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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-25-90267 through 11-25-90269

ORDER

An individual has filed a Complaint against a United States magistrate judge and two United States district judges 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 and a codefendant with two crimes. Complainant later pleaded guilty to the charges, and the Second Subject District Judge accepted the plea. The government, through the Subject Magistrate Judge, who was then an Assistant United States Attorney, moved to reduce Complainant's sentence because he provided substantial assistance to the government. The Second Subject District Judge later sentenced Complainant to a term of imprisonment. Over 15 years after judgment was entered,

Complainant moved to reopen the case on the ground that the government had orally agreed to provide him immunity before sentencing, but then failed to disclose the agreement during sentencing. The Second Subject District Judge denied the motion.

The record also establishes that, several years after Complainant was sentenced in the first case, another federal grand jury returned an indictment charging him and a codefendant with two crimes. After a superseding indictment was returned, Complainant moved to dismiss the indictment. Complainant alleged that, in connection with the previous case, the government orally agreed to provide him immunity from prosecution in exchange for information he provided that led to him being indicted in the second case. He argued that the “principles of transactional immunity” barred the government from prosecuting him.

The First Subject District Judge held a hearing on the motion to dismiss the indictment, and the Subject Magistrate Judge testified that he never offered immunity to Complainant in his role as Assistant United States Attorney during the previous criminal case. The First Subject District Judge then denied the motion to dismiss the indictment. After a trial, the jury found Complainant guilty as charged in the superseding indictment, and the First Subject District Judge sentenced him to a term of imprisonment. This Court affirmed and ruled that the district court did not abuse its discretion in denying the motion to dismiss the indictment.

Complaint

Complainant alleges the Subject Judges failed to act on “clear evidence of prosecutorial misconduct.” He states that in his first criminal case, he was promised immunity, but neither the prosecutor nor his attorneys mentioned his immunity at the sentencing hearing. He complains that the Second Subject District Judge took no action despite being made aware of the immunity agreement. He states he was later contacted by the Federal Bureau of Investigation and threatened that if he reported the matter to a federal judge again there would be serious consequences.

Complainant states that he was indicted a second time despite being given immunity and that he presented evidence to the court concerning the immunity deal. Complainant alleges that the Subject Magistrate Judge lied under oath by stating at a hearing that he had not been involved in the immunity agreement. He complains that the First Subject District Judge did not further investigate the matter and sealed all reports and affidavits. Complainant also asserts that he later obtained newly discovered evidence showing that the lead witness lied to the grand jury and that prosecutors and witnesses at his trial falsely stated they had not been promised anything in exchange for their testimony, which constituted fraud on the court.

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 District Judges’ official actions, findings, rulings, and orders in the above-described cases, the allegations are directly related to the merits of the Subject Judges’ 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 Magistrate Judge lied under oath or that the Subject Judges acted with an illicit or improper motive, committed fraud on the court, 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