

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-15-90002

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BEFORE  
Howard and Kayatta, Circuit Judges  
Casper, McConnell and Delgado Hernández, District Judges

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ORDER

ENTERED: DECEMBER 4, 2015

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Petitioner, the defendant in a probation revocation matter, has filed a petition for review of then Chief Judge Lynch's order dismissing his complaint, under 28 U.S.C. § 351(a), against a First Circuit district judge. Petitioner, who had been convicted and sentenced in another circuit, alleged that the First Circuit district judge engaged in wrongdoing in adjudicating the proceedings.

Petitioner originally alleged that the judge exhibited racial bias and blatant hostility toward petitioner by disregarding petitioner's objections to his attorney, speaking rudely and violating petitioner's Constitutional rights. Petitioner contended that the judge exhibited these behaviors during three court appearances. Petitioner alleged that the judge "summarily denied" petitioner's *pro se* motions, addressed petitioner in a "threatening tone," improperly denied petitioner's requests to appear *pro se* and to continue his education while incarcerated, and prematurely terminated the hearing. Petitioner further alleged that, during his next court appearance, the judge wrongfully stated that petitioner was fortunate when his second attorney was appointed and denied petitioner's request for new counsel. Petitioner continued that, during the final probation revocation hearing, the judge forced him to plead guilty and improperly

inferred that items that had been found in petitioner's possession suggested that was intending to commit violent crimes.

Petitioner further objected to orders issued in the case, including an order denying petitioner funds to retain an expert and an order banning petitioner from possessing certain materials. Petitioner added that the court wrongfully delayed in ruling on a number of petitioner's motions and that these motions were simultaneously denied by electronic order "in unexplained circumstances." Petitioner also claimed that clerk's office staff improperly gave petitioner conflicting information concerning the status of a motion he had filed. Finally, petitioner included in his original complaint a newspaper article referencing the judge in an unrelated matter. Petitioner concluded that the judge demonstrated "contempt" for petitioner's civil rights and was "unable to perform the duties of his office fairly, impartially, and diligently." Petitioner asked that a different judge be appointed to his case.

Then Chief Judge Lynch first explained that the judicial misconduct complaint procedure does not provide an avenue for obtaining the removal or replacement of a judge. 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. Chief Judge Lynch then dismissed the misconduct complaint as lacking any factual foundation, not indicative of judicial wrongdoing and not cognizable.

Based on a review of the record in the case, the chief judge found no support for petitioner's claims of judicial wrongdoing. Chief Judge Lynch observed that, at each of the relevant hearings, the judge patiently heard from all parties before entering any orders, did not exhibit any bias, racial or otherwise, and was not hostile, rude or disrespectful of petitioner.

Chief Judge Lynch noted that, at the first status conference, the judge allowed petitioner's motion for new counsel but warned petitioner that future such requests would elicit greater scrutiny. The chief judge further noted that the court did not prematurely terminate the hearing. Chief Judge Lynch determined that that the judge's statement that petitioner was fortunate when his second attorney was appointed was not remotely indicative of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

The chief judge further noted that, at the final probation revocation hearing, the judge did not "force" petitioner to plead guilty. Rather, petitioner's attorney acknowledged that there was no factual dispute as to the probation violation and the judge determined that petitioner's conduct in violating the terms of his probation warranted increased supervision. Chief Judge Lynch further observed that the judge did not make the other statements, as alleged - that petitioner was intending to commit violent crimes.

Because Chief Judge Lynch found that there was no indication in the reviewed record that the judge was biased against petitioner, hostile or engaged in any other judicial wrongdoing, she dismissed the misconduct complaint as lacking any factual foundation, pursuant to 28 U.S.C. § 352(b)(1)(B) and Rules of Judicial-Conduct, Rule 11(c)(1)(D).

As Chief Judge Lynch determined that petitioner's claim that the judge raised his voice during these hearings did not constitute cognizable misconduct, she dismissed this claim pursuant to 28 U.S.C. § 352(b)(1)(A)(i) and Rules of Judicial-Conduct, Rule 11(c)(1)(A). See Boudin, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 444, January 23, 2007. The chief judge also dismissed the claims arising from the alleged mishandling of a motion by clerk's office staff and from the article complainant submitted (that had no bearing on his case) as not

indicative of judicial wrongdoing. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial-Conduct, Rule 11(c)(1)(A).

Finding that there was no evidence of improper judicial motivation, Chief Judge Lynch concluded that petitioner's objection to any of the orders issued in the case did not constitute cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial-Conduct, Rule 11(c)(1)(B). The same held true for petitioner's claim that the court delayed in ruling on some of petitioner's motions. See Rules of Judicial-Conduct, Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural ruling.").

In the petition for review, petitioner reiterates the allegations that the judge acted with bias and hostility by mischaracterizing petitioner's criminal history and wrongfully suggesting that he was a violent criminal. Petitioner claims that these purported mischaracterizations violated his Constitutional rights.

Petitioner asserts that two rulings issued in this case, one of which was issued since the dismissal of the original complaint, evidence the judge's bias. These include the denial of petitioner's motion to correct the transcript of a revocation hearing and the denial of petitioner's motion to travel internationally to attend school. Petitioner infers that the judge's conclusions are "not based on fact but on a highly subjective personal opinion," and that the court has "overstepp[ed its] authority as a fair and impartial adjudicator of the law."

Petitioner also contends that Chief Judge Lynch's dismissal of the complaint was the product "of favoritism," and requests the opportunity to appear in court in order to dispute the district judge's findings.

As an initial matter, the judicial misconduct procedure does not provide an avenue for affording relief in a pending or closed case, including the court appearance requested in the

present matter. See 28 U.S.C. § 351. See also Rules for Judicial-Conduct, Rule 19. In addition, petitioner includes new claims of wrongdoing by the prosecutor and others which are not cognizable under the judicial conduct and disability statute. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rule 4.

Moreover, the petition for review offers no information that undermines then Chief Judge Lynch's determinations. As the chief judge observed, there is no evidence in the reviewed record, including the transcripts of the relevant hearings, corroborating the claims that the judge referred to petitioner as alleged or otherwise suggested that petitioner was a violent criminal. Nor is there any evidence of judicial bias or hostility toward petitioner. The record demonstrates that, in considering the petitioner's probation violation, the court explicitly noted that it was not modifying the underlying judgment but was weighing the factors associated with petitioner's behavior, based exclusively on the record. Relying on these factors, the judge found the need for increased supervision over the petitioner. Accordingly, these claims were properly dismissed as lacking any factual foundation, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Because petitioner failed to present any evidence of improper judicial motivation, his objections to the judge's orders in this case were properly dismissed as not cognizable. These include the court's denial of petitioner's motions to correct the transcript and to travel. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

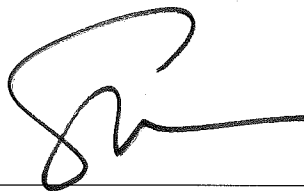
Finally, petitioner presents no facts whatsoever supporting the charge that Chief Judge Lynch was improperly motivated when she dismissed petitioner's original complaint. This claim is both frivolous and is not cognizable. See 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C), Rule 11(c)(1)(B) and Commentary to

Rules of Judicial-Conduct, Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related . . . [A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . .").

Therefore, the misconduct complaint was appropriately dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii) and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B) and 11(c)(1)(D), respectively. For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-15-90002 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

December 4, 2015

Date



Susan Goldberg, Secretary