

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

March 17, 2023

Chief Judge Diane S. Sykes

No. 07-23-90002

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM AND ORDER

The complainant filed a misconduct complaint against the judge who in 2020 found him guilty in a bench trial, denied his posttrial motions, and imposed sentence. Last October the complainant filed a motion to vacate his sentence under 28 U.S.C. § 2255, which is currently pending. In his misconduct complaint, he alleges that the judge erred in sentencing him by imposing restitution without supporting evidence and ignored relevant precedent when ruling on his posttrial motions. He also claims that the judge will engage in delay in ruling on his pending § 2255 motion.

The complaint directly challenges the merits of the judge's substantive and procedural decisions and thus does not raise a cognizable claim of misconduct. Allegations directly related to the merits of the judge's decisions are not proper grounds for a misconduct complaint. 28 U.S.C. § 352(b)(1)(A)(ii). "Any allegation that calls into question the correctness of an official action of a judge ... is merits related." RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. r. 4(b)(1) cmt. Complainant's allegations about delay are conclusively refuted by the docket; there has been no delay. *See* 28 U.S.C. § 352(b)(1)(B). In any event, allegations of delay are considered merits related and are not cognizable under the Judicial Conduct and Disability Act. *See id.* r. 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.").

For the foregoing reasons, the complaint is dismissed pursuant to § 352(b)(1)(A)(ii) and (b)(1)(B). The complainant may petition the Judicial Council of the Seventh Circuit for review of this order in accordance with Rule 18(b) of the *Rules for Judicial-Conduct and*

Judicial-Disability Proceedings. 28 U.S.C. § 352(c); *see* RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. r. 11(g)(3). A petition for review must be filed in the clerk's office of the United States Court of Appeals for the Seventh Circuit not later than 42 days of the date of this order.