

MAR 17 2010

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 09-90099

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that a district judge improperly refused to reduce his sentence. This charge relates directly to the merits of the judge's ruling and must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

The appellate process, not a misconduct complaint, is the proper vehicle to challenge a judge's ruling on the merits. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge is biased against Native Americans and other minorities. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Adverse rulings are not proof of bias. In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009). A complainant might be able to show misconduct by providing evidence

that multiple defendants raised the issue of bias on appeal and had their sentences overturned on that basis. Complainant's evidence that four Native Americans had their cases remanded for resentencing falls short; complainant presents no evidence that the remands had anything to do with bias or even that the issue of bias was raised on appeal. Two of the cases, including complainant's own, were remanded because the defendant was sentenced before United States v. Booker, 543 U.S. 220 (2005), revolutionized the law of sentencing, and one was remanded based on the judge's erroneous reliance on hearsay. Only one sentence was found to be unreasonable, and there was no suggestion that the judge imposed a high sentence on account of the defendant's race. Because there is no evidence of misconduct, this charge must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.