

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-10-90020

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 2, 2010

Complainant, an incarcerated litigant, has filed a complaint alleging a violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a), against a district judge within the First Circuit. The complainant alleges that the judge improperly delayed in entering an order of acquittal after the Court of Appeals reversed the complainant's conviction and so prolonged his incarceration. The complaint is based on a misapprehension of the relevant facts. The complainant's continued incarceration resulted from his detention on other charges pending as of the date of issuance of the mandate. Further, there is absolutely no evidence of improper motivation on the part of the judge.

The complainant alleges that the judge intentionally delayed entering the order of acquittal mandated by the Court of Appeals for a period of several weeks. The complainant states that, after the Court of Appeals issued its mandate, the complainant was informed that the judge was away and would not enter the order of acquittal until the judge returned. The complainant concludes that the judge intentionally delayed issuing the complainant's judgment of acquittal "in retaliation" for the

Court of Appeals' order reversing the complainant's conviction.

As part of a limited inquiry undertaken pursuant to Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), my staff and I have reviewed the docket(s), the relevant transcripts, and inquired of the relevant parties. In short, there was no misconduct. The record confirms that the district court did not issue the judgment of acquittal until several weeks after the Court of Appeals issued its mandate. During the intervening time period, the complainant was detained on other charges. The complainant had been indicted on these other charges several years earlier. Although the complainant had initially waived his arraignment in this second case (because he was serving the sentence in the first case), the government filed a motion for detention and a motion for an arrest warrant several days after the Court of Appeals issued its opinion reversing the conviction in the complainant's first case.

On the same day that the government filed the motion for detention in the second case, the judge called a hearing *sua sponte* to address a number of issues, including the status of the complainant's incarceration. The judge explained that the order of acquittal in the first case could not enter until after the mandate issued. Counsel for the government stated that a motion for detention had been filed in the second case. After the complainant filed an opposition to the government's motion for detention, the judge granted the motion and issued an arrest warrant. Thereafter, the complainant was released from the Bureau of Prisons and transferred to the custody of the United States Marshal's Service for transport to the district where the arrest warrant was executed. He remains detained awaiting trial in the second case.

There is no evidence at all that the judge was improperly motivated. The court held a hearing shortly after the Court of Appeals issued its order reversing the underlying conviction, in order to address, in part, the implications of the Court of Appeals' decision on the complainant's incarceration.

By the time the mandate issued in the first case, the court had issued an arrest warrant in the second case. The charge that the judge delayed issuing the order of acquittal "in retaliation" for the appellate court's reversal of the complainant's conviction, or for any other improper reason, is utterly baseless. The charge to that effect is dismissed pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial Misconduct, 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 . . ."). Furthermore, on the present facts -- where the complainant was incarcerated on independent grounds during the relevant time period -- the court's issuance of the judgment of acquittal several weeks after the mandate issued had no practical effect and is not remotely indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A).

For the reasons stated, Judicial Misconduct Complaint No.01-10-90020 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(B).

12/2/10
Date

Sandra Lynch
Chief Judge Lynch