IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket Number: 05-17-90132

MEMORANDUM

Complainant, the father of a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge who presided over his son's criminal trial.

Complainant alleges that the judge demonstrated bias by permitting his son's conviction based on circumstantial evidence and the unreliable testimony of government witnesses.

To the extent that this allegation relates directly to the merits of the judge's decisions, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertion of bias is insufficient to support a finding of judicial misconduct, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further asserts that the pre-trial, trial, and sentencing transcripts omit portions of the proceedings, in particular, discussions in which the judge demonstrated bias against complainant's son.

A comparison of the transcripts and audio-recordings show that nothing was omitted from the transcripts, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also protests that the judge demonstrated bias against his son throughout the proceedings. For example, he contends that the judge: "insisted that the charge of possession be added to the charges of access and distribution of child pornography"; "allowed defense attorney to commit perjury, breach of contract, and conspiracy for allowing "possession" to be added"; "allowed defense attorney to commit

perjury, breach of contract, and conspiracy for allowing "possession" to be added"; "indicate[d] that the jury [was] not familiar with reading indictments so she [could] really do anything she please[d]"; imposed an excessive sentence in retaliation for [redacted] and his wife writing to request leniency in sentencing; and, "delighted herself in assessing the [excessive] fines and … bragged that [my son] will have to pay even if the verdict is reversed."

A comprehensive review of the record shows that these allegations arise out of complainant's fundamental misinterpretations of discussions on the record between the judge, the prosecutor, and defense counsel. These allegations are therefore also 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

October 23, 2017

BEFORE THE JUDICIAL COUNCIL

OF THE FIFTH CIRCUIT

No. 05-17-90132
Petition for Review by [redacted]
of the Final Order Filed October 25, 2017
Dismissing Judicial Misconduct Complaint Against
[redacted],
Under the Judicial Improvements Act of 2002.

ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Stewart, filed October 25, 2017, dismissing the Complaint of [redacted] against [redacted] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

December 7, 2017
Date

Priscilla R. Owen
Priscilla R. Owen
United States Circuit Judge
For the Judicial Council of the Fifth Circuit