

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90024

BEFORE
Lynch, Chief Circuit Judge

ORDER
ENTERED: NOVEMBER 7, 2012

Complainant, a criminal defendant serving a life sentence, filed a complaint, under 28 U.S.C. § 351(a), against the district judge who presided over complainant's lengthy jury trial and sentencing over 15 years ago, alleging errors in the handling of that case.

Complainant alleges that he should not have been simultaneously prosecuted in both state and federal court for the same criminal conduct. He contends that, as a result, the federal court lacked jurisdiction. Complainant asserts that the judge should have recused from the case because the judge knowingly allowed the matter to be federally prosecuted in the absence of jurisdiction. Complainant adds that the dismissal of the state charges against him, which occurred after complainant was sentenced in federal court, required the dismissal of the federal case. Complainant concludes that, since the federal court lacked jurisdiction, all of the judge's orders are void.

Complainant first filed a motion seeking the recusal of the judge this past summer, roughly 15 years after his sentencing and after the failure of multiple appeals and collateral challenges to his conviction and sentence. The judge denied this motion. There is no evidence whatsoever suggesting that the judge was improperly motivated in doing so or was otherwise biased in connection with this case.

Any claim that the complainant could not be prosecuted concurrently on federal and state charges is also not a misconduct claim and is equally groundless. The same conduct can give rise to simultaneous indictments and prosecution in both state and federal jurisdictions. Nor would the dismissal of one set of charges alone require the dismissal of the other.

The misconduct complaint is utterly frivolous. It attempts, improperly, to convert arguments about substantive legal issues long since resolved into claims of misconduct. The misconduct system may not be used for these purposes. The misconduct complaint is based on the complainant's disagreement with the judge's rulings in the case, including the denial of the motion to recuse, and is dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct 11(c)(1)(B).

The misconduct complaint is also dismissed as baseless because there is no information suggestive of judicial bias or wrongdoing. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(C).

For the reasons stated, Complaint No. 01-12-90024 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).

Petitioner is warned against filing future frivolous misconduct complaints. See Rules of Judicial-Conduct, Rule 10(a).

4/7/2015
Date

Sandra L. Lynch
Chief Judge Lynch