

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JUN 06 2016

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Docket Number: 05-16-90071

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 intentionally allowed the trial to proceed without complainant entering a plea in open court because he would have exposed the criminal conduct of prosecution and defense counsel, “undeniably guaranteeing a completely different outcome”. He further contends that the judge “allowed prosecutorial misconduct”.

Complainant also complains that despite his filing a 28 U.S.C. § 2255 motion presenting “proof of gross serious and criminal misconduct” by prosecution and defense counsel, the judge “breached the public trust, failed his fiduciary duty, and denied his moral, ethical, and professional responsibility by not investigating, correcting, and disciplining those who were and are clearly and convincingly guilty.” He submits that the judge’s failure to investigate his claim that CJA counsel overbilled the United States government might indicate that “decisions being bought ... embezzled funds being kickbacked [sic].”


To the extent that the 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 conspiracy are insufficient to support a finding of judicial misconduct and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant asserts that “[t]wice during the first day trial, [the judge] fell asleep on the bench.”

A limited inquiry was conducted pursuant to 28 U.S.C. 352(a)(2), and none of the three defense attorneys recalled the judge falling asleep during the trial. There is no evidence to support the allegation, and it is 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.



Carl E. Stewart
Chief Judge

April 20, 2016

U. S. COURT OF APPEALS
FILED

SEP 01 2016

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90071
Petition for Review by [REDACTED]
of the Final Order Filed June 6, 2016
Dismissing Judicial Misconduct Complaint Against
[REDACTED]
Under the Judicial Improvements Act of 2002.


ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Stewart, filed June 6, 2016, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

8-29-2016
Date


Priscilla R. Owen
United States Circuit Judge
For the Judicial Council of the Fifth Circuit