

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90006

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 5, 2017

Complainant, a criminal defendant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with a criminal matter over which the judge presided. The misconduct complaint is baseless and not cognizable.

Complainant asserts that the judge committed misconduct by denying complainant's requests for a new trial. Complainant generally alleges that the district court's failure to apply the law and rules of procedure correctly constitutes a denial of his Fifth Amendment right to due process. Complainant argues that, accordingly, his incarceration constitutes an illegal detention in violation of the United States Constitution. Complainant requests that the judgment against him be voided.

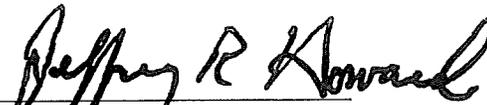
As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a pending or closed case, including the voiding of a criminal conviction or sentence. See 28 U.S.C. § 351, *et seq.*; see also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

A review of the record provides no factual support for complainant's conclusory allegations of judicial misconduct. After a jury found complainant guilty of the charged offense, the district court denied complainant's multiple motions for a new trial. Later, the subject judge granted complainant's request for resentencing, reducing his sentence in light of a sentencing amendment. Complainant provides no facts indicating judicial misconduct by the district judge in connection with this matter. Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Absent evidence of improper judicial motive, complainant's objections to the judge's orders, including the denial of complainant's motions for a new trial, do not constitute a cognizable judicial misconduct claim. 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, the misconduct complaint is dismissed 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).

For the reasons stated, Complaint No. 01-17-90006 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, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

12/5/2017
Date


Chief Judge Howard