

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90016

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 11, 2015)

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.¹

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).

¹ Complainant’s co-defendant filed a similar complaint against the Subject Judge. This complaint was likewise dismissed. See J.C. No. 03-14-90064.

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 two motions 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 also filed a petition for relief under 28 U.S.C. § 2241. To date, Complainant's efforts have been unsuccessful.

In this complaint of judicial misconduct, Complaint alleges that the Subject Judge gave an "unbalanced and misleading supplemental jury instruction" concerning the weight of a bag of drugs. In addition, the Complainant contends that the Subject Judge improperly ignored the dismissal of a murder charge against him because the Subject Judge took into account evidence regarding the charge during sentencing.

These allegations reflect Complainant's belief that his sentence and conviction were imposed in error. In effect, Complainant seeks to collaterally challenge both his sentencing and his conviction. Such allegations are merits-related and subject to dismissal. 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 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("An allegation that calls into question the correctness of a judge's ruling . . . without more, is merits-related."); 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). See also In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (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 any event, there is no evidence to support Complainant’s allegations of judicial misconduct. In particular, it is notable that Complainant’s argument about the Subject Judge’s putative improper consideration of evidence that he was involved with a homicide was previously raised in a petition filed under 28 U.S.C. § 2241. Although the District Court dismissed the petition without prejudice to Complainant seeking permission to file a second or successive 2255, the District Court observed that “a review of the record and the Presentence Investigation Report rendered on [Complainant’s] criminal case demonstrates that [the Subject Judge’s] finding relative to the homicide did not trigger a mandatory minimum sentence” Complainant’s allegations of judicial misconduct 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)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: June 11, 2015)

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)(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: June 11, 2015