JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90061

In re Complaint of John Doe[1]

This is a judicial complaint filed by a criminal defendant ("complainant") against the United States district judge assigned to the complainant's case. The judicial complaint alleges that although the district judge concluded that the complainant was innocent of the charged offense, the district judge was "left with 'no choice' in accepting the plea bargain." The judicial complaint alleges that the district judge's actions reflect bias and a "political agenda."

I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). The record shows that a magistrate judge held a supervised release revocation hearing. The complainant appeared pro se. The magistrate judge found that the government proved by a preponderance of the evidence the allegations in the petition to revoke supervised release and indicated that the magistrate judge would prepare a report and recommendation (R & R) to the district judge. When the magistrate judge inquired if there was "anything further" the complainant needed to raise, the complainant indicated that a "conflict" existed with the district judge over the complainant's "Amended Plea Agreement." According to the complainant, the district judge told the complainant that "if [he] would have went to trial, that [he] would have walked . . . out of this courtroom. But however, since [the complainant]

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[1]Under 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.

entered into a plea agreement, that [the district judge] had no choice but to sentence [the complainant] to what . . . the prosecutor recommends."

The magistrate judge explained that although no sentencing transcript existed, "the proceedings were recorded." The magistrate judge then read a memo into the record authored by the district judge's law clerk that summarized the recording. The memorandum stated, in relevant part:

> Defendant was indicted . . . with having committed *sexual abuse of a person incapable of consent*, in violation of 18 United States Code §2242(2) . . . .
>
> The maximum penalty for that offense is *life imprisonment*. With the assistance of [counsel], a plea agreement was negotiated. The Government agreed to file a superseding information and Defendant pleaded guilty to *abusive sexual contact* in violation of 18 United States Code §2244(b). The maximum penalty for that offense is *24 months imprisonment*.
>
> The Defendant *admitted under oath* at the change of plea hearing that he had intentionally touched the victim's genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, harass, and degrade the victim and arouse his own sexual desire.
>
> . . .
>
> At the sentencing hearing, [the district judge] stated that he thought the proper plea agreement had been entered. . . .
>
> [The district judge] stated, having heard the evidence, I *don't think the Government has evidence beyond a reasonable doubt that [the Defendant] raped [the victim] and should have been sentenced accordingly to something between 70 and 87 months*. The question of sentencing is whether by a preponderance of the evidence the cross reference should apply because of the conduct of the Defendant.

(Emphases added.)

The magistrate judge explained to the complainant that the district judge "did not state at sentencing that there was no evidence that the Defendant committed sexual contact as pleaded." Instead, the district judge "stated there was not evidence at sentencing to convict the Defendant beyond a reasonable doubt of aggravated sexual abuse as *originally* charged." (Emphasis added.) The magistrate judge reiterated that aggravated sexual abuse was *not* what the complainant had pleaded guilty to. Ultimately, the magistrate judge explained, "it's beyond [the jurisdiction] of this Court . . . as far as a sentence and what happened at [the complainant's] original plea." The magistrate judge lacked "authority to review those things." But, the magistrate judge again stressed, the district judge "did not at any point say there as not sufficient evidence to convict [the complainant] of the charge to which [the complainant] pled guilty."

At the supervised release revocation sentencing hearing, the complainant again alleged that the district judge stated during the original sentencing hearing that the judge "had no choice—since [the complainant] entered into a plea agreement." The district judge responded that the complainant's statement was "false" and further noted that the complainant had "admitted to what [the complainant] did." The district judge clarified, "My statement at your sentence hearing was that I did not think the Government had sufficient evidence to convict you beyond a reasonable doubt of the charged offense. . . . I said there was evidence to prove that you did what the Superseding Information alleged that you did." According to the district judge, sufficient evidence existed to convict the complainant of—and the complainant admitted under oath to— "hav[ing] sexual contact with someone who was unable to consent." The district judge instructed the complainant, "You're not withdrawing any plea for that matter. And if you have moved to do so, that is denied. There's no basis for you to deny what you admitted to doing under oath previously." Ultimately, the district judge adopted the magistrate judge's R & R, overruled the complainant's objections, and denied the complainant's motions to dismiss and motion to withdraw

the guilty plea. The district judge revoked the complainant's supervised release and sentenced the complainant to 9 months' imprisonment and 36 months of supervised release.

Having reviewed the record, I conclude that to the extent that the judicial complaint challenges the district judge's rulings at the complainant's original sentencing or during the revocation hearing, the allegations must be dismissed as "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). To the extent the judicial complaint alleges that the district judge showed bias, had a political agenda, or otherwise engaged in misconduct, the allegations are "lacking 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).

October 21, 2022

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