

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-15-90020

In re Complaint of John Doe¹

This is a judicial complaint filed on July 22, 2015, by a federal prisoner against the United States district judge who presided over complainant’s criminal trial and sentenced him to prison for eighteen months followed by six months in a residential re-entry center. Complainant, who identifies his “race and ethnic background as . . . ‘Native American,’” asserts that during his sentencing hearing, the district judge—in response to complainant’s request for drug-abuse treatment—stated “after you finish your sentence, treatment, and probation, you . . . can go back to the ‘reservation’ and ‘drink’ (alcohol) all you want.”

Complaining that the district judge’s comment made him feel “hurt,” “worthless,” and “very offended,” complainant alleges the purported remark constitutes cognizable misconduct because the district judge treated him in “a demonstrably egregious or hostile manner” and made “personally derogatory remarks irrelevant to the issues.” Complainant further proposes the remark reveals the district judge’s decision or ruling resulted from “an improper motive, e.g. racial or ethnic bias.” In complainant’s view, the district judge’s decision to sentence him to six “months extra . . . after [he] was given a plea agreement by [the] government to [a sentence at the] ‘low end’ of [the sentencing] guideline” “was made pertaining to [his] race and ethnic background.”

¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

I obtained and read a transcript of complainant's sentencing hearing. The transcript unequivocally establishes that complainant either plainly misunderstood or overtly misrepresented the district judge's sentencing order and explanatory remarks. After listening to complainant describe his struggle with drug and alcohol abuse and the part that abuse played in complainant's crime, the district judge sentenced complainant to eighteen months imprisonment followed by three years of supervised release. Based on complainant's admitted long history of substance abuse, the district judge imposed several special conditions to stabilize and control complainant's environment upon release from prison, including requiring complainant to (1) spend the first six months upon release at a residential re-entry center "to provide for a stable transition back into society," (2) participate in "a chemical dependency treatment program," (3) abstain from using drugs and alcohol, (4) submit to drug and alcohol testing, and (5) avoid establishments "where alcohol is the primary item for sale."

When complainant questioned whether the six months at the re-entry center was in addition to the eighteen months imprisonment, the district judge explained

The six months is in a halfway house. I want you to get a job and get sober, you know. You've got [eleven] convictions as I see them for acts of violence. A couple of them were in a single case and so . . . you've got to grow up. It is time for this all to come to an end. And, you know, [twenty-four] months is a long time but if you come out of it clean, sober and employed and things are good that's a good thing. I think that if you come out in [eighteen] months and just go back to the reservation that there's not much of a chance you'll succeed and that's the reason for my sentence.

In light of the record in this case, I find the complaint to be unsupported. The complaint is "frivolous" and "lack[s] sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); accord J.C.U.S. Rule 11(c)(1)(C), (D). Contrary to complainant's unsupported misconduct allegations, the

district judge neither treated complainant “in a demonstrably egregious or hostile manner” within the meaning of J.C.U.S. Rule 3(h)(1)(D), nor made “personally derogatory remarks irrelevant to the issues.” The district judge was polite, professional, and civil at all times and carefully explained the reasons for the sentence imposed. The district judge’s remarks were invariably related to complainant’s sentence, and the remark most closely resembling complainant’s bias allegation—though not close to reflecting any bias—was made in direct response to complainant’s question about the specifics of his sentence.

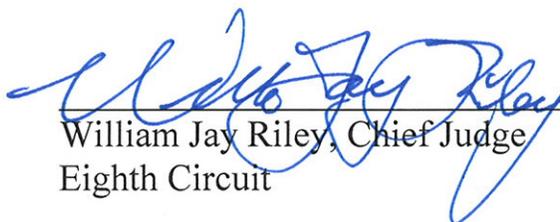
The complaint must also be dismissed to the extent complainant’s allegations are “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); see J.C.U.S. Rule 11(c)(1)(B). “An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.” J.C.U.S. Rule 3(h)(3)(A). Although non-frivolous allegations of racial or ethnic bias or other improper motive are not necessarily merits-related, such allegations must be dismissed as merits-related when, as alleged here, the only support for the allegations is the merits of the judge’s rulings. See id.

Because of the special need to protect judges’ independence in deciding what to say in an opinion or ruling, a somewhat different standard applies to determine the merits-relatedness of a non-frivolous allegation that a judge’s language in a ruling reflected an improper motive. If the judge’s language was relevant to the case at hand[,] then the judge’s choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive.

Commentary on J.C.U.S. Rule 3. In this case, the district judge’s rationale for imposing complainant’s sentence was indubitably “relevant to the case at hand” and thus “presumptively merits-related and excluded.” Id. Complainant abjectly fails to overcome that presumption. The judge’s conduct was quite proper.

The complaint is dismissed.

September 24, 2015



William Jay Riley, Chief Judge
Eighth Circuit