

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90024

BEFORE

Torruella, Lipez and Thompson, Circuit Judges
DiClerico and Besosa, District Judges

ORDER

ENTERED: FEBRUARY 19, 2013

Petitioner, an incarcerated litigant, 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. The petitioner alleged that the judge engaged in misconduct while presiding over petitioner's prosecution and sentencing over 15 years ago.

Petitioner alleged that the judge presided over the case despite the absence of subject matter jurisdiction. Petitioner asserted that the case had been improperly removed to federal from state court where it had been dismissed. The petitioner added that the judge wrongfully allowed the same prosecuting attorney to bring charges (arising from the same criminal conduct) against petitioner in both state and federal court. Petitioner surmised that, since the federal court lacked jurisdiction, all of the judge's orders, including the denial of petitioner's motion for recusal, are void.

Chief Judge Lynch dismissed the misconduct complaint. The Chief Judge determined that petitioner improperly sought to convert arguments about substantive legal issues, decided

many years ago, into claims of judicial impropriety. Chief Judge Lynch observed that petitioner sought the judge's recusal roughly 15 years after his sentencing and after the failure of multiple appeals and collateral challenges to his conviction and sentence.

The Chief Judge further noted that the same conduct can give rise to indictment and prosecution in multiple jurisdictions and that the dismissal of one set of charges would not alone mandate the dismissal of the other. As petitioner offered no evidence whatsoever that the judge was improperly motivated in denying the motion to recuse or otherwise in presiding over the petitioner's case, Chief Judge Lynch dismissed the complaint as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(C) and 11(c)(1)(B), respectively.

In the petition for review, petitioner restates his original claim that the federal court lacked jurisdiction over petitioner's case because the state was prosecuting petitioner for the same conduct. Petitioner argues that he can raise a jurisdictional issue at any time. Petitioner adds that Chief Judge Lynch neglected to address petitioner's assertion that the district judge violated federal law by allowing the same prosecutor to charge petitioner in state and federal court. Petitioner concludes that the judge's denial of petitioner's recent motions (to recuse and to dismiss the case for lack of jurisdiction) demonstrates the judge's personal bias against petitioner and necessitates the judge's disqualification from petitioner's case.

The petition for review is without merit. As Chief Judge Lynch observed, petitioner may not reiterate untimely legal arguments under the guise of a misconduct proceeding. The misconduct complaint, the petition for review, and the lengthy record of petitioner's proceedings

are utterly devoid of any information suggesting that the judge was biased against the petitioner or engaged in any other impropriety in connection with petitioner's case. The reviewed record demonstrates that, over 15 years ago, petitioner was convicted after a lengthy jury trial, and sentenced to life in prison. Recently, after multiple failed appeals and rejected collateral attacks, petitioner filed a motion to remand his case to state court and then, when this motion was denied, filed a motion to recuse the judge.

Where, as here, there is no evidence of judicial bias or improper motive, petitioner's disagreement with the court's legal rulings - concerning jurisdiction, the prosecutor, recusal, or other issues of federal law - does not constitute a cognizable misconduct complaint.

Accordingly, the complaint was appropriately dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C) and 11(c)(1)(B), respectively.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-12-90024 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).



Gary H. Wentz, Secretary