

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
FILED

MAR 11 2019

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Docket Number: 05-19-90044

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MEMORANDUM

Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject Senior United States District Judge who presided over complainant's criminal proceeding. Complainant alleges he was deprived of due process during the sentencing hearing by the judge's "failure to carry out proper procedure, to assure [me] and [my] attorney did or didn't receive [a Notice of Right to Appeal Conviction and Sentence Imposed After Plea of Guilty (or Nolo Contendre)] ... there is nothing in the record to prove that [the judge] did or didn't receive the form."

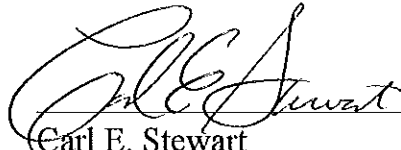
A review of the docket shows that the Notice of Right to Appeal, signed by Damm and defense counsel on the date of the sentencing hearing, was docketed on the same date. The allegation is clearly contradicted by the record and is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that immediately before his sentencing hearing commenced, he "witnessed [the judge] sentence another defendant where [the judge] could not remember how many years he'd sentenced that defendant to, 2 short minutes after he sentenced him. This is judicial disability and [sic] needs to be removed from the bench." In response to the Clerk's request for more information in support of this claim, e.g., the defendant's name or the case number, complainant replied that he does not have "those types of facts."

The undersigned is unable to determine the case in which the alleged incident took place based on this scant information. However, even if true, the alleged memory lapse described is insufficient to support a finding of mental disability and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.

March 5, 2019

  
Carl E. Stewart  
Chief Judge

MAY 23 2019

FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

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No. 05-19-90044

Petition for Review by [REDACTED]  
of the Final Order Filed March 11, 2019,  
Dismissing Judicial Misconduct Complaint

Against [REDACTED]

Under the Judicial Improvements Act of 2002.

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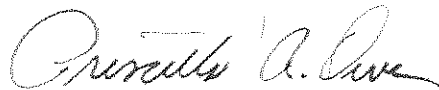
ORDER

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 Carl E. Stewart, filed March 11, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

5-21-2019  
Date

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