

FILED

June 15, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-21-90110 and 05-21-90111

MEMORANDUM

Complainant, a private citizen, complains that neither United States District Judge A nor United States District Judge B “consider[ed] the order by the Court of Appeals in sentencing by the guidelines” in the underlying criminal proceeding.

Given that the case was reassigned to Judge B on remand, this allegation appears nonsensical as to Judge A. Regardless, the allegation relates directly to the merits of decisions or procedural rulings and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further complains that the Factual Resume docketed in May 2019 “was altered/modified without any notice to anyone, in pen, without so much as initials at the site of modification.” A review of the record shows that the two handwritten amendments to the “Stipulated Facts” in the Factual Resume, signed by the defendant and defense counsel, changed the arrest date from “April 15” to “April 5” and changed the amount of methamphetamine found in defendant’s possession from “two ounces” to “10 grams.” At least seven other documents filed in the record, including defense pleadings, confirm that the amendments corrected errors in the Factual Resume, i.e., the defendant was arrested on April 5 and was in possession of 10 grams of methamphetamine.

To the extent, if any, that complainant's statement might be construed as an allegation that Judge A—to whom the case was assigned in May 2019—improperly and clandestinely altered the Factual Resume, or that Judge A and Judge B intentionally ignored that the document was altered, the allegation lacks sufficient evidence to raise an inference that misconduct has occurred and 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.



Priscilla R. Owen
Chief United States Circuit Judge

June 10, 2021