

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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

DEC 13 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Docket Number: 05-18-90015

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MEMORANDUM

Complainant, a federal prisoner, complains that during a sentencing hearing, the subject United States District Judge “did not allow me to speak in mitigation of my sentence and to explain to him that I was promised immunity from prosecution . . . instead, [the judge] threaten[ed] me with the removal of my soon to [sic] awarded points for accepting responsibility if I continued to speak in the manner I had chosen to do.”

A review of the sentencing hearing transcript shows that defense counsel presented complainant’s objections that the presentence report included sentencing enhancements based on information complainant provided under the belief he had immunity from prosecution. After the judge overruled those objections, complainant repeated the claim that he had immunity from prosecution. Given that the presentence report recommended a reduction in sentence based on complainant’s acceptance of responsibility, there appears to have been nothing improper in the judge’s admonishment that the court might construe his continued insistence on immunity from prosecution as a withdrawal of acceptance of responsibility.

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). To the extent that complainant is alleging that the judge demonstrated bias in denying his arguments in

favor of mitigation of sentence, the Supreme Court of the United States has held that “[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant ... But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings ....” Liteky v. United States, 510 U.S. 540, 551 (1994). The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that the judge: violated his oath of office by failing to recuse himself *sua sponte* from a civil proceeding in which complainant named the judge as a defendant; construed complainant’s Rule 60(d)(3) motion as a § 2255 petition “without any legal argument or reason for his determination”; and, dismissed the petition as untimely filed without holding an evidentiary hearing regarding complainant’s detailed allegations of fraud on the court. He also protests that the judge denied his motions seeking an order “to produce the original signed non-prosecutorial Immunity Agreement”, failed to review the Immunity Agreement “to interpret and to enforce its terms and stipulations” in determining complainant’s sentence, and denied complainant’s recusal motions. In addition, complainant complains that the judge’s denial of his motion to order the U.S. Probation Office to provide copies of his medical records has hindered his ability “to obtain proper and adequate treatment” and participate in training and rehabilitative programs in prison.

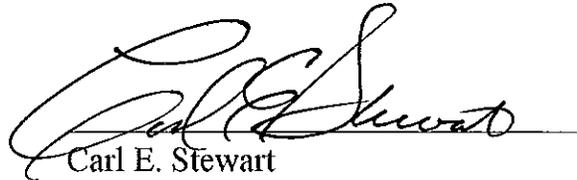
The allegations relate directly to the merits of the judge’s decisions, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant concludes that the judge acted “to protect and conceal the actions, omissions and concealments” of the government, federal agents, police detectives, and defense counsel.

Such conclusory assertions of improper motive 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).

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

December, 2017

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FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

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No. 05-18-90015

Petition for Review by [REDACTED]  
of the Final Order Filed December 13, 2017,  
Dismissing Judicial Misconduct Complaint  
Against [REDACTED]  
Under the Judicial Improvements Act of 2002.

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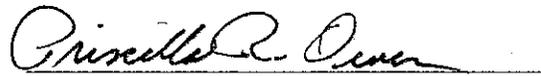
ORDER

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 December 13, 2017, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

2-15-2018  
Date

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