

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

February 6, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90001

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant, a federal prisoner, filed a motion for collateral relief under 28 U.S.C. §2255, coupled with a motion asking the judge who had presided at trial and imposed sentence to recuse himself. The request for recusal was supported by an affidavit in which complainant asserts that the judge is biased. The subject judge dismissed the §2255 motion as premature (an appeal was then pending) and declined to act on the motion for recusal. Complainant now accuses the judge of misconduct.

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). See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. “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). The allegations of this complaint fit that description. Complainant believes otherwise, contending that a decision with respect to recusal is not a “procedural ruling” under this statute. I agree with the *Report* (at 146), however, that a judge’s decision about whether he is qualified to resolve a dispute is a “procedural ruling” covered by this statute. (The *Report’s* exception for situations in which a judge knows that he is disqualified does not apply.)

What is more, all of the allegations of “bias” in the affidavit accompanying the motion for recusal concern adverse rulings during the criminal prosecution or comments during sentencing. A judge’s decisions based on the record do not constitute

bias, whether or not the judge made a mistake. See *Liteky v. United States*, 510 U.S. 540 (1994). Judges resolve disputes; every ruling favors one litigant or another. Making decisions is a judge's job and does not demonstrate bias, even though the party adversely affected by a ruling may be firmly convinced that the judge is wrong. What is more, the court of appeals has ruled that the judge did not commit any reversible error in resentencing complainant after an initial appellate remand.

The judge did complainant a favor by dismissing his collateral attack on procedural grounds, rather than dismissing it on the merits. The collateral attack had no chance of success while the direct appeal was pending. Perhaps some issue survived the court of appeals' ruling and now can be the subject of a proper collateral proceeding under §2255. The subject judge's decision to protect complainant's opportunity to wage a collateral attack on his conviction and sentence cannot be understood as evidence of bias against complainant.