

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90064

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: October 22, 2014)

PRESENT: McKEE, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii).

After a jury trial, Complainant was convicted of drug-related offenses and the Subject Judge sentenced him to life imprisonment. The Court of Appeals affirmed.

Complainant then filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. The Subject Judge denied the motion and the Court of Appeals declined to issue a certificate of appealability. Complainant since has filed a number of additional habeas petitions, as well as several motions under 28 U.S.C. § 2244, seeking the Court of Appeals' authorization to file a second or successive habeas petition. To date, Complainant's efforts have been unsuccessful.

In this complaint of judicial misconduct, Complaint alleges that he and his brother (a co-defendant) have been subjected to a "miscarriage of justice and lies involving a 'supplement jury charge,' as well as the 'actual jury charge.'" Specifically, Complainant contends that the prosecutor improperly failed to present evidence of the quantity of drugs that Complainant and his brother possessed and, as a result, Complainant wrongly was sentenced to life imprisonment. Complainant further alleges that the Subject Judge responded to a juror's question with a "lie" because the Subject Judge allegedly told the jurors that there was no evidence on a particular issue when, according to Complainant, evidence had been presented on that issue. In addition, Complainant alleges that, on a different occasion, the Subject Judge "answered [the] deliberating jury's questions with facts not in evidence." Complainant further alleges that "the prosecutor failed to meet its burden of proving each and every element of the charge of conspiracy." Complainant states that he is attempting to "raise the public awareness about the prosecutorial misconduct and the unjust punishment that is incorrectly being dished out by the government for these alleged drug crimes."

Obviously, these allegations reflect Complainant's belief that his sentence and conviction were imposed in error, reiterating a number of bases for collaterally challenging both.¹ Such allegations are merits-related. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. This is not the appropriate forum for raising a collateral challenge to the conviction and sentence, as merits-related allegations are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling). Thus, Complainant's merits-related allegations are subject to dismissal.

Moreover, it is apparent that Complainant previously raised the majority of these allegations in his prior challenges to his conviction and sentence, including in his direct appeal. In the opinion affirming the conviction and sentence, for instance, which Complainant has attached as an exhibit to his complaint, the Court of Appeals rejected

¹ Complainant raises a number of allegations of prosecutorial misconduct. Prosecutors are not covered by the Judicial Conduct and Disability Act. See Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Because this judicial misconduct proceeding is not a proper forum for considering the merits of such allegations, they will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

these arguments and concluded that sufficient evidence supported Complainant's conviction. Complainant cannot challenge these conclusions in this administrative proceeding. The "misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges' rulings." In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

Finally, Complainant alleges that the Subject Judge intentionally lied. This allegation appears to be based solely on Complainant's merits-related disagreement with the Subject Judge's statements made in the course of charging the jury, and is otherwise entirely lacking in evidentiary support. The record offers no support for Complainant's claim. Accordingly, Complainant's remaining non-merits-related allegations are subject to dismissal as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: October 22, 2014)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the office of the clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk of the court of appeals, and in an envelope marked “Misconduct Petition” or “Disability Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is available from the Clerk’s Office of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: October 22, 2014