

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90105

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 16, 2024)

PRESENT: CHAGARES, 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 (“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. About three weeks into trial, after the prosecution presented its case, Complainant entered a guilty plea. Complainant later filed a pro se motion to withdraw the plea, claiming

ineffective assistance of counsel. The Subject Judge held an initial hearing to determine whether new counsel should be appointed. During the hearing, Complainant asserted his innocence, pointed out purported weaknesses in the prosecution's case, and requested new counsel. The Subject Judge appointed new counsel and, after further briefing, held a hearing on the motion to withdraw the plea.

Complainant alleges that he appeared for the hearing and provided extensive testimony asserting his innocence. Complainant further alleges, however, that he later learned that a significant portion of his hearing testimony, including his assertion of innocence, was removed from the hearing transcript. Complainant claims that the transcript was "criminally redacted" and that he suffered harm as a result. Complainant asserts that the Subject Judge "most probabl[y]" ordered the redaction or "somehow manipulated" the court reporter into doing so. Complainant also claims that those present at his hearing, including prosecutors and his court appointed attorney, must have colluded with the Subject Judge to manipulate the transcript, because "[i]f all parties did not participate it would not have worked."¹

Ultimately, the Subject Judge denied the motion to withdraw the plea and sentenced Complainant to the term of imprisonment contemplated by the plea agreement.

¹ To the extent Complainant alleges misconduct by the prosecution, defense attorneys, court reporter, or others, it is noted that such individuals are not federal judges and therefore are not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d); Rule 1(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Allegations non-covered individuals will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

Complainant appealed the denial of the motion to withdraw the plea and a panel of the Court of Appeals affirmed the judgment.

To the extent Complainant's allegations are intended to challenge the merits of the Subject Judge's denial of the motion to withdraw the guilty plea, such allegations are not cognizable. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). The Court of Appeals considered Complainant's innocence claim, observing that he argued "that he is legally innocent," and ultimately concluded that the Subject Judge properly denied the motion to withdraw the plea. Any dispute with the Court of Appeals' assessment is merits related. "The misconduct procedure [under the Judicial Conduct and Disability 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). Complainant's merits-related allegations are subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

A careful review of the record reveals no evidence to substantiate Complainant's claim that the hearing transcript was tampered with by any individual. The transcript is upwards of 300 pages long, more than 100 pages of which comprise Complainant's testimony, much of which concerns his claim of legal innocence of the crimes to which he

pled guilty. Indeed, the Subject Judge’s ruling on the record recognized that Complainant “presented a narrative today [about his innocence] that is directly contradictory to what he said under oath at the change of plea hearing.” When the hearing transcript was released, no party objected to it as incomplete or inaccurate, and the court reporter provided a certification that the transcript is “true and correct.”

Complainant believes that the alleged transcript alteration was covered up by individuals present at his hearing, including the court reporter and his own counsel, but he provides nothing apart from personal suspicion to substantiate the facially incredible claim that such a conspiracy exists or that the Subject Judge engineered it. Complainant alleges that others were present at the hearing who did not participate in the alleged conspiracy and witnessed Complainant’s complete testimony, including Complainant’s own family members and friends as well as members of the press, but Complainant identifies no witness willing to support his claim. The allegation that the Subject Judge was involved with the removal of testimony from the hearing transcript is 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)(i), (ii), and (iii).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: December 16, 2024)

PRESENT: CHAGARES, 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/ Michael A. Chagares
Chief Judge

Dated: December 16, 2024