

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90012

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JUNE 29, 2011

Complainant, a litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge in the First Circuit engaged in misconduct while presiding over the complainant's criminal trial. The complainant alleges that the judge knowingly allowed the United States Attorney to present fraudulent evidence during the complainant's trial, resulting in the complainant's wrongful conviction and incarceration.

The complainant recounts the chronology of the criminal proceedings that precipitated his 2005 jury trial on a number of conspiracy, drug, robbery and firearms charges. The complainant asserts that the prosecutor obtained the complainant's conviction on the basis of "manufactured evidence" that the complainant's weapon had been used in the shooting of a guard during a robbery. The complainant contends that the

judge allowed the prosecutor to present this testimony although it conflicted with that presented during the earlier trial of a co-defendant, over which the same judge had also presided. The complainant explains that the original evidence would not have been sufficient to sustain the complainant's conviction but that the testimony of the complainant's "mistress" offered at complainant's trial was substantively different from this witness' previous testimony.

The complainant adds that the judge wrongfully refused to allow this witness to be cross-examined on her original grand jury testimony, and that the arresting officer, whose testimony would have also allegedly exonerated the complainant, "was also kepted [sic] away from all [c]ourt proceedings. . . ." The complainant concludes that the judge "used [the] bench to allow and protect the corruption perpetrated by the prosecutor . . . to frame complainant as being complicit in the robberies"

The misconduct complaint is baseless. The complainant offers no facts in support of the claim that the judge knowingly allowed the introduction of perjured testimony or "manufactured evidence" during the complainant's jury trial. The complainant correctly states that the judge presided over the trial of two of the complainant's co-defendants several months before the complainant's trial. However, the misconduct complaint and the reviewed record - including the docket and relevant pleadings, court orders, and transcript segments (provided by complainant) - contain no evidence of improper judicial motivation. The court allowed the complainant's only pretrial motion, requesting permission to examine the relevant shell casings.

The misconduct complaint derives exclusively from the claim that the judge made erroneous evidentiary rulings that precipitated the complainant's wrongful conviction and incarceration. Unfavorable rulings do not alone raise a viable claim of misconduct. Where, as here, there is no evidence of illicit judicial motivation, such a claim is not cognizable. Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(C), and 11(c)(1)(B), respectively.

For the reasons stated, Complaint No. 01-11-90012 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C).

6/29/11

Date

Scott L. Lynch

Chief Judge Lynch