

transcript showed that he had knowingly and voluntarily waived his right to appeal.

Complainant now alleges in his judicial complaint that:

1. he suffers from vision and hearing difficulties and had used an assisted listening device at a prior hearing but was not provided with this device for his plea and sentencing hearing;
2. the judge could see that complainant's responses during the hearing were coming from his attorney who was trying to force him into a plea agreement;
3. the judge violated complainant's right to a presentence report by relying on his psychological evaluation and an old presentence report that did not accurately describe his record; and
4. the judge should have stopped the hearing so that complainant could take his medication.

The Judicial Conduct and Disability Act governs judicial conduct, not judicial decisions. 28 U.S.C. § 352(b)(1)(A)(ii). The Act provides protection against "demonstrably egregious and hostile" treatment of litigants and other violations of "specific, mandatory standards of judicial conduct." Rule 3(h)(1)(D) & (I), Rules for Judicial-Conduct and Judicial-Disability Proceedings. It does not, however, apply to conduct "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); In re Memorandum of Decision, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

A claim of judicial misconduct must be supported by "sufficient evidence to raise an inference that misconduct has

occurred." 28 U.S.C. § 352(b)(1)(A)(iii). When a limited inquiry of transcripts or other relevant documents demonstrates "that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence," the complaint must be dismissed. 28 U.S.C. § 352(b)(1)(B). Review of the transcript of complainant's plea and sentencing hearing establishes that complainant's allegations lack any factual foundation and are refuted by objective evidence.

With respect to complainant's allegation that he could not hear what was being said, the transcript discloses the following exchange between the judge and complainant:

THE COURT: And do you have any problems with your hearing or your eyesight that would affect your ability to follow the proceedings?

THE DEFENDANT: Not really, no.

THE COURT: Okay. Can you hear me?

THE DEFENDANT: Yes, I can.

THE COURT: And can you see me?

THE DEFENDANT: Yes, I can.

THE COURT: All right. If you can't hear or see someone else in the courtroom during these proceedings, please let me know, okay?

THE DEFENDANT: Yes, ma'am.

(Tr. at 5). The transcript further reflects that complainant communicated with the judge appropriately throughout the proceeding, including asking questions,¹ thanking the judge for

¹THE COURT: Okay. And did [your attorney] answer your questions?

(Continued)

imposing a 51-month sentence,² and addressing where he would like to be placed.³

With respect to complainant's allegation that the judge could see that his responses were coming from his attorney, who was forcing him to enter the plea, the transcript discloses the following exchange:

THE COURT: [H]as anybody forced you or threatened you or coerced you in any way into your pleas of guilty to Counts One and Two?

THE DEFENDANT: No, ma'am.

(Tr. at 34).

THE DEFENDANT: I guess to the best of his ability he did. I just have some concerns about the guidelines. If we're agreeing to 51 months, why do we abide by the guidelines?

(Tr. at 11).

²THE DEFENDANT: Your Honor, I would just like to thank you for accepting the plea agreement. I believe it's fair and I apologize for any inconvenience I've caused the Court and, again, I really respect you for accepting this plea agreement and sentencing me at 51 months.

(Tr. at 37).

³THE COURT: I assume there's a recommendation you want me to make as to where you're to be incarcerated.

THE DEFENDANT: Yes, ma'am.

THE COURT: What is it?

THE DEFENDANT: [name of facility]. I would like for-- my home plan would be with my brother who resides here in [city and state].

(Tr. at 39)

With respect to complainant's allegation regarding the absence of a presentence report, the transcript discloses the following:

The COURT: In paragraph nine you and the Government—the Government is reserving the right to waive or not order a Presentence Investigation Report and you are too. So we don't have Presentence Report.

(Tr. at 21-22).

With respect to complainant's allegation that the judge should have stopped the hearing so he could take his medication, the transcript discloses the following exchange:

THE COURT: Are you on any medications?
THE DEFENDANT: Yes, ma'am.
THE COURT: What do you take?
THE DEFENDANT: Blood pressure.
THE COURT: Okay. So you're on a blood pressure pill. Do you know which one it is?
THE DEFENDANT: I'm not for sure at this time. It's been changed on me a couple of times.
THE COURT: Okay. Have you had any alcohol or drugs in the last 24 hours?
THE DEFENDANT: No, ma'am.
THE COURT: Do you know where you are and what you're doing this morning?
THE DEFENDANT: Yes, ma'am.

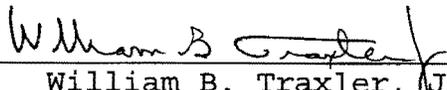
(Tr. at 4-5).

In short, the transcript shows that complainant could hear what was being said, that he was not forced to enter his plea, that he understood that the agreed sentence was being imposed without a new presentence report, and that he did not express

any need for his blood pressure medication. There is no evidence that complainant was subjected to egregious or hostile treatment or that the judge disregarded his need for hearing assistance or medication. The judge's decision to permit the parties to waive a new presentence report is a legal decision that is not subject to review through a misconduct complaint.

Complainant's judicial complaint is, accordingly, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge