

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**

AUG 01 2018

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Docket Number: 05-18-90076

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MEMORANDUM

Complainant, a former federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge who presided over complainant's 1996 criminal trial.

Complainant alleges that the judge made erroneous and improper decisions to ensure his conviction. For example, he claims that "during deliberation in the presence of the jury," the judge said that complainant was guilty and that if complainant denied buying drugs from [a particular individual], he would be lying.

A review of the transcript complainant provided in support of this claim suggests that the judge was summarizing a witness's testimony, not himself saying that complainant was guilty.

The allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains that the judge let the foreman of the jury stay on the trial knowing that she was the best friend of one of the FBI agents investigating the case.

The allegation relates directly to the merits of the judge's decision, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant also asserts that the judge gave erroneous instructions to the jury regarding "criminal intent by law for a conspiracy", and "changed" or "misread" or "falsity [sic]" the jury's verdict forms to ensure that complainant was convicted of Count 1 of the indictment. The allegations are convoluted, but it seems complainant is arguing that without verdicts finding at least two defendants conspired to commit the same offense, complainant could not be found guilty of conspiracy under Count 1. In support of the contention that the

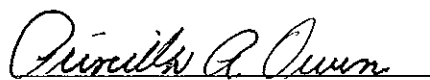
judge intentionally “lied about the jury’s verdicts” to ensure that complainant was convicted, he claims that the judge refused to allow trial counsel to view the verdict form(s).

To the extent that complainant alleges that the judge gave erroneous jury instructions, the allegation relates directly to the merits of the judge’s decision and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertion that the judge “misread,” “changed,” or “falsified” the verdict forms to ensure complainant’s conviction lacks sufficient evidence to raise an inference that misconduct has occurred, and is 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.

This is complainant’s second merits-related and conclusory judicial misconduct complaint against the judge regarding the same proceeding. Complainant is WARNED that should he file a further merits-related, conclusory, or frivolous complaint, his right to file complaints may be suspended and, unless he is able to show cause why he should not be barred from filing future complaints, the suspension will continue indefinitely. See Rule 10(a), Rules For Judicial-Conduct or Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen

Circuit Judge

7-27, 2018