

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Number: 05-16-90105

M E M O R A N D U M

Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge who presided over his criminal trial and post-conviction proceedings. Complainant alleges that the judge, in conspiracy with the prosecution, made “novel rulings of law to support [his] merits findings on Constitutional violation issues without according the facts from the trial record to support its rulings,” thereby violating complainant’s constitutional rights.

For example, complainant contends that his Fourth Amendment and Sixth Amendment rights were violated because the judge allowed the trial to proceed without the Government’s having to prove the constitutionality of a traffic stop or whether complainant consented to the search of the vehicle. He submits that the judge “admitted” to this conspiracy in a memorandum opinion dismissing complainant’s 28 U.S.C. § 2255 petition. However, a review of the memorandum shows that the judge noted that the reason that the Government did not call the officer who stopped and searched the vehicle was because, in a conference held at the end of the second day of the trial, defense counsel advised the Court that they did not plan to challenge the legality of the traffic stop or the consent to search.

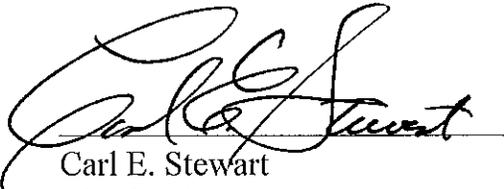
Complainant further complains that the judge denied his habeas petition and denied *sua sponte* a certificate of appealability.

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 conspiracy are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal as frivolous 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

July 12, 2016