

FILED

JUL 11 2016

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

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 16-90047

ORDER

THOMAS, Chief Judge:

Complainant, a defendant in a criminal case, alleges that a district judge incorrectly calculated his sentence and made various other improper rulings in the underlying proceedings. 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).

Complainant further alleges that the judge was antagonistic, did not give complainant an adequate opportunity to be heard, and threatened to increase complainant’s sentence if he appealed or objected to the sentence calculation. A review of the record, including the full transcripts of the relevant hearings, belies these allegations. Complainant had an ample opportunity to argue his sentencing position, and none of the cited comments by the judge amounted to threats or “demonstrably egregious and hostile” treatment. See In re Complaint of Judicial

Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014). Accordingly, these allegations are dismissed as unfounded and refuted by objective evidence.

See 28 U.S.C. § 352(b)(1)(A)(iii), (b)(1)(B); In re Complaint of Judicial

Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule

11(c)(1)(D).

DISMISSED.