

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90015

Before: Srinivasan, Chief Judge

ORDER

Upon consideration of the complaint herein, filed against a judge of the United States District Court for the District of Columbia, it is

ORDERED that the complaint be dismissed for the reasons stated in the attached Memorandum.

The Circuit Executive is directed to send copies of this Order and accompanying Memorandum to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. See 28 U.S.C. § 352(b); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), RULE 11(g)(2).


Sri Srinivasan, Chief Judge

Date: 9/22/20

No. DC-20-90015

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. For the following reasons, the misconduct complaint will be dismissed.

The complainant was found guilty on two drug distribution charges and one charge of possessing a firearm in furtherance of a drug trafficking offense. The complainant appealed, and the court of appeals remanded for resentencing in light of the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). On remand, the district court resentedenced complainant to 300 months of imprisonment: 240 months for the two drug counts to run concurrently, and 60 months for the firearm count to run consecutively to the sentence for the drug offenses.

After filing several unsuccessful post-conviction relief motions, the complainant filed a motion pursuant to § 404 of the First Step Act. Pub. L. No. 115-391, 132 Stat. 5194. Section 404 of the First Step Act gave retroactive effect to sections 2 and 3 of the Fair Sentencing Act, Pub. L. No. 111-220, 124 Stat. 2372, which increased the threshold drug amounts required to trigger mandatory minimum sentences for crack cocaine offenses and granted courts the discretion to reduce an eligible defendant's sentence. Relying on section 404(c), which provides that "[n]othing in this section shall be construed to require a court to reduce any sentence pursuant to this section," the

subject judge determined that even if the complainant were eligible for relief under the First Step Act (and the judge was “unconvinced” of this), “the Court would not in its discretion grant his motion for a reduced sentence.” The subject judge went on to note that the complainant “is not the type of offender contemplated by either the Fair Sentence Act or the First Step Act. . . . [The complainant] faces no disparity between the mandatory minimum he was sentenced under and the one he would have faced ‘if sections 2 and 3 of the Fair Sentencing Act . . . were in effect at the time.’” *Id.* The complainant noticed an appeal, and that appeal remains pending.

The complainant has now filed a judicial misconduct complaint against the subject judge, asserting that the judge’s ruling was discriminatory and was based on “conduct outside the performance of official duties.” With respect to the allegation of discrimination, the complainant states that the judge “gives no true findings as to why he will not give any consideration to [the complainant’s] attempt at reintegration back into society.” He further argues that “[i]t is evident from the memorandum and ruling [the judge] uses his authority to discriminate base on race and crime, not character and rehabilitation.” The complainant, however, has provided no substantive support for the discrimination claim other than pointing to the denial of his motion. As a result, the allegation “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 11(c)(1)(D). Moreover, the allegation is a direct challenge to the disposition

of the motion and “calls into question the correctness of [the] judge’s ruling.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1). Such an allegation does not constitute “[c]ognizable misconduct” under the Judicial-Conduct Proceedings Rules or the applicable statute. *Id.*; *see* 28 U.S.C. § 352(b)(1)(A)(ii).

Furthermore, to the extent that the complainant claims that the alleged misconduct was the result of “conduct outside the performance of official duties,” that assertion also lacks merit. The complainant argues that the subject judge “is acting outside of the scope of his judgeship to further incarcerate [the complainant].” While “conduct occurring outside the performance of official duties” can constitute misconduct, *see* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(a)(7), here, the subject judge was performing his official duties when he issued his ruling. The fact that the complainant believes the decision to be “clearly erroneous” does not make the ruling any less a performance of an official duty. Accordingly, because the allegations are “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” and are “directly related to the merits of a decision or procedural ruling,” the

complaint will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B), (D); *see* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUDICIAL-CONDUCT PROCEEDINGS RULE 18(a), the complainant may file a petition for review by the Judicial Council for the District of Columbia Circuit. Any petition must be filed in the Office of the Circuit Executive for the D.C. Circuit within 42 days after the date of the dismissal order. JUDICIAL-CONDUCT PROCEEDINGS RULE 18(b).