

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-19-90003

A Charge of Judicial Misconduct or Disability

Before: GARLAND, *Chief Judge*.

ORDER

Upon consideration of the complaint herein, and the supplements thereto, 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).



Merrick B. Garland, Chief Judge

Date: 7/30/2019

No. DC-19-90003

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.

Following a jury trial before the subject judge, the complainant was convicted of conspiracy to distribute and to possess with intent to distribute five kilograms or more of cocaine on an aircraft registered in the United States or owned by a U.S. citizen, 21 U.S.C. §§ 959(b), 960, 963. The complainant, a citizen of the Bahamas who resided in Colombia, was one of five individuals indicted for a conspiracy operating from 2011 through 2012 in the Bahamas, Colombia, and elsewhere in Latin America. He was extradited from Colombia to the United States in September 2014.

The complainant and one of his co-defendants appealed their convictions, asserting that neither had set foot in the United States and that the statutory conspiracy provision does not have an extraterritorial reach. While the appeal was pending, the complainant filed a motion with the district court to dismiss the indictment and requested an order to disclose all grand jury materials, asserting that allegedly false information was presented to the grand jury and thus that his indictment should be dismissed. The subject judge denied the motion without prejudice, noting that the court did not have jurisdiction to decide the motion while the case was pending on appeal.

The court of appeals subsequently concluded that the charge of conspiracy to possess with intent to distribute was defective, but that the error was harmless and that the appellants' remaining objections were without merit.

While the appeal was pending, the complainant filed the instant judicial misconduct complaint. The complainant alleges that the subject judge knew that wiretap evidence was "obtained illegally [and] this is why [the subject judge] sealed [a] document from the defendant." The complainant filed two supplements to his complaint. In one, the complainant asserted that the allegedly illegal wiretap evidence was presented as evidence to the grand jury in support of his extradition and that the subject judge "withheld evidence related to [a] document which infringed upon my right to present a defense." In the second supplement, the complainant further alleged that the subject judge "and all of the government prosecutors knew about this evidence, and conspired with one another to hide, or seal, the [] Document from me, the Grand Jury, and the trial jury, as well."

The allegations regarding the lawfulness of the evidence and the judge's refusal to disclose a document to the complainant will be dismissed because each is "directly related to the merits of a decision or procedural ruling" of the district court, namely, the denial of the motion to dismiss the indictment and to disclose grand jury material. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant's allegation that the subject judge and the prosecutors conspired to withhold evidence will also be dismissed. The complaint does not cite, identify, or reference any evidence in support of this allegation. Accordingly, this part of the complaint "is based on [an] allegation[] lacking sufficient evidence to raise an inference that misconduct has occurred." JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).¹

¹ Pursuant to 28 U.S.C. § 352(c) and Judicial-Conduct 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 RULE 18(b).