

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**

JUN 06 2016

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Docket Number: 05-16-90072

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FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

MEMORANDUM

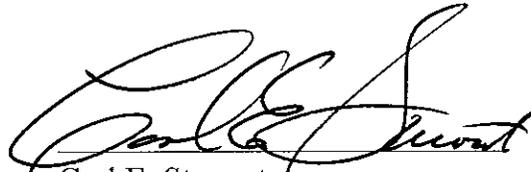
Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge who presided over his criminal trial. Complainant states that during the trial and in letters sent directly to chambers post-trial, he alerted the judge to the purported misconduct of officers of the County Sheriff's Office, the Assistant United States Attorney, and defense counsel. For example, complainant advised the court that the government used the color of law to obtain and coerce their two key witnesses, prosecution witnesses committed perjury, the sheriff's office or the prosecution tampered with video evidence, and defense counsel did not pursue the agreed upon trial strategy. Complainant alleges that the judge "has never addressed any of my complaints", and concludes that he has "no other choice but to assume that [the judge] is in collusion with" the Sheriff's Office, and with prosecution and defense counsel.

It was entirely proper for the judge not to respond to *ex parte* communication from a criminal defendant represented by counsel and, contrary to complainant's assertion that his claims were "never addressed", the trial and sentencing transcripts show that the judge did address the claims when they were raised at trial or in post-trial motions.

Regardless, to the extent that the allegations directly to the merits of the judge's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that the allegations relate to the judge's failure to respond to *ex parte* communication, the allegation is subject to dismissal as frivolous 28 U.S.C. § 352(b)(1)(A)(iii). In other respects such a conclusory assertion of conspiracy is insufficient to support a finding of

judicial misconduct, and is also 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