

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JAN 04 2017

Complaint Numbers: 05-16-90144 through 05-16-90146

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK


MEMORANDUM

Complainant, a federal prisoner, complains that he was subject to “outright judicial discrimination” by the three subject United States Circuit Judges because they denied his motion for authorization to file a successive 28 U.S.C. § 2255 motion, while other panels of this court granted similar motions for authorization filed by other prisoners. Complainant’s motion and the motions of the other prisoners were based on the argument that *Johnson v. United States*, 135 S. Ct. 2551 (2015), should be applied to U.S.S.G. § 4B1.2(a)(2).

To the extent the complainant’s allegations relate directly to the merits of the judges’ decision in his case, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).¹ In other respects, the complainant’s conclusory assertions of “outright judicial discrimination” and hypocrisy are insufficient to support findings of judicial misconduct, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.

December 28
September 28, 2016


Carl E. Stewart
Chief Judge

¹ Additionally, the undersigned notes that subsequent to the decision in the complainant’s case, this Court published *In re Arnick*, 826 F.3d 787 (5th Cir. 2016), which is now Fifth Circuit precedent on the issue raised in complainant’s motion for an order authorizing the district court to consider a successive 28 U.S.C. § 2255 motion. *Arnick* was decided the same way as the complainant’s case.