

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

April 19, 2013

FRANK H. EASTERBROOK
Chief Judge

No. 07-13-90027

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant was convicted of conspiracy to distribute cocaine and sentenced to life imprisonment. The court of appeals reversed that conviction because of an error in the jury instructions. After a second jury trial, before a different judge, complainant was again convicted and again sentenced to life imprisonment. This time the court of appeals affirmed. He filed a collateral attack under 28 U.S.C. §2255. The district court denied the petition, and the court of appeals denied complainant's application for a certificate of appealability. These events occurred more than a decade ago.

In recent years complainant has been trying to assemble evidence that he believes will show that he requested that another jury be impaneled to resolve questions that affect sentencing. He contends that a district judge has committed misconduct by frustrating his effort to obtain a single, consecutively numbered transcript of all sentencing proceedings.

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. The district judge's rulings are "procedural" for the purpose of this statute—and §352(b)(1)(A)(ii) also covers complainant's assertion that

the judge must be biased against him. See *Report* at 146; Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The judge's adverse decisions do not show bias, see *Liteky v. United States*, 510 U.S. 540 (1994), and complainant offers no other basis for his charge.

Complainant must understand that the criminal proceedings are over and that he can pursue another collateral attack only if the requirements of §2255(h) are met—and then only with permission of the court of appeals under 28 U.S.C. §2244. Complainant's argument that he was entitled to a jury trial at sentencing could have been raised on direct appeal. It does not meet the standards for relief under §2255, let alone for a successive collateral attack under §2255(h). He is not entitled to demand that the district judge help him compile the basis for a doubly frivolous proceeding. (It would be frivolous substantively, because there is no right to a jury trial at sentencing, and frivolous procedurally because the requirements of §2255(h) are not satisfied.)