

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Number: 05-19-90083

MEMORANDUM

Complainant, a federal detainee, alleges that during a February 2018 hearing the subject United States Magistrate Judge made two statements in “a[n] egregious and hostile manner: [to complainant] “We[']re going to get you straightened out for what you did”; and [to defense counsel] “[A]re you going to do what needs to be done in this case with [complainant]?”

A review of the audio-recording of the hearing shows that the magistrate judge did not make the statements alleged or any similar statements and, in addressing complainant and counsel, he was patient and courteous. The allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that during a July 2018 competency hearing the magistrate judge made the following “egregious” statement to the prosecutor: “Do you want me to do what I’m going to do to him? Do you agree?”

A review of audio-recording of the hearing shows that the magistrate judge made no such statement to the prosecutor. To the extent that complainant might be referring to the magistrate judge’s asking if defense counsel objected to the prosecutor’s requests that the Court enter into evidence, and accept the findings in, the psychological evaluation, and whether he agreed with the prosecutor’s motion to commit complainant for further treatment to restore competency, those statements were not “egregious.” The allegation is therefore also subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also claims that on the day of the competency hearing he “overheard a conversation ... off of [sic] the Court record where [the magistrate judge] was saying to [the

prosecutor] “that those Sheriffs and army boys are only going to get my help with this one time.””


Complainant’s demonstrably false allegations about the magistrate judge’s statements on the record render him wholly unreliable and not credible. This allegation is therefore so lacking indicia of reliability as to warrant dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant alleges that the magistrate judge “is actively engaging in partisan favors for the [county] Sheriff’s Department, the U.S. Government, and the U.S. Army, and is encroaching and violating my [Constitutional] rights ... is detaining and keeping me incarcerated when I do not have any charges against me, and have not been indicted, and have never been arraigned ... holding hearings ... without me being physically present.”

To the extent that the allegations relate directly to the merits of the magistrate judge’s decisions to hold a telephone conference with counsel only and to commit complainant commitment for further treatment to restore competency, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion that the magistrate judge is “actively engaging in partisan favors” appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, 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.


Carl E. Stewart
Chief Judge

June 23, 2019