINT FILED BY:

IN RE: The Complaint of _____ against United States Circuit
Judges _____ and _____ of the United States Court of Ap-
peals for the _____ Circuit, under the Judicial Conduct and Dis-
ability Act of 1980, 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against
United States Circuit Judges _____ and _____ (collectively,
“the Subject Judges”), under the Act, 28 U.S.C. § 351(a), and the
Rules for Judicial-Conduct and Judicial-Disability Proceedings of
the Judicial Conference of the United States (“Judicial-Conduct
Rules”).

Background

The record shows that in September 2017 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus in which he argued that his guilty plea to a certain state court offense was the result of threats and coercion. After various proceedings, a magistrate judge issued a report recommending that Complainant's § 2254 petition be denied because all of his claims were procedurally defaulted. Over Complainant's objections, the district judge entered an order adopting the magistrate judge's report and recommendation, denying the § 2254 petition, and declining to issue a certificate of appealability (COA).

Complainant then filed an application for a COA in this Court, as well as a "Motion for Correction and Modification of the Record" and a "Motion to Compel[] the Lawfully Required Answer by Appellee." In May 2019 a circuit judge who is not one of the Subject Judges granted Complainant's motion for a COA, stating that he raised at least one facially valid claim of the denial of a constitutional right by arguing that his guilty plea was induced by the use of coercion and threats. After that, Judge _____ entered an order denying Complainant's two remaining motions.

In November 2019 a panel of this Court that included Judges _____ and _____ affirmed the denial of Complainant's § 2254 petition. The panel held that, like a state prisoner in a certain previous case, Complainant failed to exhaust his claims in the state supreme court. The panel also stated that Complainant alleged no

actual innocence or cause and prejudice that would excuse the default.

Complaint

Complainant takes issue with this Court's decision affirming the denial of his § 2254 petition, contending the Subject Judges failed to address the claim on which he was granted a COA—that his guilty plea was the result of threats and coercion. He asserts that the claim “cannot be procedurally barred from review,” and that Judge _____ “knowingly made a ruling that is completely contrary to the Constitution.” He states that Judge _____ intentionally engaged in misconduct by comparing his case to another case that “was based on completely different issues and had absolutely nothing in common with [his] case,” “create[d] his own or the state's version” of why the state supreme court did not review his claims, and based his decision “solely on or as a favor to the respondent or the state.” Complainant asserts that Judge _____ ruling was “completely contrary to the facts as well as the law,” and the “only two conclusions” are that Judge _____ arrived at his decision through *ex parte* communications or “because of some mental disability he may have.” He also asserts Judge _____ statement that he alleged no actual innocence or cause and prejudice was “completely untrue”

Next, Complainant alleges that Judge _____ engaged in misconduct by denying his motions to correct the record and to compel, which “shut the door on any s[ense] of justice and fairness”

and prevented him from establishing “the truth of what was transpiring against” him. He asserts the Subject Judges knew he had been threatened and coerced into pleading guilty and knew that the state concealed transcripts that proved it. He states they knew that “if they followed the law their friends within the state would be exposed and could be held accountable for their criminal actions,” so Judge _____ decided to “help and protect” his friends instead of adhering to his oath of office and the law. Complainant alleges the Subject Judges conspired with others to make a ruling that they knew had no basis in fact or law for the purpose of preventing him from exercising his constitutional right to petition the government for the redress of grievances. Finally, he states the Subject Judges violated 18 U.S.C. § 241 (conspiracy against rights). He attached documents to his Complaint.

Discussion

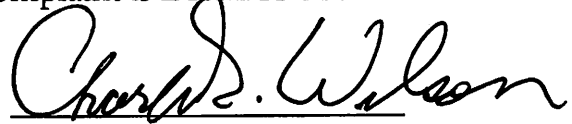
Judicial-Conduct Rule 4(b)(1) provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The Commentary on Rule 4 explains the rationale for this rule as follows:

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 Judges' orders and opinion on appeal, the allegations are directly related to the merits of the Subject Judges' decisions or procedural rulings. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges acted with an illicit or improper motive, gave special treatment to friends, engaged in improper *ex parte* communications, suffered from a disability, violated their oaths of office, were part of a conspiracy, or otherwise engaged in misconduct.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," under Judicial-Conduct Rule 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," under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

A handwritten signature in black ink, reading "Charles D. Wilson". The signature is written in a cursive style with a horizontal line underneath the name.

Acting Chief Judge