

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90041

In re Complaint of John Doe¹

This is a judicial complaint filed by a criminal defendant (“complainant”) against the United States district judge assigned to the complainant’s criminal case.

The judicial complaint alleges that the district judge “has refused” to resentence the complainant in accordance with the Eighth Circuit’s mandate.

I have reviewed the record in the complainant’s criminal case. *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 the complainant moved for a sentence reduction under the First Step Act. The district judge found the complainant ineligible and denied relief. On appeal, the Eighth Circuit reversed and remanded, holding the complainant was eligible for resentencing under the First Step Act. On remand, the district judge reduced the complainant’s sentence. On appeal, the Eighth Circuit summarily affirmed. The complainant then filed a petition for writ of mandamus, asking the Eighth Circuit to direct the district judge to comply with its mandate issued in the first appeal. The Eighth Circuit denied the petition for writ of mandamus as moot. Thereafter, the complainant filed another petition for writ of mandamus, asking the Eighth Circuit to direct the district judge to set aside the order reducing the complainant’s sentence on remand. The complainant argued that the

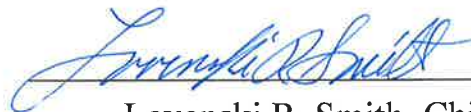
¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

district judge failed to address the complainant’s motion under the First Step Act but rather evaluated the sentence under 18 U.S.C. § 3582(c). The complainant further claimed that there was no final decision in the criminal case. The Eighth Circuit again denied the petition for writ of mandamus.

To the extent the judicial complaint challenges the district judge’s order reducing the complainant’s sentence on remand, it 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* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the district judge engaged in misconduct by refusing to comply with the Eight Circuit’s mandate, such allegation is “frivolous, 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).

The judicial complaint is dismissed.

July 17, 2023



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