

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-10-90020

BEFORE

Torruella, Lipez and Thompson, Circuit Judges,
Lisi and Gelpi, District Judges

ORDER

ENTERED: MAY 16, 2011

Petitioner, a litigant, has filed a petition for review of Chief Judge Lynch's order dismissing a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a district judge in the First Circuit. The petitioner alleged that the judge improperly delayed in entering an order of acquittal after the Court of Appeals reversed the petitioner's conviction.

The petitioner originally alleged that the judge intentionally delayed for a period of several weeks entering the order of acquittal mandated by the Court of Appeals. The petitioner stated that he had been informed, after the Court of Appeals issued its mandate, that the judge was away and would not enter the order of acquittal until the judge returned. The petitioner concluded that the judge intentionally delayed issuing the judgment of acquittal "in retaliation" for the Court of Appeals' order reversing the petitioner's conviction.

Based upon a review of the docket(s), the relevant transcripts, and information provided

by the United States Marshal's Service, Chief Judge Lynch determined that there was no misconduct. The Chief Judge determined that, while the district court did not issue the judgment of acquittal until several weeks after the Court of Appeals issued its mandate, there was absolutely no evidence that the judge was improperly motivated. Chief Judge Lynch observed that, in addition to the charges on which he was acquitted by the Court of Appeals, the petitioner had been subsequently indicted on weapons charges. Because he was serving the sentence imposed in the first case, the petitioner had originally waived arraignment on these charges.

The Chief Judge further noted that, shortly after the Court of Appeals issued its order in the original case, the government filed a motion for detention and a motion for an arrest warrant in the subsequent prosecution. Chief Judge Lynch explained that, on the same day that these motions were filed, the judge held a hearing addressing, in part, the petitioner's incarceration in light of the Appeals Court's decision. The Chief Judge further observed that, by the time the mandate issued in the original case, the court had issued the arrest warrant in the second case. Thereafter, the judge entered the judgment of acquittal in the first case, and the custody of the petitioner was transferred from the Bureau of Prisons (BOP) to the U. S. Marshal's Service for transport to the district where the second case was pending and the arrest warrant was executed.

As there was no evidence that the judge acted "in retaliation" for the appellate court's decision, or for any other improper reason, Chief Judge Lynch dismissed the complaint as baseless. See 28 U.S.C. § 352(b)(1)(B). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D), and Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive . . . or habitual delay . . .").

The Chief Judge also concluded that, on the present facts, the court's issuance of the judgment of acquittal several weeks after the mandate issued had no practical effect and was not remotely indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

In the petition for review, the petitioner reiterates the original claim that the judge intentionally neglected to enter the order of acquittal while away, and, thereby, prolonged the petitioner's unlawful incarceration for several weeks after the appellate mandate issued. The petitioner states that he was not "detained on other charges" during the intervening time period, and that the judge did not grant the motion for detention at the same time he issued the arrest warrant. The petitioner infers that, had he been "released to the detainer" when the appellate mandate issued, he might have had a "more liberal" judge in federal court in the original jurisdiction "who might have permitted him to self-report to [the other district], and thus release him."

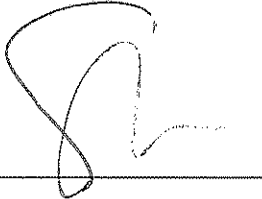
The petition for review is without merit. As explained by the Chief Judge, delay alone does not demonstrate cognizable misconduct. See Rules of Judicial-Conduct, Rule 3(h)(3)(B). The petition for review, like the original complaint, offers no evidence whatsoever that the judge harbored any illicit motivation in entering the order of acquittal. To the contrary, it establishes that the judge sought to ensure the orderly transfer of petitioner's custody from one jurisdiction to another. As determined by Chief Judge Lynch, the judge promptly held a hearing addressing the petitioner's detention in light of the Appeals Court's decision, and issued an arrest warrant in the second case, before the mandate issued in the original matter.¹ Thereafter, the petitioner and the

¹In fact, during the relevant hearing, the judge stated that he did not have "any leanings one way or another with regard to the substantive issue of [the petitioner's] detention . . . but [it] .

government filed a joint motion requesting that custody of the petitioner be transferred to the U.S. Marshals Service for transport to the district in which the second case was pending. The government was required to submit weekly status reports until the petitioner was available to appear in the district. Shortly thereafter, the judgment of acquittal was entered in the first case, and custody of the petitioner was transferred from the BOP to the U.S. Marshals Service.

Chief Judge Lynch properly determined that there was no evidence in support of the petitioner's claim that the judge was acting "in retaliation" for the appellate court's reversal of the lower court's decision, or otherwise harbored any illicit animus in connection with the proceeding. Accordingly, the complaint was appropriately dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(B), and as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D), and Rule 11(c)(1)(A), respectively.

For the reasons stated herein, the orders of dismissal issued in Judicial Misconduct Complaint No. 01-10-90020 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).



Susan Goldberg, Acting Secretary

. . . is not a matter that should be resolved as a result of some bureaucratic failure to close the loop or some other oversight. It's something that has to be considered, weighed, and arguments need to be presented and a decision needs to be made, and that's the way that I want to ensure that it's handled."