

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**  
JAN 08 2016  
FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Docket Number: 05-16-90008

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MEMORANDUM

Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge who presided over his criminal trial. Complainant alleges that the judge: knew that “the trial ... was illegal”; denied his motions to suppress evidence; deliberately failed to direct the jury about a warrantless wiretap; permitted the violation of complainant’s right to confront a victim-witness; sealed records without justification and without following proper procedure; and, imposed an excessive sentence.

Complainant further alleges that the judge impermissibly considered his “sexual orientation ... and gender” in sentencing, and imposed an excessive sentence in retaliation for exercising his right to trial. A review of the appellate record suggests that complainant is complaining about what he perceives to be a gender-based disparity between the 126-month sentence he received, and the 1-year and 1-day sentence the judge imposed in an unrelated criminal proceeding against a female defendant facing similar fraud-related charges that fell within a higher sentencing range.

Without presenting any evidence in support of the assertion, complainant also alleges that the judge and court-appointed appellate counsel, who had served as a student intern in the judge’s chambers, “tampered with exonerating evidence”. He appears to be alleging that the judge failed to obtain a security video from a liquor store that, according to complainant, would have provided exonerating evidence. He seems to also assert that

appellate counsel was appointed because of her prior relationship with the judge and, to cover up the judge's misconduct, intentionally failed to obtain the exonerating evidence.

In addition, and in similarly conclusory fashion, complainant contends that the judge improperly "influenced" a state lawsuit complainant filed against a detective associated with the criminal investigation, and a complaint he filed with the Texas Bar against his trial counsel.

To the extent that these allegations relate directly to the merits of the judge's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of bias and "judicial influence" are insufficient to support a finding of judicial misconduct and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial. An order dismissing the complaint is entered simultaneously herewith.

~~October 22~~ December 31, 2015

  
Carl E. Stewart  
Chief Judge