

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90006 and 01-16-90007

BEFORE
Lynch and Kayatta, Circuit Judges
Casper, McConnell, and Levy, District Judges

ORDER

ENTERED: AUGUST 1, 2017

Petitioner, the defendant in a criminal matter and respondent in a civil commitment proceeding, has filed a petition for review of Chief Judge Howard's order dismissing his complaint, under 28 U.S.C. § 351(a), against the two district judges who presided over the respective proceedings. Petitioner alleges that the judges conspired with counsel and engaged in other wrongdoing. Chief Judge Howard dismissed the complaint as baseless and not cognizable.

Petitioner originally alleged that the district judge presiding over the criminal matter conspired with the prosecuting attorney and petitioner's appointed counsel to charge petitioner based on a fraudulent indictment. Petitioner further alleged that, after dismissing the indictment, this district judge improperly ordered petitioner's confinement on "dangerousness" charges.

As to the civil commitment proceeding, petitioner originally alleged that the presiding district judge lacked jurisdiction and that the commitment order issued by the judge was unlawful. Petitioner objected to various rulings made by the judge during the course of the civil commitment proceeding, alleging that the erroneous decisions were the result of the judge's bias on the basis of petitioner's ethnicity and the judge's conspiracy with counsel. Petitioner further contended that the district judge made a "personally derogatory remark" during a status conference and that the judge "watched" while petitioner was "assaulted" by court security personnel.

Chief Judge Howard found that neither the misconduct complaint nor the reviewed records of both cases offered any evidence to support petitioner's allegations that either district judge engaged in conspiracy or other wrongdoing in connection with the proceedings. In connection with the criminal matter, the Chief Circuit Judge found that, over the course of a year, the district judge heard from multiple experts on petitioner's competency. Based upon this testimony, the district judge determined that petitioner was not competent to stand trial, nor could petitioner be restored to competency.

In the absence of any evidence to support the allegations that the district judge presiding over the criminal matter had conspired with lawyers on the case to unlawfully indict and prosecute petitioner or engaged in any other wrongdoing, Chief Judge Howard dismissed the allegations against this judge as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C). Furthermore, because Chief

Judge Howard determined that petitioner's allegations of bias and conspiracy by this district judge were based exclusively on the petitioner's objections to the judge's rulings, including the order of confinement, these allegations were not cognizable. 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, Chief Judge Howard also dismissed the allegations against this judge, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

In connection with the civil commitment proceeding, Chief Judge Howard determined that the presiding district judge conducted a lengthy evidentiary hearing before issuing a detailed order setting forth the determination that complainant met the dangerousness standard for commitment. Finding no evidence of judicial bias or conspiracy, Chief Judge Howard determined that petitioner's allegations against the presiding judge were based exclusively on petitioner's objections to the substance of the court's rulings, including the final order of commitment. Accordingly, the Chief Circuit Judge dismissed petitioner's claims against this judge 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). Furthermore, having determined that the judge's alleged "derogatory remark" was an appropriate question posed in the context of a discussion of petitioner's criminal history, Chief Judge Howard dismissed this allegation as unfounded, pursuant to 28 U.S.C. §

352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D). Finally, with regard to petitioner's allegation that the judge "watched" a purported assault by court security personnel, a review of the transcript demonstrated that petitioner had lost his temper during the proceeding, uttered expletives, and was removed from the courtroom, and that the district judge noted for the record that petitioner was very violent and combative. Chief Judge Howard dismissed this allegation as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).


In the petition for review, petitioner asserts that Chief Judge Howard, in dismissing the complaint, has conspired with the subject judges. Petitioner also reiterates his claims disputing the propriety of his confinement and the district judges' factual and legal determinations.

The petition for review is meritless. It provides no evidence of conspiracy, improper judicial motive, or other wrongdoing that would undermine Chief Judge Howard's determinations, let alone suggest that the Chief Circuit Judge was involved in a conspiracy with the subject judges. Petitioner's conclusory allegations that either district judge was involved in a conspiracy, was biased, or engaged in any other wrongdoing are baseless and were properly dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(C), and 11(c)(1)(D).

Further, as Chief Judge Howard explained, objections to the substance of the courts' rulings are not alone cognizable under the misconduct statute. See Rules of Judicial-Conduct, Rule 3(h)(3)(A), supra. Accordingly, the complaint was properly dismissed 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 herein, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

8/1/17
Date



Susan Goldberg, Secretary