

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90059

In re Complaint of John Doe¹

This is a judicial complaint filed on July 14, 2017, by an incarcerated pro se litigant against the United States district judge who sentenced him to prison and now presides over his motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence.

The judicial complaint alleges that the district judge engaged in judicial misconduct at the complainant's sentencing. First, the complainant alleges that the district judge relied on false statements from the presentence report to justify giving him a sentence at the high-end of the Guidelines range. Second, the complainant maintains that the district judge had no reason to deem him not credible at sentencing. Third, the complainant asserts that the district judge emphasized his convictions and downplayed the mitigating factors. Fourth, the complainant alleges that the district judge "attempted to perpetrate a falsehood" at sentencing "but was corrected by [his] attorney." Fifth, the complainant contends that the district judge incorrectly calculated his Guidelines range. Sixth, the complainant asserts that the district judge failed to disclose the "other reasons" that the judge relied on in determining the complainant's sentence.

¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

The judicial complaint also alleges that the district court engaged in judicial misconduct regarding the complainant's § 2255 proceeding. The complainant alleges that the district judge has "purposely delayed ruling on [his] [§] 2255 motion to deny [him] relief from the appeals court or Supreme Court so as to make that relief come too late to shorten [his] sentence significantly or at all before [his] release." The complainant asserts that this delay is unwarranted because the district judge already stated in the order denying his motion for appointment of counsel that because a review of his § 2255 petition suggested that he was not entitled to relief, "there is no reason to appoint an attorney at this time." The complainant therefore "beg[s] this court to intervene in [his] case, get another judge to look at [his] [§] 2255 motion, or at least get [the district judge] to hurry up and shoot [him] down so [he] can appeal."

These allegations are directly related to the merits of the judge's decisions or procedural rulings and are not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rules 3(h)(3)(A), 11(c)(1)(B); *see also* J.C.U.S. Rule 3(h)(3)(B) (stating that cognizable misconduct "does not include . . . an allegation about delay in rendering a decision or ruling").

The complaint is dismissed.

September 6, 2017



Lavenski R. Smith, Chief Judge
United States Court of Appeals
for the Eighth Circuit