

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-24-90083

In re Complaint of John Doe*

This is a judicial misconduct complaint by a criminal defendant against a district judge presiding in his criminal case.

The complainant alleges that: (1) the judge “has violated [his] civil and constitutional rights and denied [him] minimal requirements of due process of law in allowing [him] time to review documents or prepare a defense to false accusations made by probation officers” in a status report filed two days before sentencing; (2) he expected a sentence of probation under his plea agreement, but the judge sentenced him to 21 months’ imprisonment because of the status report’s “knowingly false allegations” adopted from interview reports by agents of the Federal Bureau of Investigation (FBI); (3) he is entitled to jail credit for 211 days of home detention during pretrial release, but the Bureau of Prisons (BOP) only gave him credit for 22 days, and thus his sentence of 21 months has resulted in a term of almost 29 months in violation of the plea agreement; (4) the judge “has shown no respect,” is “rude,” and should be removed from his case due to her bias and prejudice; (5) the judge has twice denied transcripts of the sentencing hearing that the complainant sought in order to challenge the jail credit; and (6) the judge knew the complainant needed surgery and had medical conditions making it “questionable if he was competent to have understood the plea agreement.” The complainant concludes that “the court,

*Under Rule 24(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the names of the complainant and the subject judge are not disclosed. Citations or references herein to a “Rule” refer to these Rules.

prosecutors, probation, and FBI have breached the terms of the plea agreement,” and the judge has violated his fundamental rights “in enhancing [his] sentence and added punishment of GPS and home detention based upon uncorroborated allegations.”

As attachments, the complainant submits the probation officer’s status report, the government’s response to his motion seeking the sentencing hearing transcript and other reports at public expense, one of the district judge’s orders denying him a transcript and FBI reports at public expense, FBI reports about the complainant’s alleged criminal activities while on pretrial release, and a letter to him from the BOP stating that “home confinement [is] a condition of pretrial release and is not official detention and cannot be applied as presentence credit.”

In the underlying case, the complainant’s plea agreement estimated a sentencing guidelines range of 15 to 21 months’ imprisonment. On December 11, 2023, the probation office filed a status report stating that, according to information provided by an FBI agent, the complainant was suspected of being involved in additional criminal activity while on pretrial release. The status report stated that mandatory detention was not applicable, but given the complainant’s possible additional criminal activity while on pretrial release, he should be granted a brief period of not more than two weeks for voluntary surrender if the court imposed a prison sentence.

On December 14, 2023, the district judge adopted the presentence report, sentenced the complainant to 21 months in prison and 3 years of supervised release, and suspended execution of the prison sentence until December 18, 2023. The complainant filed a motion seeking additional time to surrender, citing health issues and a need for medical testing. The district judge granted the motion, deferred the surrender date until the BOP designated an institution for service of the sentence, and observed that the BOP was capable of addressing the complainant’s medical issues. On February 2, 2024, the probation officer filed a petition alleging that the complainant had violated his conditions of pretrial release by removing his location-

monitoring equipment and by failing to surrender when the BOP designated a medical facility. Following the complainant's arrest, he filed motions seeking copies of the sentencing transcript at public expense, and copies of the probation officer's report with FBI attachments. The judge denied the motions.

“Cognizable misconduct does not include an allegations that calls into question the correctness of a judge's ruling.” Rule 4(b)(1). The complaint's allegations challenging the district judge's rulings—including those regarding his plea, sentencing, detention, and motions seeking documents at public expense—must be dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B). The allegations of disrespect, prejudice, and bias, are dismissed as frivolous and “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D). The complainant does not specify any statement of the judge in support of the allegations. The judge's actions do not demonstrate prejudice or bias: the judge granted the complainant pretrial release, sentenced him within the guideline range specified in his plea agreement, suspended execution of his sentence to allow self-surrender, and granted his motion to extend the time for voluntary surrender. The probation office's pre-sentencing status report simply recommended establishing a surrender date if the judge decided to impose a sentence of imprisonment; it does not support a finding of cognizable misconduct.

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton
Chief Judge

Filed: November 1, 2024
