

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90171

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: August 8, 2018)

PRESENT: SMITH, *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).

Approximately one decade ago, after a jury trial, Complainant was convicted of numerous crimes and the Subject Judge orally sentenced Complainant to a substantial term of imprisonment. Complainant filed a notice of appeal at the sentencing proceeding, which the Court of Appeals docketed and then stayed pending entry of a written judgment and commitment order. The Subject Judge subsequently entered the written judgment and commitment order approximately two months later, and the appeal proceeded. Ultimately, the Court of Appeals affirmed Complainant's conviction and sentence. Complainant later filed a motion to set aside, vacate, or correct the sentence under 28 U.S.C. § 2255. The Subject Judge denied the motion and the Court of Appeals declined to enter a certificate of appealability. Complainant since has filed several motions challenging his sentence in various respects, which have been unsuccessful.

In this complaint of judicial misconduct, Complainant contends that, because the Subject Judge signed the written judgment and commitment order after Complainant filed a notice of appeal, the Subject Judge was without jurisdiction to enter it. In addition, Complainant provides a copy of a written judgment and commitment order that was apparently signed at around the time of the oral sentencing, but which does not appear on the public docket.<sup>1</sup> Based upon this document, Complainant alleges that the

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<sup>1</sup> It is unclear why this earlier version of the order was not docketed, nor is it clear why Complainant was provided a copy of an order that was not entered on the public docket. Because these issues are not relevant to resolution of this complaint of judicial misconduct, they need not be explored further. It is noted that the earlier version reflects the same term of sentence that the Subject Judge imposed orally and that appears in the later-filed judgment and commitment order.

subsequently entered judgment and commitment order should have been titled as an amended judgment, and that the parties should have been notified that the judgment had been “altered.” In addition, Complainant alleges that the judgment and commitment order improperly “altered the counts of conviction and added . . . lesser included offenses.”

Finally,

Complainant argues that the failure to title the final judgment and commitment order as “amended” constitutes an “attempt[] to cover up the error” in the earlier, never-filed order, “in order to deprive [Complainant of] the opportunity to challenge the illegal sentence on appeal.”

Complainant’s allegations clearly represent an effort to collaterally challenge his sentence. For instance, the contentions that the Subject Judge entered the judgment and commitment order in the absence of jurisdiction and that the judgment and commitment order improperly included “lesser included offenses” are patently aimed at undermining the validity of Complainant’s sentence. Accordingly, these allegations are merits-related. 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.”). Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *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*. Indeed, Complainant pursued an appeal, a § 2255 motion, and other post judgment

motions challenging his sentence, to no avail. This administrative proceeding does not permit Complainant another opportunity to re-litigate the merits of his criminal sentence. 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). Accordingly, Complainant’s merits-related allegations will be dismissed.

When considered apart from the merits-related allegations, Complainant identifies no basis for his subjective belief that the Subject Judge is biased against him. A review of the record reveals no support for any claim of judicial misconduct or disability. Complainant’s remaining allegations are therefore 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, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: August 8, 2018)

PRESENT: SMITH, *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](http://www.ca3.uscourts.gov).

s/ D. Brooks Smith  
Chief Judge

Dated: August 8, 2018

