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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-25-90210

ORDER

An individual has filed a Complaint against a United States district judge under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Background

The record establishes that a federal grand jury returned an indictment charging Complainant with three crimes. Complainant pleaded guilty to one count of the indictment, and at a trial before a district judge who is not the Subject Judge, a jury found Complainant guilty of the remaining two counts. Complainant then moved to withdraw his guilty plea and moved for a new trial. The district court granted the motion to withdraw the plea on the ground that it impermissibly amended the indictment in accepting the plea. The district court also granted a new trial.

The government moved for reconsideration. The case was then reassigned to the Subject Judge who granted the motion for reconsideration after finding that the previously assigned judge erred in ruling that the indictment had been amended. The Subject Judge later sentenced Complainant to a term of imprisonment. This Court affirmed.

Complainant moved to vacate, set aside, or correct his sentence, 28 U.S.C. § 2255, and the Subject Judge denied the motion. This Court vacated and remanded because the district court failed to consider all the claims Complainant raised in his motion to vacate. Afterward, the Subject Judge again denied Complainant's motion to vacate. Complainant moved for relief from judgment, which the Subject Judge denied. This Court clerically dismissed Complainant's appeal for want of prosecution.

Complaint

Complainant alleges that the Subject Judge granted the government's motion to reconsider and reinstated his guilty plea and convictions without legal justification and without addressing the legal reasons provided by the previous judge. Complainant contends the Subject Judge's order "appeared to be based solely on his own opinion." Complainant also states the Subject Judge never addressed "any of the issues that occurred at my trial," failed to address the previous judge's detailed findings, and repeatedly denied his post-trial motions without addressing the trial issues and previous judge's findings. He contends that the motion to reconsider should have been heard by the appellate court, not a newly

assigned district judge. Complainant states that the Subject Judge's actions raised "concerns about impartiality, disregard for appellate instructions, and the fundamental fairness of the proceedings."

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.

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders in the above-described proceedings, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Judicial-Conduct Rule 11(c)(1)(B). Complainant's remaining claims are based on allegations lacking sufficient

evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, was not impartial, or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge