

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90006

BEFORE

Torruella, Thompson, and Barron, Circuit Judges
McConnell and Delgado-Hernández, District Judges

ORDER

ENTERED: MAY 25, 2018

Petitioner, a criminal defendant, has filed a petition for review of Chief Judge Howard's order dismissing his complaint, under 28 U.S.C. § 351(a), against a First Circuit district judge. Petitioner alleged judicial misconduct in connection with a criminal matter over which the judge presided. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.

Petitioner originally alleged that the judge engaged in judicial misconduct by denying petitioner's requests for a new trial. Petitioner also generally alleged that the district court's failure to apply the law and rules of procedure correctly constituted a denial of his Fifth Amendment right to due process and that, as a result, his incarceration is unconstitutional. Petitioner asked that the judgment in the criminal matter be voided.

In dismissing the complaint, Chief Judge Howard first explained that the judicial misconduct procedure does not provide an avenue for obtaining relief in a pending or closed case, including the voiding of a criminal conviction or sentence. See 28 U.S.C. § 351, *et seq.*; Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

Chief Judge Howard then determined that the record contained no evidence supporting petitioner's conclusory allegations of judicial wrongdoing. Chief Judge Howard observed that, following a guilty verdict, the judge denied petitioner's motions for a new trial. Chief Judge Howard further observed that the judge later granted petitioner's request for resentencing. Because petitioner's conclusory allegations of misconduct were presented without any supporting evidence, Chief Judge Howard dismissed the misconduct complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D). Insofar as petitioner's claims were based exclusively on petitioner's objections to the court's orders, including the denial of petitioner's motions for a new trial, Chief Judge Howard dismissed the complaint 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).

In the petition for review, petitioner reiterates his claims of error by the trial judge and violations of petitioner's Constitutional rights, and levies incoherent and generalized allegations of judicial misconduct.

The petition for review is meritless and is simply another attempt to reassert petitioner's disagreement with the court's orders. Petitioner offers no facts in the petition for review that undermine Chief Judge Howard's determinations with respect to the underlying complaint. As the Chief Judge concluded, neither the misconduct complaint nor the reviewed record offer any indication that the judge engaged in judicial misconduct. Chief Judge Howard correctly determined that the allegations in the misconduct complaint derive exclusively from petitioner's disagreement with the court's orders and that such claims do not constitute cognizable misconduct. See Rules for Judicial-Conduct, Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural ruling."). Accordingly, Chief Judge Howard appropriately dismissed the complaint as baseless and as not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-17-90006 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

5/25/2018

Date



Susan Goldberg, Secretary