

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-20-90025

In re Complaint of John Doe¹

This is a judicial complaint filed by a criminal defendant against the United States district judge who presided over the complainant's criminal case and habeas petition. In the judicial complaint, the complainant alleges that the district judge "received information detailing criminal and constitutional rights violations by" police officers" but failed to report the violations to the "appropriate agency for investigation." According to the complainant, the district judge permitted the government "to conceal and use criminally obtained evidence that was not subject to evidentiary review" and "present false representation[s] at [the] pre-trial and penalty hearing[s]." The complainant claims that a government attorney "admitted perjury by law enforcement," yet the district judge declined to report the misconduct. The complainant alleges that the district judge's failure to report the violations "amounted to concealment, obstruction of justice, aiding and abetting, vindictive retaliation[,] and conspiracy to obstruct judgment in a government matter."

I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) 11(b). The record shows that, in his habeas petition, the complainant set forth four claims for relief: "(1) planting and fabrication of evidence and perjury by police officers in violation of [the complainant's] constitutional rights to Due Process; (2) prosecutorial

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 judicial officer complained against are to remain confidential, except in special circumstances not here present.

misconduct in suborning perjury; (3) withholding of exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); and (4) trial court error in allowing the admission of 404(b) evidence.” The district judge concluded that the complainant failed to show (1) “how the allegedly fabricated evidence was used to deprive him of his liberty,” (2) “that any of the allegedly perjured statements [were] false,” (3) any “evidence of . . . prosecutorial misconduct,” (4) “what evidence was allegedly withheld or how it would be exculpatory,” and (5) “why admitting the 404(b) evidence was improper.” Accordingly, the district judge denied the complainant’s habeas petition.

The judicial complaint is devoid of any evidence to substantiate the complainant’s claims against the district judge of concealment, obstruction of justice, aiding and abetting, retaliation, and conspiracy. Therefore, the allegations must be dismissed as “frivolous [and] “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States Rule (J.C.U.S.) 11(c)(1)(C), (D). The judicial complaint also challenges the district judge’s memorandum and order rejecting the complainant’s claims of fabrication of evidence and perjury; as a result, the allegations must be dismissed because they are “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B).

The complaint is dismissed.

July 29, 2020

Lavenski R. Smith

Lavenski R. Smith, Chief Judge
United States Court of Appeals
for the Eighth Circuit