

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90118

In re Complaint of John Doe¹

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

The judicial complaint alleges that the district judge “displayed pure bias” against the complainant prior to trial, during trial, and at sentencing. The judicial complaint further contends that the district judge conspired with the government and defense counsel in a “vindictive prosecution” that was “racially motivated.” In support of these allegations, the complainant identifies the following alleged actions by the district judge: (1) denial of the complainant’s right to present a justification defense in violation of the Sixth Amendment and grant of the government’s motion in limine; (2) denial of the complainant’s request for a continuance to prepare for pro se representation; (3) interruption of defense counsel during cross-examination; (4) permitting the government’s introduction of unsworn victim impact statements at sentencing regarding a crime for which the complainant had been charged but not convicted; and (5) stating during sentencing that “the maximum sentence[] allowed by the law is not enough and that [the complainant] deserve[s] a longer sentence” and that the complainant would “end up dying in prison one day.”

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.

I have reviewed the record, including the documents and transcripts cited in the judicial complaint. *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, during the pretrial hearing, defense counsel informed the district judge that the complainant desired to proceed pro se in light of the district judge's rejection of the complainant's justification defense. The district judge then questioned the complainant about the request to proceed pro se, inquiring what motions the complainant wanted defense counsel to file. The complainant indicated a desire to file a motion for justification. The district judge responded that the judge had already granted the government's motion in limine on that issue and that the complainant was "not even in the ballpark on that one. That's not even a close call." The complainant replied that it was defense counsel's job to argue for the justification defense and continued to press the issue despite the district judge advising the complainant to stop. Nonetheless, the complainant continued discussing the issue, stating, "I was trying to save my own life, man. I was a victim. What did you all want me to do, stay on the scene and die? I was a victim. I was a victim, [Judge]." The court then advised the complainant, "[Y]ou're going to prison for a long time saying those words because the jury's not going to hear about a lot of this." When the complainant inquired what the district judge meant, the judge replied, "Because you're going down a road where you're very misguided and you're not making good decisions." Thereafter, the complainant requested a continuance to "study" for "three or four months" in preparation to proceed pro se. The district judge denied that request. The complainant then indicated he would keep defense counsel.

During trial, defense counsel cross-examined a witness about whether the witness's handwriting appeared on an exhibit. The witness indicated that it was the witness's handwriting. Defense counsel replied, "Maybe I'm confused because I thought [another witness] had told the Court—." The district judge interrupted defense counsel, stating, "No. [The prior witness] testified it was [the current witness's] handwriting." During a recess, the district judge informed counsel, "I made a mistake. . . . I was mistaken in how I remembered the evidence." To remedy the

mistake, the district judge proposed making a statement to the jury and advising the jury of what the prior witness's testimony was. Defense counsel agreed that the "clarification should be sufficient" to "cure" the mistake.

Prior to sentencing, the government requested permission to present unsworn victim impact statements during sentencing. In a text entry, the district judge granted the motion. During sentencing, the witnesses made their unsworn victim impact statements to the district judge. While one of the witnesses was speaking, the complainant interrupted. The district judge then had the complainant "removed . . . from the courtroom because of a very loud and disruptive outburst." After the witnesses testified, the district judge allowed the complainant to return to the courtroom. In imposing the complainant's sentence, the district judge stated, in part,

I agree with [the government], this—the maximum sentence allowed by law is not enough. But it's the only legal sentence that we can give you. Because this conduct, this case, calls for a much longer sentence. And I hope you get yourself together while you're serving this sentence . . . because you are—you'll end up dying in prison one day, no doubt at the rate you're going.

Having reviewed the record, I conclude that, to the extent the judicial complaint challenges the district judge's rulings, 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* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the district judge was biased against the complainant or participated in a racially motivated prosecution of the complainant, such allegations are "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).

Accordingly, the judicial complaint is dismissed.

January 19, 2024



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