

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90004

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: AUGUST 22, 2017

Complainant, an incarcerated defendant who challenged his criminal conviction and sentence pro se, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Complainant alleges that the judge acted with bias in denying complainant's motion to vacate his sentence. The misconduct complaint is baseless and not cognizable.

Complainant alleges that the judge was biased against him, engaged in fraud on the court, colluded with the Assistant United States Attorney in denying complainant's motion to vacate his sentence, pursuant to 28 U.S.C. § 2255, and subsequent certificate of appealability, and failed to appoint counsel to represent complainant. Complainant further alleges that the judge engaged in obstruction of justice and deprived complainant of a fair and impartial appeal process and various constitutional rights. Complainant

requests that his motion be transferred to a different venue, that the court issue a subpoena to allow him to obtain additional evidence in support of the motion, that the court vacate the district court's denial of the motion, and that he be awarded attorney's fees and costs.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a pending or closed case, including issuing a subpoena, changing venue, or awarding fees. See 28 U.S.C. § 351, *et seq.*; see also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

The reviewed record, including the misconduct complaint, the docket of the relevant proceedings, and the judge's orders, is devoid of any information suggesting that the judge was biased or otherwise engaged in misconduct. The record indicates that the judge presided over complainant's criminal case, resulting in complainant's conviction on several drug charges and a period of incarceration. After complainant's direct appeal and request for a sentence reduction were unsuccessful, complainant, pro se, filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255, based on prosecutorial misconduct and insufficiency of evidence. The judge denied the motion on the grounds that the arguments had been fully litigated on direct appeal and complainant was not prejudiced by any prosecutorial misconduct.¹ The district court subsequently denied the certificate of appealability.

¹ The record does not indicate that complainant requested the appointment of counsel.

Complainant's conclusory allegations of judicial bias, collusion, or other judicial wrongdoing by the judge are wholly unsupported. Complainant provides no facts indicating that the judge harbored any illicit motivation while presiding over complainant's case or colluded with the government. Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Insofar as the misconduct complaint is based exclusively on complainant's disagreement with the judge's rulings, including, but not limited to, the denial of complainant's motion to vacate and application for a certificate of appealability, the complaint is not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related."). Accordingly, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-17-90004 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, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

8/22/2017
Date


Chief Judge Howard