

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In the Matter of	*	
Judicial Complaints	*	Nos. 04-16-90035 04-16-90036
Under 28 U.S.C. § 351	*	

MEMORANDUM AND ORDER

Complainant brings these judicial complaints against a federal district judge and a federal magistrate judge pursuant to 28 U.S.C. § 351(a), which provides an administrative remedy for "conduct prejudicial to the effective and expeditious administration of the business of the courts" and for judicial inability to "discharge all the duties of office by reason of mental or physical disability."

Complainant pled guilty to threatening to assault and murder a federal official and was sentenced to 18 months of imprisonment, 3 years of supervised release, and restitution. Complainant was subsequently charged with violating the terms of his supervised release. Following a hearing, his term of supervised release was revoked, and a six-month sentence was imposed. Complainant appealed the revocation to the court of

appeals. The appeal was dismissed as moot because complainant had completed his sentence and been released. Complainant's motion to vacate sentence under 28 U.S.C. § 2255 is pending in the district court.

In his judicial complaint, complainant alleges that the magistrate judge and district judge who presided over his criminal proceedings engaged in the following misconduct:

- subjected him to unjust proceedings at this arraignment, sentencing, and probation revocation hearing;
- revoked his probation on the same day as, and as a result of, the execution of an Arizona death row inmate;
- failed to dismiss complainant's excessive restitution, despite the fact that he had been granted hardship status;
- failed to hold his probation officers accountable for a racially motivated assault on him at the courthouse;
- appointed ineffective counsel who was biased against him;
- failed to recuse themselves and consistently ruled against complainant despite his innocence;
- knowingly relied on perjured testimony in finding complainant guilty;
- accepted complainant's guilty plea while he was under the influence of Haldol-induced akathisia;

- enhanced complainant's sentence based on a conviction for which he had been pardoned; and
- improperly determined that complainant had violated the terms of his supervised release.

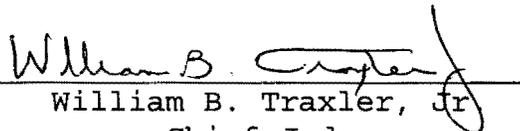
The Judicial Conduct and Disability Act does not permit review of a judge's decisions. Allegations that are "[d]irectly related to the merits of a decision or procedural ruling," 28 U.S.C. § 352(b)(1)(A)(ii), cannot be reviewed except to the extent they allege that a judicial decision was "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Claims of improper motive or conduct must be supported by "sufficient evidence to raise an inference that misconduct has occurred," 28 U.S.C. § 352(b)(1)(A)(iii), and cannot be based solely on the merits of the judge's rulings, In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

Complainant's allegations that the judges subjected him to injustice, enforced an excessive restitution order; failed to take action against his probation officers; appointed ineffective counsel; failed to recuse themselves; improperly accepted his guilty plea; improperly enhanced his sentence; and improperly found him guilty are directly related to the merits of the judges' decisions and orders in his case. Complainant's

assertions that the judges' decisions and orders were influenced by the execution of an Arizona death row inmate, by bias or prejudice against complainant, or by collusion in the use of perjured testimony to convict an innocent man lack any factual support in either the complaint or the record of proceedings in complainant's case.

These complaints are, accordingly, dismissed as merits related and as lacking in evidence of misconduct.* 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge

* Complainant previously filed similar complaints against the same judges. Those complaints were dismissed as merits related and lacking in evidence. In re Judicial Complaint, No. 04-15-90206(L) (Traxler, C.J. Dec. 30, 2015). Complainant has offered no additional evidence that would support a finding of misconduct in these cases.