

FILED

DEC 11 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 17-90067

ORDER

THOMAS, Chief Judge:

Complainants, two federal prisoners, have filed a misconduct complaint against the district judge who presided over their criminal case. To the extent complainants allege that the judge improperly sentenced them, made erroneous factual findings at sentencing, or made other improper rulings in the underlying case, these allegations relate directly to the merits of the judge's rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Complainants further allege that the judge lied and committed fraud in a post-conviction order by claiming that he made particular findings of fact at sentencing. Specifically, complainants argue that the judge did not himself make findings of fact, but instead accepted factual findings made in a pre-sentencing report. This is not evidence of fraud, and complainants' allegations are dismissed

as unfounded and for failure to allege misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 726 F.3d 1060, 1062 (9th Cir. Jud. Council 2013); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(A), (D).

Finally, complainants allege that the judge has conspired with the prosecutor to “fix the case” against complainants. However, adverse rulings are not proof of bias or conspiracy, and complainant provides no objectively verifiable evidence to support these allegations, which are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. 2011); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.