

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90012

BEFORE
Torruella, Thompson and Barron, Circuit Judges
Laplante and Torresen, District Judges

ORDER

ENTERED: APRIL 16, 2015

Petitioner, an incarcerated criminal defendant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a district judge in the First Circuit. The petitioner alleged that the judge mishandled petitioner's criminal prosecution and related civil action.

Petitioner, who was convicted following a jury trial, originally alleged that the judge was biased and engaged in other wrongdoing. Petitioner alleged that the judge wrongfully failed to indict petitioner for over two years after his arrest. Petitioner charged that the judge exhibited a personal bias, lack of integrity, and disregard for the judge's professional and constitutional obligations in presiding over the petitioner's criminal case. Petitioner maintained that the judge lacked impartiality and favored "his former alunms [sic]." Petitioner further asserted that the judge made a statement effectively admitting to bias and wrongfully denied petitioner the right to present a witness at trial who would have testified on petitioner's behalf.

Petitioner further contended that the judge: violated the Double Jeopardy Clause by allowing petitioner to be recharged for the same crime; engaged in conspiracy to unlawfully imprison and deport petitioner after the expiration of his sentence; and deprived petitioner of his constitutional rights to a fair and speedy trial. Finally, petitioner asserted that the judge wrongfully ignored petitioner's motion to vacate his sentence, under 28 U.S.C. § 2255, and his subsequently filed motion for the judge's recusal.

Chief Judge Lynch dismissed the misconduct complaint. The Chief Judge observed that petitioner had been incarcerated following a previous conviction at the time he was indicted in the case before the subject judge. Chief Judge Lynch determined that petitioner's objection to the timing of the indictment filed in the case at issue did not indicate misconduct by the judge. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(A).

In reviewing the case record, the Chief Judge found no evidence to support petitioner's allegations of bias and other wrongdoing by the judge. Chief Judge Lynch observed that, for the several years leading up to petitioner's trial, the parties engaged in discovery, the judge allowed petitioner's request for new appointed counsel and held hearings on multiple motions, including petitioner's motion to dismiss.

The Chief Judge further noted that petitioner filed the motion to vacate shortly after his conviction and sentence were affirmed on appeal. Chief Judge Lynch explained that the court promptly mandated the submission of a responsive pleading to the § 2255 petition but had not ruled on the petition or on the motion for recusal.

Chief Judge Lynch determined that there was no evidence in the misconduct complaint or in the record of petitioner's proceeding suggesting that the judge was biased against petitioner or

engaged in any wrongdoing while presiding over petitioner's case. Chief Judge Lynch found no facts suggesting that the judge "favored" any party, "admitted" to bias, or had any personal relationship that would be suggestive of potential bias. Nor did the Chief Judge find any information suggesting that the judge intended to delay the trial, violate any of petitioner's legal or constitutional rights, or induce petitioner to enter a guilty plea. Accordingly, the misconduct complaint was dismissed as groundless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Chief Judge Lynch further explained that petitioner's objections to the judge's rulings in the case do not alone constitute cognizable misconduct. These included petitioner's disagreement with court orders on pretrial and evidentiary motions, as well as petitioner's double jeopardy claim. The Chief Judge explained that "[c]ognizable 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." Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, the misconduct complaint was dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Finally, the Chief Judge noted that cognizable misconduct does not include the claim that the judge had yet to rule on petitioner's pending motions to vacate the sentence and for recusal. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural ruling.").

After the Chief Judge dismissed the complaint, the subject judge issued a lengthy order denying the § 2255 petition. The judge thoroughly addressed each of petitioner's claims – under the Double Jeopardy Clause, the Sixth Amendment (ineffective assistance of counsel), and the

Speedy Trial Act – before denying the petition and dismissing petitioner's related claims. It does not appear, however, that the court has ruled on petitioner's recusal motion.

In the pending petition for review, petitioner complains about the court's delay in ruling on the § 2255 petition. Petitioner explains that he filed the motion to vacate, a motion to appoint counsel and a motion for a hearing on the petition over three years ago. Petitioner reports that, almost a year later, he sent a letter to the court inquiring as to the status of the petition. Petitioner contends that, thereafter, all of his requests for information were "ignored," and "probably put in the trash."

Petitioner next alleges that the indictment in the case was filed in retaliation for petitioner's assertion of his constitutional rights during his previous, related criminal proceeding. Petitioner contends, as he did in the § 2255 petition, that the latter conviction violated petitioner's rights under the Speedy Trial Act and the Double Jeopardy Clause, as well as his right to the effective assistance of counsel. In apparent support of his arguments, petitioner cites various statutes, case law and the Code of Conduct for United States Judges.

Petitioner further asserts that the judge, prosecutors and petitioner's counsel conspired to coerce petitioner to waive his rights to trial and to appeal. Petitioner adds that Chief Judge Lynch "erroneously concluded" that the judge's delay in ruling on the habeas petition was not a due process violation and an "usurp[ation of] power."

The petition for review is without merit. Like the original misconduct complaint, the petition for review contains no information suggestive of bias or other wrongdoing by the judge. There is no evidence whatsoever that the judge conspired with the prosecution, defense counsel or anyone else to undermine petitioner's defense or subvert the success of his civil claims. As to the latter, the judge thoroughly addressed petitioner's claims in the court's lengthy memorandum

and order. Insofar as petitioner is objecting to these and other rulings that the judge issued in the case, the claims are not cognizable. Accordingly, the misconduct complaint was appropriately dismissed as unfounded, 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 of Judicial-Conduct, Rules 11(c)(1)(D) and Rule 11(c)(1)(B), respectively.

Finally, as the Chief Judge explained, where, as here, there is no evidence of improper motive, allegations of delay in judicial rulings are not cognizable under the misconduct statute. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rule 3(h)(3)(B). See also Commentary on Rule 3 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge – in other words, assigning a low priority to deciding a particular case.").

For the reasons stated, the order dismissing Judicial Misconduct Complaint No. 01-14-90012 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

4/15/15

Date



Susan Goldberg, Secretary