

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Number: 05-17-90059

U. S. COURT OF APPEALS
FILED

AUG 01 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge who presided over complainant's sentencing proceeding.

Complainant complains that the judge treated her in a "demeaning and dehumanizing" manner at the sentencing hearing, including by forcing her to say that she knowingly violated the law and by not allowing complainant's lawyer sufficient time to speak. Complainant claims that the judge "yelled at" her and told her not to cry. A review of the transcript and audio recording of the sentencing hearing shows that the judge did not treat complainant in the manner complained of. Although the judge instructed complainant not to cry more than once, she did not yell at her, and did not make the other comments unrelated to crying as alleged by complainant. The transcript and audio recording also reflect that the judge did not "badger" or "force" complainant to say that she knowingly violated the law and that the judge gave complainant's attorney adequate time to speak.

"A judge's ordinary efforts at courtroom administration – even a stern and short-tempered judge's ordinary efforts at courtroom administration – remain immune." Liteky v. U.S., 510 U.S. 540, 556 (1994). A limited inquiry demonstrates that these allegations are conclusively refuted by objective evidence (the transcript and the audio recording), and are therefore subject to dismissal under 28 U.S.C. §§ 352(b)(1)(B) and (b)(1)(A)(iii) as frivolous and/or lacking sufficient evidence to raise an inference that misconduct has occurred.

Complainant further alleges that the sentencing hearing transcript was altered. A review of the audio recording shows that the transcript is correct.

A limited inquiry demonstrates that this allegation is conclusively refuted by objective evidence, and is therefore subject to dismissal under 28 U.S.C. §§ 352(b)(1)(B) and

(b)(1)(A)(iii) as frivolous and/or lacking sufficient evidence to raise an inference that misconduct has occurred.

Complainant, who claims that during sentencing the judge stated that the indictment would be sealed, also asserts that the indictment was not sealed. From a review of the transcript and the audio-recording of the sentencing hearing, it appears that complainant misunderstood the judge's order that "the presentence investigation report and all related documents be sealed."

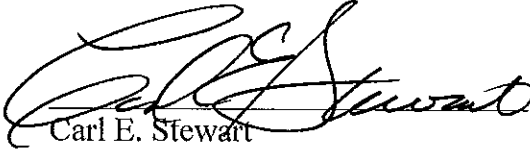
To the extent complainant's allegation relates directly to the merits of the judge not *sua sponte* sealing the indictment, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(a)(ii). In other respects, the allegation is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(a)(iii) because, according to the docket, neither the government nor complainant requested that the indictment be sealed.

Finally, complainant contends that the judge did not sentence her to an appropriate facility and did not consider complainant's health problems or her need to care for her husband. The transcript and audio recording reflect that complainant's counsel requested that she be housed near a certain city, and the judgment reflects that the judge made the recommendation.

To the extent that complainant's allegation relates directly to the merits of the judge's recommendation in the judgment, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(a)(ii). In other respects, the allegation is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii) because complainant's attorney requested, and the judge recommended, that she be housed in the facility nearest a certain city.

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

July 29, 2017