

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90027

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 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 (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).

Complainant was a defendant in a criminal proceeding before the Subject Judge. Before the matter went to trial, Complainant changed his plea to guilty. The Subject

Judge oversaw the change of plea hearing and conducted the plea colloquy, during which Complainant was represented by court-appointed counsel. After accepting Complainant's guilty plea, the Subject Judge sentenced him to a lengthy term of imprisonment.

Complainant filed a pro se notice of appeal and counsel was appointed. The Government filed a motion to enforce the appellate waiver. Before the Court of Appeals decided the motion, Complainant voluntarily withdrew the appeal.

Approximately one year later, Complainant filed a pro se motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255, which the Government opposed. The Subject Judge denied the motion. Complainant appealed and retained counsel for the appeal. The Court of Appeals declined to issue a certificate of appealability.

In this complaint of judicial misconduct, Complainant alleges that his guilty plea was based on his admission to certain facts, but the Subject Judge improperly permitted the government attorney to later "alter the facts used" at sentencing, resulting in a longer sentence.¹ In addition, Complainant alleges that the written waiver he signed did not match the Subject Judge's explanation of the waiver during the change of plea hearing. Specifically, Complainant contends that the Subject Judge repeatedly told him he would be permitted to appeal "if there's some error in today's proceeding," but that he has since been unable to appeal the alleged error from that proceeding (concerning the change in

¹ Although it is not clear from the complaint, the District Court record reveals that this claim is based on allegations by the government at sentencing that Complainant had been involved in additional crimes to which Complainant did not plead guilty during the plea colloquy.

facts used at sentencing) because the language of the written waiver prohibits such an appeal. Thus, Complainant claims that the Subject Judge “mised” Complainant about his guilty plea and appeal waiver, and that it therefore “cannot be said that [the Subject Judge] acted fairly properly or impartially in the matters related to this case.”

These allegations are clearly an attempt to collaterally challenge both the guilty plea and the Subject Judge’s sentence. 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. Merits-related allegations are beyond the scope of a judicial misconduct proceeding.

Indeed, Complainant raised several of these allegations in his unsuccessful motion to vacate, set aside, or correct his sentence, and both the Subject Judge and the Court of Appeals declined to issue a certificate of appealability. 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). Because the allegations do not constitute cognizable misconduct, they are dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

When considered apart from his merits-related allegations, Complainant's claims of judicial misconduct are entirely unsubstantiated. The record provides no support for Complainant's contention that the Subject Judge intentionally "misled" him or failed to act impartially. Accordingly, Complainant's remaining allegations are subject to dismissal as frivolous and unsupported by 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.

Based on the foregoing, 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 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)(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: June 17, 2016