

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-21-90004

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: DECEMBER 16, 2021

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Complainant, a pro se litigant and former criminal defendant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with his criminal case and subsequent habeas corpus proceeding, over both of which the judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that, at his sentencing hearing, the judge "request[ed]" complainant's attorney to "misle[a]d" complainant into filing a motion under 28 U.S.C. § 2255, instead of a direct appeal and that the judge did "not allow" complainant to file a direct appeal. Complainant further alleges that the district court did "not allow[]" complainant to provide evidence or witnesses in his defense or to have an interpreter at trial. Complainant also suggests that the judge directed complainant's counsel to withdraw complainant's motion for bail pending appeal. Finally, complainant objects to

the judge's denial of complainant's 28 U.S.C. § 2255 motion and a certificate of appealability of the order denying the habeas motion.<sup>1</sup>

The reviewed record, including the misconduct complaint and the docket and transcripts of the relevant proceedings, provides no basis for complainant's conclusory allegations of judicial misconduct. After a jury trial, at which complainant testified, complainant was found guilty on numerous firearms counts. Subsequently, complainant filed a motion for bail pending appeal.

At complainant's sentencing hearing, the judge advised complainant of his right to appeal his conviction and sentence, notified complainant of the timeline and procedure for filing an appeal, and explained that failure to file a timely notice of appeal would result in forfeiture of the direct appeal. Also at the sentencing hearing, the judge heard arguments on the pending motion for bail that complainant had filed in the district court. The judge denied the motion on the grounds that complainant had not met the applicable legal standard, provided complainant an opportunity to file a renewed motion for bail or a stay of execution of the sentence pending appeal, and, at complainant's request, released complainant on the same terms and conditions of his initial bail. In response to complainant's counsel's question regarding whether a motion for bail or to stay execution of the sentence would need to be filed in the Court of Appeals once a notice of appeal was filed, the judge proffered that any such motion should first be filed in the district

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<sup>1</sup> Complainant includes allegations of wrongdoing by his former attorney, who represented complainant throughout his criminal proceeding, and against the prosecutor. These claims are not addressed as the judicial misconduct procedure applies only to complaints against federal judges. See 28 U.S.C. § 351, et seq. See also Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 1.

court, but advised counsel to research the relevant rules and deadlines. Following the hearing, complainant's counsel filed a motion to withdraw the motion for bail pending appeal.

More than a year later, complainant filed pro se a notice of appeal of his conviction and sentence, and the Court of Appeals entered judgment dismissing the appeal as untimely. A number of months later, complainant filed a pro se motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255, arguing, in part, that his former counsel had failed to appeal complainant's conviction and sentence, and that complainant had not been provided an interpreter at trial. The government objected, and the magistrate judge assigned to the case entered a report and recommendation to deny: (1) complainant's § 2255 motion because the statute of limitations had passed and equitable tolling did not apply; and (2) a certificate of appealability of the denial of the motion, as there was no substantial showing of the denial of a constitutional right. The magistrate judge also noted that the record did not support complainant's assertion that he had required an interpreter at trial.

The judge affirmed the report and recommendation, adopting the magistrate judge's reasoning and adding that complainant first raised the issue of an interpreter in his § 2255 motion after complainant had testified extensively in English at the trial, and that, therefore, the record did not support complainant's belated assertion that he had needed an interpreter.

Complainant provides, and the record reveals, no evidence to support the allegations that the presiding judge "request[ed]" complainant's attorney to "misle[a]d" him into filing a motion under 28 U.S.C. § 2255, interfered with complainant's right to appeal, or directed complainant's counsel to withdraw his motion for bail pending appeal. To the contrary, the record establishes that the judge clearly explained the appeal process at the sentencing hearing, directed complainant's counsel to review the relevant rules and deadlines regarding the motion for bail pending appeal, and provided complainant the opportunity to renew the motion.

Further, contrary to complainant's allegation that he was not allowed to provide evidence or witnesses at trial, the record indicates that complainant extensively testified on his own behalf. Likewise, the record contravenes the claim that the judge did "not allow[]" complainant needed interpreter services at trial. As the record establishes that no such request had been made until complainant's post-conviction proceedings, and that complainant had testified at length in English, the court had no basis to conclude that such services were warranted. Therefore, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

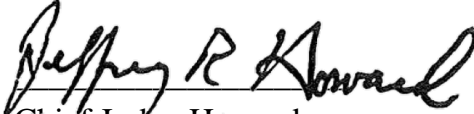
As there is no evidence of improper motive, complainant's objections to the judge's order denying complainant's 28 U.S.C. § 2255 motion, including the determination that complainant did not need an interpreter, and a certificate of appealability of the order denying the habeas motion are not cognizable. See Rules of

Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling . . . . If the decision or ruling is alleged to be the result of an improper motive . . . or improper conduct . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision.").

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. 01-21-90004 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, Rules 11(c)(1)(B), and 11(c)(1)(D), respectively.

December 16, 2021  
Date

  
Chief Judge Howard