

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90010

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 3, 2013

Complainant, an incarcerated convicted criminal defendant, filed a complaint, under 28 U.S.C. § 351(a), alleging that the district judge mishandled the criminal proceeding in which complainant entered a guilty plea. The complainant contends that, during a hearing on counsel's motion to withdraw, the judge intimidated complainant and improperly interfered with plea negotiations. The complainant further asserts that, during the sentencing proceeding, the judge was biased in favor of the government, verbally "attacked" complainant, improperly sentenced complainant to consecutive terms and enhanced the sentence for obstruction of justice. Complainant concludes that the judge "abus[ed] his authority," and requests resentencing by another judge.

As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. §

351, *et. seq.*, does not provide a mechanism for entering or modifying an order in a pending or closed case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19.

Moreover, the misconduct complaint is not cognizable. I have reviewed the misconduct complaint, as well as the record of the case, including the docket, pleadings, court orders, and transcripts of the relevant hearings. See Rules of Judicial-Conduct, Rule 11(b) (providing for a limited inquiry by the chief judge in determining what action to take in response to a judicial misconduct complaint). The record demonstrates that complainant is essentially dissatisfied with the sentence imposed in his case. This issue, as well as complainant's related concerns regarding the circumstances surrounding the plea agreement, are not cognizable in a judicial misconduct proceeding. "Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling" Rules of Judicial-Conduct, Rule 3(h)(3)(A). Complainant has taken an appeal and may raise his disputes with the judge's rulings in that context. Accordingly, the misconduct complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Insofar as complainant contends that the judge was improperly motivated in imposing the sentence, or otherwise during the course of the proceeding, the claims are baseless. The record demonstrates that, during both the hearing on counsel's motion to

withdraw and the sentencing, the judge listened to complainant in full before issuing a ruling. The judge called a recess during the motion hearing to allow complainant to discuss with counsel whether to consider a change of plea. At no time during either hearing was the judge rude or disrespectful, or in any way verbally "attack" complainant.

After complainant made lengthy arguments during the sentencing regarding the plea agreement and other allegedly mitigating factors, the court rejected complainant's claims in full, observing complainant's history of presenting what the court considered to be disingenuous arguments to manipulate the court and delay the proceeding.¹ This is not evidence of bias or other wrongdoing. The court's rulings were based exclusively on the record before the court. See Boudin, C.C.J., Order, In Re: Complaint No. 444, January 23, 2007, at 3-4, and cases cited ("It is well settled that judges are entitled to form views about the merits [of a case] and to express them so long as the judgments rest on the evidence and arguments in the proceeding itself; remarks that may prejudice the jury are a different matter . . ."). As nothing that happened during this proceeding in any way evidences judicial bias or verbal abuse by the judge, these claims are dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

For the reasons stated, Complaint No. 01-13-90010 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules

¹Though complainant was represented by counsel, he spoke on his own behalf during most of the sentencing proceeding.

11(c)(1)(B), and 11(c)(1)(D).

10/3/13

Date

Shirley Lynch

Chief Judge Lynch