

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

OCT 17 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Docket Number: 05-17-90116

MEMORANDUM

Complainant, a former federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge who presided over complainant's criminal trial. He alleges that the judge erroneously and improperly permitted the case to proceed despite numerous infirmities, including lack of probable cause, illegal search, lack of an arrest warrant, and lack of evidence.

The allegation relates directly to the merits of the judge's decisions, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further asserts that in Hearing 1, the judge "threatened" him and his co-defendant that if they did not enter guilty pleas "he would sentence us to life in prison." In support of this assertion, he claims:

- While the defendants were in a courthouse holding cell prior to the scheduled hearing, the judge ordered the U.S. Marshals to "coerce and force" the defendants' wives to visit the holding cell "to persuade [us] to plead guilty."
- The judge then held a "secret" in-chambers conference with the co-defendants, outside the presence of prosecution and defense counsel, and "began to try and convince [us] to plead guilty and not take a trial. He threatened that otherwise he would sentence [us] to life in prison and only gave [us] 10 days to make up [our] mind[s]. ... I was tortured by these violent appearances in mental nature."

A review of the audio-recording and transcript of Hearing 1, and reviews of the transcripts of two subsequent hearings, demonstrate that complainant's claims are plainly


contradicted by the record. The allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also appears to complain that the transcript of Hearing A fraudulently records that the conference commenced at 3:22:15 p.m., whereas complainant claims the hearing was held in the morning. “[T]he original transcripts with real and true information of what happened ... were supplanted by fraudulent ones.”

However, the time-stamped transcript is automatically generated by the court reporter’s stenographic machine, and any contention that the judge somehow manipulated the transcript to denote that the in-chambers conference was held in the afternoon is contradicted by the record. This allegation is therefore 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

October 11, 2017

DEC 08 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-17-90116

Petition for Review by [REDACTED]
of the Final Order Filed October 17, 2017
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 October 17, 2017, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

12-17-2017
Date

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