

AUG 04 2016

**FIFTH CIRCUIT
LYLE W. CAYCE, CLERK**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-16-90090 and 05-16-90091

MEMORANDUM

Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge and the subject United States Magistrate Judge regarding his criminal trial proceeding.

Complainant complains that the magistrate judge permitted his “arrest without a warrant, and illegal seizures done without a valid warrant ... or at least his signature, which is questionable as to show 3 clearly different signatures all dated the exact same time of day and date.” He appears to further complain that the magistrate judge should have recused himself.

To the extent that these allegations relate directly to the merits of the magistrate judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertion that the magistrate judge permitted someone to forge his signature is insufficient to support a finding of judicial misconduct, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant complains that despite the government producing no evidence to support its claim that he was a flight risk, and without providing complainant with written notice, the judge ordered his detention, thereby intentionally depriving him of access to his trial preparation materials. He further complains that the judge: denied his recusal motion, his request for additional funds for forensic expert services, and his request for a continuance; failed to correct “several grave errors” made by the prosecutor; allowed the prosecutor to examine an expert about “computer evidence that appears nowhere in the record;” “simply ignored repeatedly ... [complainant’s] Booker objections” during sentencing hearings; and

“refused to file” complainant’s post-remand “*pro se* motion to challenge the subject matter jurisdiction”.

Complainant also protests that by appointing counsel on remand, the judge has violated his constitutional right to self-representation. “I believe clearly the Judge is trying to silence my voice thru [sic] this Appeal Attorney, in order to protect the errors that he allowed to occur and to hide the injustice.”

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 improper motives 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).

In addition, complainant alleges that the judge “has allowed (ordered) clerk to remove records from system ... has deleted from the record of 140 pages of documents ... Also has allowed (ordered) evidence to be tampered with (altered).” In support of these claims, he asserts:

- Fourteen docket entries are not included in the public docket. A review of the private docket shows that the fourteen documents are “sealed” and do not, therefore, appear in the public docket.
- The judge “must have ordered” the district court clerk “to remove” from the docket “CD Rom acquittal evidence” complainant purportedly filed on May 13, 2015. A review of the docket shows that this assertion is baseless. The entry in question is complainant’s sealed *ex parte* motion for expert services, a motion subsequently denied by the judge in a May 2015 pretrial hearing.
- “Now, the search warrant was on the Docket, but has mysteriously disappeared since pre-Appeals.” Contrary to this claim, the sealed search warrant is entered as part of the government’s exhibits.
- The judge “must have” ordered the clerk to “alter and retype” complainant’s exhibit and witness lists. The record shows that the defendant’s exhibit list and the joint

witness list entered on the docket are those prepared post-trial by either the government or by court personnel based on defense exhibits entered and the prosecution and defense witnesses who testified at trial. Neither list purports to be a copy of any such list filed pretrial by complainant.

- The judge “must have” ordered the “[r]emoval of another document from the records: Declaration of Forensic work.” Complainant offers no evidence that he filed any such document, and the undersigned notes that complainant did not list the document in his recently filed “Objection to Missing Records.”

To the extent that these claims are contradicted by the record, they are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, such conclusory assertions are insufficient to support a finding of judicial misconduct, and are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Noting that he has filed five Freedom of Information Act requests in three months, complainant also protests that the “court” has provided only two of the documents he requested.

The Freedom of Information Act does not apply to federal courts, and the allegation 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

June 2, 2016