

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90002

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 17, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (hereinafter “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). 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).

As a preliminary matter, Complainant makes allegations concerning individuals who are not subject to the Judicial Conduct and Disability Act; e.g., his former attorney and a Department of Homeland Security agent. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Complainant alleges that the Subject Judge engaged in judicial misconduct because he never informed him of his legal right to a speedy trial, denied postponement of a plea hearing, did not give him sufficient time to review a plea agreement, and appointed a public defender on the date when a plea bargain was "forced upon" him. Complainant is seeking to call into question the correctness of the Subject Judge's official actions in the course of Complainant's criminal proceeding before the Subject Judge. Merits-related allegations, however, 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 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("[a]n 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).

In any event, there is no evidence to support Complainant's allegations of judicial misconduct. The transcript attached to the complaint reflects that the Subject Judge engaged in a lengthy colloquy with Complainant before accepting his guilty plea. Indeed, Complainant appealed his conviction and sentence and a panel of this Court affirmed, concluding that Complainant voluntarily and understandingly entered his plea of guilty. As observed by the Third Circuit panel, the Subject Judge engaged Complainant "in a colloquy to ensure that his guilty plea was voluntary and not the result of any force, threats, or promises not contained in the plea agreement." Accordingly, Complainant's allegations are dismissed 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.

Complainant also complains that the Subject Judge delayed a decision on an "Ex-parte motion" in a proceeding under 28 U.S.C. § 2255, denied a motion for relief under 28 U.S.C. § 2255 as untimely filed, and failed to make a timely decision on a motion to appoint counsel in a civil action against an employee of the Department of Homeland Security. These allegations are merits-related and are dismissed. 28 U.S.C.

§ 352(b)(1)(A)(ii); Rule 3(h)(3)(B) (cognizable misconduct does not include an allegation about delay in rendering a decision or ruling).

To the extent Complainant contends that the Subject Judge had an improper motive for any putative delay, Complainant's allegations are dismissed 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. The relevant docket reflects that Complainant filed his "Ex-Parte" motion after the Subject Judge had already issued an order dismissing the case and directing the Clerk to close the file. Also, the record reflects that action was taken on Complainant's motion to appoint counsel approximately five months after it was filed. The Subject Judge granted Defendants' motion to dismiss and denied the motion to appoint counsel because he concluded Complainant's lawsuit was without merit.

Furthermore, Complainant alleges that the Subject Judge used his "political belief to reach a decision" against him as if he "was responsible directly or indirectly for [the] Immigration related crisis of this country" and that the Subject Judge's "personal hate" and "political belief" is found everywhere in the court proceedings. The transcripts and other documents attached to the complaint have been reviewed and none of them support a claim of judicial misconduct. Complainant's allegations arise from his disagreement with his conviction and sentencing. As discussed above, such allegations are merits-related and not cognizable in these proceedings. Complainant, furthermore, pled guilty and was given

a within guideline sentence that has already been affirmed by a panel of this Court. Complainant's allegations are dismissed 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.

Complainant also complains that the Subject Judge did not have the “mandate to even comment on [the] deportability of a person to whom he sentences for any offense.” Complainant appears to be complaining about the Subject Judge's statement at sentencing that, “I hope the process will in his case recognize that he should be deported. So he will be out of this country [at the conclusion of his prison sentence], I expect.” This statement is not evidence of judicial misconduct and is not, as argued by Complainant, an attempt to order his deportation in the absence of any jurisdiction to do so (“without any mandate”). The statement in question was made at sentencing in the context of the Subject Judge's discussion of the seriousness of Complainant's criminal conduct assisting individuals to submit fraudulent applications to immigration officials, Complainant's apparent lack of remorse, and the cost of imprisonment. As Complainant acknowledges in his complaint, it is true as a matter of law that Complainant's conviction could result in his removal. Indeed, during the plea colloquy, the Subject Judge asked him, “You understand, and tell me, you should understand that a guilty plea to a matter like this, being found guilty of a matter like this could, in all likelihood, result in your being removed from the United States. Do you understand that?” Complainant responded, “Yes.” Complainant's

allegations are dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. Id.

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: March 17, 2016)

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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 Office of the Circuit Executive and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: March 17, 2016