

JUDICIAL COUNCIL OF THE SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90026
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se prisoner against the district judge who presided over his criminal proceeding. The complaint alleges that the district judge violated the complainant's right to appeal by not notifying him that the judge had denied his motion to correct his sentence.

After conducting an initial review, the chief judge may dismiss a complaint as to which he concludes: (A) that the claimed conduct, even if it occurred, "is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office"; (B) that the complaint "is directly related to the merits of a decision or procedural ruling"; (C) that the complaint is "frivolous," a term that applies to charges that are wholly unsupported; or (D) that the complaint "lack[s] sufficient evidence to raise an inference that misconduct has occurred." Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

An initial review of the district-court record reveals that the district judge sentenced the complainant in November 2007. In March 2014, the complainant moved for correction of the sentence under Federal Rule of Criminal Procedure 35. The district judge denied the motion, and, in June 2014, the complainant filed a largely repetitive motion for correction of his sentence under Federal Rule of Criminal Procedure 36. The district judge denied that motion on June 18, 2014.

This complaint is subject to dismissal under Rule 11(c)(1)(D) because there is no evidence that the district judge withheld notice of the June 18, 2014 order from the complainant. See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The record reflects that the order was entered on the public docket sheet, and nothing in the record suggests that a copy of the order was not sent to the complainant in the same manner as other orders (that the complainant does not deny receiving). Even if the complainant could show that he

was not sent a copy of the order, there is no evidence that the district judge's interference, rather than a simple mistake in the clerk's office, caused that omission.

For these reasons, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/ R. Guy Cole, Jr.
Chief Judge

Date: June 29, 2015