

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

October 23, 2008

FRANK H. EASTERBROOK
Chief Judge

No. 07-08-90097

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is a federal prisoner following his sentence for growing a substantial number of marijuana plants. His conviction was affirmed on direct appeal, but the court of appeals remanded for additional findings concerning the number of plants for which complainant should be held responsible. The judge made a new decision and imposed a new sentence, which was affirmed on complainant's second appeal.

Complainant believes that the district judge committed error in his trial and sentencing. He thinks that evidence should have been suppressed (though this issue was raised on the initial appeal, and the court of appeals affirmed the district judge's decision) and that the judge attributed too many marijuana plants to him (a contention that was raised, and rejected by the court of appeals, in the second appeal).

Any complaint that is "directly related to the merits of a decision or procedural ruling" must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii). The allegations of this complaint fit that description. "Any allegation that calls into question the correctness of an official action of a judge ... is merits related." Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 145 (2006). Complainant cannot avoid this rule by characterizing the district court's substantive decisions as "misconduct." The point of §352(b)(1)(A)(ii) is that judicial decisions, right or wrong, differ from misconduct in office.

Complainant must understand that the arguments he now presents have been resolved against him on the merits. His conviction and sentence are final. The 1980 Act does not supply a means to reopen decided cases.