

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

JAN 10 2019

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

Complaint Number: 05-18-90046

M E M O R A N D U M

Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge regarding decisions made as a United States Magistrate Judge in a 2010 proceeding, and decisions made as a district judge in a 2016 proceeding.

2010 proceeding

Complainant alleges that then-magistrate judge knowingly and improperly issued an arrest warrant “without establishing probable cause to arrest [me] ... within the District A. [I] was subjected to arrest in the [District B] ... outside the jurisdiction of [the] warrant,” and thereby “acted outside his judicial capacity and authority by acting outside his territorial jurisdiction.” He further asserts that the then-magistrate judge sealed the arrest warrant application to protect the DEA agent who sought the warrant, the [City] Task Force, and the AUSA who prosecuted the criminal case, and “to hide from the public and several defendants that [the] warrant was executed in the [District B] without legal authority.”

2016 proceeding

Complainant alleges that the judge improperly “recharacterized” his tort claim action as a 28 U.S.C. § 2255 application to vacate sentence, and “failed to do a judicial review of or acknowledge that [I] failed to plead or defend against plaintiff’s claim, defaulting.”

To the extent that these allegations relate directly to the merits of the judge's decisions in the 2010 and 2016 proceedings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of improper motive are insufficient to support a finding of judicial misconduct and are 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

Date January 7, 2019