

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90042

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se inmate against the United States district judge who dismissed the inmate's motion to dismiss for lack of jurisdiction, which the district judge construed as a petition filed pursuant to 28 U.S.C. § 2255. The inmate pleaded guilty pursuant to a written plea agreement. The plea agreement waived the inmate's right to challenge his conviction under § 2255, except in two limited circumstances. After the inmate was sentenced, he filed no direct appeal. Instead, he filed in his criminal case a "motion to dismiss case for lack of jurisdiction," citing Federal Rule of Civil Procedure 60(d)(3). The district judge construed the Rule 60(d)(3) motion as a § 2255 motion after concluding the inmate was collaterally attacking his conviction, summarily dismissed the motion, and denied a certificate of appealability. On appeal, the inmate applied for a certificate of appealability. This court denied the inmate's application and dismissed the appeal.

The judicial complaint alleges that the district judge "prosecute[d] Complainant when [the judge] knew [the judge] had no jurisdiction; convicted that person when [the judge] knew [the judge] had no jurisdiction; accepted a plea agreement that [the judge] knew was illegal[;] and reconstrued Complain[ant]'s claim for relief to avoid ruling on the merits of the claim." The judicial complaint alleges

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.

that the district judge “wanted to preserve a conviction, so [the judge] changed the law to do it.”

The inmate’s allegations against the district judge are “directly related to the merits of a decision or procedural ruling” and therefore must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rule 11(c)(1)(B); *see also* J.C.U.S. Rule 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.”). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

August 13th, 2018



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