

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90062

In re Complaint of John Doe¹

This is a judicial complaint filed by a federal inmate against the United States district judge who presided over the complainant's criminal trial and sentencing and is currently presiding over the complainant's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255.

The judicial complaint alleges that the district judge "is engaging in known bias and concealment" against the complainant. The complainant alleges that the district judge "has for a very long time denied this movant from highlighting criminal and constitutional violations." In support of these allegations, the complainant represents that at sentencing, the district judge "told me to be quiet, because the more I spo[ke] the deeper the hole I was putting myself in. The district [judge] used threats and coercion to force me to relinquish my right to speak against the government."

I have reviewed the sentencing transcript. The complainant misrepresents the district judge's statements. At sentencing, the district judge provided the complainant an opportunity to speak about the sentence to be imposed. Instead of speaking about the sentence to be imposed, the complainant discussed the evidence presented at trial, deficiencies the complainant believed existed in that evidence, and the government's actions. The district judge interrupted the complainant and urged the complainant "to

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.

tell me what you want to tell me with regard to the sentence to be imposed here today.” The district judge “continue[d] to give [the complainant] an opportunity to do that.” Nevertheless, the complainant continued challenging the trial evidence. The district judge again interrupted the complainant, stating, “[W]hat you are saying here today is not mitigating. You are not helping yourself; do you understand that?” Once again, the complainant continued with his challenge to the trial evidence. The district judge urged the complainant to “use your time wisely” and explained that the complainant was merely rehashing the trial evidence and arguments that defense counsel had made to the jury. The district judge instructed the complainant to talk “about the sentence to be imposed.” The district judge allowed the complainant to continue speaking, but the complainant persisted in challenging the trial evidence. In announcing the complainant’s sentence, the district judge explained that while the complainant had attempted to testify during sentencing concerning the evidence presented at trial, “the jury clearly had an opportunity to listen to the[] evidence, weigh it fairly and impartially,” and the complainant’s defense counsel “had a full opportunity to cross-examine th[e] witnesses.” At the conclusion of sentencing, the district judge directed the complainant “not to distribute, publicize, any of the discovery that has been provided to you other than to an attorney who may be assisting you in preserving or presenting an appeal” or “us[ing] it in any civil proceeding.” This was because the discovery concerned confidential information.

Based on a thorough review of the sentencing transcript, the complainant’s claim that the district judge expressed bias and used coercion against the complainant at sentencing must be dismissed as “frivolous . . . [and] lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists.” Judicial Conference of the United States for Judicial-Conduct and Judicial-Disability Proceedings (J.C.U.S.) Rule 11(c)(1)(C), (D); *see also* 28 U.S.C. § 352(b)(1)(A)(iii).

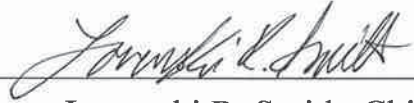
The complainant also alleges that the district judge exhibited judicial bias in adjudicating several of the complainant’s motions. In the criminal action, the district judge ordered the Clerk “to docket *under seal* . . . ten handwritten documents

submitted by [the complainant]” because the documents “contain[ed] confidential information, including names and identifying information of victims.” In the habeas corpus action, the district judge ordered the clerk to strike from the record a letter that the complainant had sent to the United States Attorney, explaining that “[a] letter to the government is not an appropriate filing in the case.” The complainant then filed a motion for leave to serve interrogatories. The district judge denied the motion, explaining “that Movant’s underlying § 2255 Motion to Vacate is fully briefed, including Movant’s reply memorandum.” Therefore, the district judge found “no reasonable basis for additional discovery as it will not lead to relevant evidence.” Thereafter, the district judge denied the complainant’s motion to compel defense counsel to surrender the case file. The district judge explained that the complainant “has yet to file a viable § 2255 motion”; as a result, the district judge concluded that the complainant had failed to “establish[] the good cause required for this Court to permit discovery under Rule 6.” The district judge also denied the complainant’s request for subpoena duces tecum, concluding that “[t]he request is duplicative of [the complainant’s] previously-filed motions, which the Court has considered and denied.” Finally, the record reflects a letter sent to the district judge from the complainant’s son, as well as several letters sent from the complainant to the district judge. The letters were not motions; therefore, the district judge did not enter any orders in response to them.

To the extent the judicial complaint alleges that the district judge was biased in adjudicating these motions, such allegations must be dismissed as “frivolous . . . [and] lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists.” J.C.U.S. 11(c)(1)(C), (D); *see also* 28 U.S.C. § 352(b)(1)(A)(iii). To the extent the judicial complaint attacks the merits of the district judge’s decisions, the allegations must be dismissed because they are improper subjects of a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11(c)(1)(B).

The complaint is dismissed.

2/27/2020, 2020

A handwritten signature in cursive script, reading "Lavenski R. Smith", positioned above a horizontal line.

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