

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-15-90015

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 12, 2015

Complainant, a pro se incarcerated litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), alleging that the presiding district judge wrongfully dismissed complainant's petition for a writ of mandamus. The complaint is dismissed as frivolous and as not cognizable.

Complainant alleges that the judge misconstrued complainant's petition for a writ of mandamus as a petition for a writ of habeas corpus and then wrongfully dismissed it. Complainant contends that he is not challenging his conviction or sentence but is challenging the trial court's assertion of jurisdiction under federal law. Complainant, who was convicted in another judicial district than the one in which he filed the mandamus petition, argues that the trial court failed to establish that complainant's crimes occurred in the jurisdiction required by the law under which he was charged. Complainant demands a "jurisdiction hearing" and maintains that the judge disregarded Supreme Court precedent when the court denied this request and dismissed the case. Complainant asserts

that a petition under 28 U.S.C. § 2255 "is not the proper vehicle to obtain relief" because it requires complainant to consent to jurisdiction, which he refuses to do. He concludes that the court is obligated to cease all action, aside from ordering the jurisdiction hearing to which complainant is entitled, or complainant will continue to suffer "irreparable harm."

Finally, complainant asks that the correctional facility to which he has been transferred be ordered to provide him with paper and pens in order to ensure his "access to the courts."

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a case or, as requested by complainant, with respect to the conditions of confinement. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19 and 20.

The misconduct complaint is baseless. Complainant does not even allege, let alone provide any evidence, that the judge who dismissed his petition for a writ of mandamus engaged in any behavior that would constitute judicial misconduct. See Rules of Judicial-Conduct, Rule 3(h). The record indicates that the magistrate judge to whom the matter was assigned issued a report recommending that the case be dismissed for lack of subject matter jurisdiction. The magistrate judge explained that complainant had been convicted and sentenced, after pleading guilty, in another judicial district and that 28 U.S.C. § 2255 provides the sole mechanism for challenging the validity of a conviction

and sentence.¹ Complainant did not object to the magistrate judge's recommendation and the district judge approved it, dismissing the petition for a writ of mandamus without prejudice to complainant's ability to file a § 2255 motion in the jurisdiction in which he had been convicted.

As there is no claim, let alone any information in the record, indicating that the judge engaged in cognizable misconduct, the complaint is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Complainant alleges only that he disagrees with the substance of the court's rulings in his case. This is not misconduct. 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 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).

For the reasons stated, Complaint No. 01-15-90015 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), respectively.

11.12.15
Date


Chief Judge Howard

¹ Complainant had neither appealed nor filed a collateral proceeding in the district in which he had been convicted.