

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,
Plaintiff,
v.
ANDREW COX,
Defendant.

Criminal Action No.: 2:11-cr-00099

ORDER

CECCHI, District Judge.

IT APPEARING THAT:

1. This matter comes before the Court on four motions brought by Defendant Andrew Cox ("Defendant" or "Cox"): (1) motion for change of venue, (ECF No. 304); (2) motion to recuse this Court, (ECF No. 306); (3) motion to recuse Assistant United States Attorney ("AUSA") Shana W. Chen, (ECF No. 308); and (4) "motion to correct criminal docket frauds." (ECF No. 309).
2. Defendant's motion for change of venue seeks a transfer "to another federal district in a different federal circuit" because Defendant alleges that "this case criminally implicates" Chief District Judge Jose L. Linares and Circuit Judge Patty Shwartz, who the undersigned cannot "be forced to criminally implicate[.]" (ECF No. 304). More specifically, Defendant states that:

As graphically detailed in Cox's original motion for change of venue to (then) Third Circuit Chief Judge McKee, this case criminally implicates USDJ Jose L. Linares and (now) Third Circuit Judge Patty Shwartz.

Therefore, since this case criminally implicates two federal judges, and under controlling authority no judge can be forced to criminally implicate a colleague, Cox hereby moves this Court for a change of venue to another federal district in a different federal circuit -- as originally detailed and argued in Criminal Docket entry 290.

(*Id.*).

3. Defendant has provided no support for the claim that this case criminally implicates any Judge in this Circuit, and such allegations run counter to the established record in this case. *See In re Complaint of Judicial Misconduct or Disability*, J.C. Nos. 03-16-90081, et al. (memorandum opinion filed Feb. 23, 2017) (dismissing Defendant's virtually identical claims as baseless), *aff'd*, (3d Cir. June 28, 2017).¹ Accordingly, Defendant's argument is without merit.
4. In Defendant's motion to recuse, Defendant alleges that this Court purportedly "refused to exercise jurisdiction over [Defendant's] case," "refused to exercise jurisdiction over [Defendant's] 2255 motion because the Government already conceded that this case criminally implicates Judges Linares and Shwartz," and denied Defendant's motions. (ECF No. 306). Defendant also alleges that this Court's denial of Defendant's motions

¹ The Court notes that in the Judicial Council's memorandum opinion, Chief Judge Brooks Smith stated that:

[A] copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from filing any further complaints under the Judicial Conduct and Disability Act. As noted above, Complainant has already filed several complaints under the Act that were dismissed as merits-related and frivolous. Complainant was previously warned that future abuse of the complaint procedure could result in the imposition of sanctions under Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Nonetheless, Complainant proceeded to file seven additional frivolous and merits-related complaints. Upon transmittal of this memorandum opinion, the Judicial Council will make a decision about whether Complainant's present and prior abuse of the complaint procedure merits taking action under Rule 10(a) to prohibit complainant's future use of the complaint procedure.

In re Complaint of Judicial Misconduct or Disability, J.C. Nos. 03-16-90081, et al., at 6-7 (memorandum opinion filed Feb. 23, 2017).

was “vindictive,” and that transfer is warranted under Federal Rule of Criminal Procedure 21. (*Id.*).

5. After Defendant filed the pending motion, Defendant filed a substantially similar motion with the Third Circuit. *See United States v. Cox*, No. 17-1189 (motion filed Feb. 6, 2017), Doc. No. 003112532152. Defendant also appealed this Court’s denial of his previous motions to recuse, (ECF No. 303), in which this Court held that “[t]he allegations of Defendant’s motions concern matters arising in the course of judicial conduct, and it is apparent that Defendant is merely disgruntled with the judicial process.” (ECF No. 302).
6. The Third Circuit denied Defendant’s motion and affirmed this Court’s denial of Defendant’s previous motions to recuse and held that:

In his motion for summary action, Cox primarily challenges the District Court’s rulings on his efforts to remove Judge Cecchi from his case. We have reviewed Judge Cecchi’s analysis of his motions for recusal, and, for substantially the reasons that she stated, we agree that the motions were meritless. *See, e.g., In re Kensington Int’l Ltd.*, 353 F.3d 211, 219 (3d Cir. 2003) (explaining that recusal is warranted when a judge’s impartiality might reasonably be questioned). To the extent Cox’s recusal motion simply took issue with the judge’s rulings, such complaints are not a basis for recusal. *See Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000). [Furthermore, insofar as Cox sought to transfer his case out of Judge Cecchi’s court by invoking Rule 21(a) of the Federal Rules of Criminal Procedure, this Rule permits a court to transfer a criminal trial to a different venue, and Cox’s trial has already taken place. *See Fed. R. Crim. P. 21(a)*.]

Cox also repeatedly complains that Judge Cecchi “vindictively” refused to exercise jurisdiction over his case. We have carefully reviewed the record, however, and confirm that the District Judge promptly considered each of Cox’s motions, and clearly stated on the record her reasons for denying relief. Therefore, this argument is frivolous.

(ECF No. 312-1 at 3-4).

7. Here, as in Defendant's previous motions to recuse, Defendant has not presented this Court with any valid basis for recusal. The Court's disagreement with Defendant on the merits of the legal arguments in this case does not warrant recusal. *See Securacomm Consulting, Inc.*, 224 F.3d at 278 (noting that "a party's displeasure with legal rulings does not form an adequate basis for recusal"). Accordingly, as no new argument has been advanced, Defendant's contentions are without merit.
8. Defendant also moves to recuse AUSA Shana W. Chen for allegedly "fail[ing] . . . to correct information she knows to be false by refusing to concede that Cox's district court docket was fraudulently manipulated to post-date Cox's arrest 35 days -- from the correct 02 December 2010 to the false 05 January 2011[.]"² (ECF No. 308).
9. Defendant made virtually the same argument in his previous motion to hold AUSA Jane Hong-Mee Yoon in Criminal Contempt, (ECF No. 262), which was rejected by this Court because "Defendant provide[d] no support for the claim that the Government ha[d] made any such concessions, and the allegedly conceded statements r[a]n counter to the established record in this case." (ECF No. 302 at 5). The Third Circuit affirmed the Court's Order denying Defendant's motion, (ECF No. 312-1 at 4 ("For these reasons, we conclude that no substantial question is presented by this appeal [Cox's] related requests to remove the assigned AUSA from the appeal are also denied.")).

² Defendant has also submitted a letter in which he contends that AUSA Chen conceded the allegations made in Defendant's motion because AUSA Chen "fail[ed] to file a timely opposition by 21 April 2017." (ECF No. 310). At the time Defendant filed his motion, however, this matter was on appeal to the Third Circuit. Accordingly, the Court does not find that AUSA Chen made any concessions.

10. Here, Defendant has failed to submit any evidence in support of the allegation that AUSA Chen failed to correct false information.³ (ECF No. 302 at 5). Accordingly, Defendant's argument is without merit.

11. Finally, Defendant maintains in his motion to correct criminal docket frauds that Defendant "was actually arrested on 02 December 2010." (ECF No. 309). Defendant also avers that "Cox's executed arrest warrant was never returned to this docket" and "the Rule 5 documents regarding Cox's transfer . . . are missing." (*Id.*).

12. Defendant has raised the arguments in his motion to correct criminal docket frauds in prior motions, which the District Court advised Defendant "relate to issues that should be raised in Defendant's § 2255 motion[.]" (ECF No. 302 at 3-4).

13. It appears that Defendant has raised such arguments in his § 2255 motion, which is currently pending before the Court and will be adjudicated in due course.⁴ *See Cox v. United States*, No. 16-345 (motion filed Jan. 20, 2016).

Accordingly, IT IS on this 11 day of October, 2018, in the interests of justice and for good cause shown:

ORDERED that Defendants' motions, (ECF Nos. 304, 306, 308, and 309) are hereby **DENIED**; and it is further

ORDERED that the Clerk of Court shall serve a copy of this Order on Defendant by regular mail.


CLAIRE C. CECCHI, U.S.D.J.

³ After Defendant filed his motion to recuse AUSA Chen, Defendant submitted a "notice of newly published controlling authority" with respect to the motion. (ECF No. 314). Such notice, however, provides no support to sustain Defendant's motion.

⁴ After Defendant filed his motion to correct criminal docket frauds, Defendant submitted a "notice of newly published controlling authority" with respect to such motion. (ECF No. 313). Because the arguments in Defendant's motion relate to issues that should be raised in Defendant's § 2255 motion, to the extent that Defendant has not submitted such notice in Dkt. No. 16-345, Defendant is permitted to do so.

Appx B

BLD-117

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3451

UNITED STATES OF AMERICA

v.

ANDREW COX
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Crim. No. 2-11-cr-00099-001)
District Judge: Honorable Claire C. Cecchi

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
February 28, 2019
Before: AMBRO, KRAUSE, and PORTER, Circuit Judges

(Opinion filed: March 13, 2019)

OPINION*

PER CURIAM

Andrew Cox is a federal prisoner proceeding pro se. In 2011, Cox pleaded guilty

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

in the United States District Court for the District of New Jersey to six counts of knowingly distributing child pornography in violation of 18 U.S.C. § 2252A(a)(2)(A). He was sentenced to 262 months in prison, followed by five years of supervised release. This Court affirmed.

Thereafter, Cox began to inundate the District Court with pro se post-judgment motions. To date, he has filed nearly sixty motions in the District Court, all of which the Court denied or dismissed, and we have affirmed the District Court's rulings in numerous appeals. See, e.g., C.A. Nos. 14-4467; 14-4196; 14-3793; 14-3687; 14-3556; 14-2862; 14-2799.

As relevant here, on January 6, 2017, the District Court entered an order denying or dismissing more than twenty pending motions, including: Cox's motion to recuse Judge Claire C. Cecchi; his motion "to correct criminal docket frauds;" his related motion to "recuse" Assistant United States Attorney Shana W. Chen; and his motion for a change of venue. Upon review, we summarily affirmed the District Court's rulings. United States v. Andrew Cox, 692 F. App'x 85 (3d Cir. 2017) (not precedential).

Cox then returned to the District Court and filed four new motions seeking the same relief. The District Court denied these motions by order entered October 11, 2018. Cox timely appealed.

We will again summarily affirm the District Court's order because this appeal fails to present a substantial question.¹ See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (*per curiam*). For substantially the reasons stated in our prior opinion and by the District Court below, we see no error in the District Court's disposition of these motions. Specifically, we agree with the District Court's denial of Cox's recusal motion because he failed to demonstrate that Judge Cecchi's impartiality might reasonably be questioned. See In re Kensington Int'l Ltd., 353 F.3d 211, 219 (3d Cir. 2003); Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000).

Next, we see no error in the District Court's dismissal of Cox's "motion to correct criminal docket frauds," given that, as the District Court noted, he raised this issue in his currently pending § 2255 proceedings. We also agree with the District Court that Cox failed to provide any support for his claim that AUSA Chen knowingly failed to correct the alleged docket manipulation. Furthermore, to the extent that Cox's allegations against AUSA Chen concern the validity of the indictment, the sole means for challenging his conviction is by way of § 2255.

Lastly, the District Court did not err in denying Cox's request to transfer his case out of her court under Rule 21(a) of the Federal Rules of Criminal Procedure, as that Rule permits a court to transfer a criminal trial to a different venue, and Cox's trial has already taken place.

¹ We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

We have considered Cox's remaining arguments and conclude that they are meritless. Accordingly, because no substantial question is presented by this appeal, we will summarily affirm the District Court's order. See Third Cir. LAR 27.4 and I.O.P.

10.6. The Government's request to bar Cox from filing any additional motions or documents in this Court without prior permission is denied. This ruling does not prevent the District Court from considering whether to re-impose its former filing injunction against Cox. Furthermore, the Court notes this appeal appears to be part of a pattern of Cox filing duplicative and frivolous motions in the District Court and then appealing the denial of those motions. Cox is warned that he will be subject to sanctions by this Court, including fines and loss of filing privileges, if he continues to file frivolous motions and appeals.

Appx C-1

United States District Court
District of New JerseyJAMES BONNE
CLERK

UNITED STATES OF AMERICA

WARRANT FOR ARREST

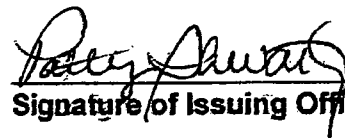
2010 DEC -7 P 4: 12

v.

ANDREW COX

Case Number: 10-3291
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS, OHIOTo: The United States Marshal
and any Authorized United States OfficerYOU ARE HEREBY COMMANDED to arrest RICHARD ROWLEY and bring him forthwith to
the nearest magistrate to answer a(n)☐ Indictment ☐ Information ☒ Complaint ☐ Order of court ☐ Violation Notice ☐ Probation Violation Petition

charging him with (brief description of offense)


Distribution of Child Pornographyin violation of Title 18, United States Code, Sections 2252A(a)(2)(A)Hon. Patty Shwartz
Name of Issuing OfficerU.S. Magistrate Judge
Title of Issuing Officer
Signature of Issuing OfficerDecember 1, 2010, Newark, NJ
Date and Location

Bail fixed at \$ _____ by _____

RETURN

This warrant was received and executed with the arrest of the above-named defendant at

6406 Busch Blvd, Apt. 470, Columbus, OH

Date Received <u>12/1/10</u>	Name and Title of Arresting Officer <u>Brian Widrig, Postal Inspector</u>	Signature of Arresting Officer 
Date of Arrest <u>12/2/10</u>		

Appx C-2

Suite 200
 Columbus, OH 43215
 614-469-5715
 Fax: 614-469-5653
 Email: Michael.Hunter@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED





Date Filed	#	Docket Text
12/02/2010	<u>1</u>	Rule 5 Documents Received as to Andrew Cox (Attachments: # <u>1</u> warrant issued, # <u>2</u> amended warrant issued) (sln1) (Entered: 12/06/2010)
12/02/2010		Arrest (Rule 40) of Andrew Cox. (sln1) (Entered: 12/06/2010)
12/03/2010	<u>2</u>	Minute Entry for proceedings held before Magistrate Judge Elizabeth Preston Deavers:Initial Appearance on Warrant from New Jersey & Detention Hearing as to Andrew Cox held on 12/3/2010. (Tape #1012 03#1.) (sln1) (Entered: 12/06/2010)
12/03/2010	<u>3</u>	CJA 23 Financial Affidavit by Andrew Cox. (sln1) (Entered: 12/06/2010)
12/03/2010	<u>4</u>	ORDER APPOINTING FEDERAL PUBLIC DEFENDER Gordon Hobson as to Andrew Cox. Signed by Magistrate Judge Elizabeth Preston Deavers on 12/3/2010. (sln1) (Entered: 12/06/2010)
12/03/2010	<u>5</u>	COMMITMENT TO ANOTHER DISTRICT as to Andrew Cox. Defendant committed to District of New Jersey. Signed by Magistrate Judge Elizabeth Preston Deavers on 12/3/10. (sln1) (Entered: 12/06/2010)
12/07/2010	<u>6</u>	DETENTION ORDER PENDING TRIAL as to Andrew Cox. Signed by Magistrate Judge Elizabeth Preston Deavers on 12/7/10. (sln1) (Entered: 12/07/2010)
12/07/2010	<u>7</u>	WAIVER of Rule 5 Hearings signed by Andrew Cox on December 3, 2010. (sln1) (Entered: 12/07/2010)
12/07/2010	<u>8</u>	Arrest Warrant Returned Executed on December 2, 2010 in case as to Andrew Cox. (sln1) (Entered: 12/08/2010)

PACER Service Center			
Transaction Receipt			
06/28/2012 10:46:36			
PACER Login:	mp1153	Client Code:	
Description:	Docket Report	Search Criteria:	2:10-mj-00829-EPD
Billable Pages:	2	Cost:	0.20

Appx C-3

NEWARK, NJ 07102
973-645-2719
Email: jane.yoon@usdoj.gov
ATTORNEY TO BE NOTICED

SHANA W. CHEN
OFFICE OF THE US ATTORNEY
970 BROAD STREET
SUITE 700
NEWARK, NJ 07102
(973) 353-6095
Email: shana.chen@usdoj.gov
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/01/2010	<u>1</u>	SEALED COMPLAINT as to ANDREW COX (1). (aa,) [2:10-mj-03201-PS] (Entered: 01/03/2011)
12/01/2010	 <u>2</u>	SEALING ORDER as to ANDREW COX. Signed by Magistrate Judge Patty Shwartz on 12/1/10. (aa,) [2:10-mj-03201-PS] (Entered: 01/03/2011)
12/01/2010	 <u>3</u>	Arrest Warrant Issued in case as to ANDREW COX. (aa,) [2:10-mj-03201-PS] (Entered: 01/03/2011)
12/02/2010	 <u>4</u>	Arrest Warrant Issued in case as to ANDREW COX. (aa,) [2:10-mj-03201-PS] (Entered: 01/03/2011)
12/23/2010	<u>6</u>	ORDER TO CONTINUE - Ends of Justice as to ANDREW COX Time excluded from 12/23/10 until 1/22/11. Signed by Magistrate Judge Patty Shwartz on 12/23/10. (aa,) [2:10-mj-03201-PS] (Entered: 01/04/2011)
12/30/2010	<u>5</u>	SEALED SUPERSEDING COMPLAINT as to ANDREW COX. (aa,) [2:10-mj-03201-PS] (Entered: 01/03/2011)
01/05/2011		Arrest of ANDREW COX (aa,) [2:10-mj-03201-PS] (Entered: 01/14/2011)
01/05/2011	<u>7</u>	Minute Entry for proceedings held before Magistrate Judge Patty Shwartz: Initial Appearance/Attorney Appointment Hearing as to ANDREW COX held on 1/5/2011. Defendant waived preliminary hearing, Ordered detained. (CD #ECR.) (aa,) [2:10-mj-03201-PS] (Entered: 01/14/2011)
01/05/2011	 <u>8</u>	(Court only) CJA 23 Financial Affidavit by ANDREW COX (aa,) [2:10-mj-03201-PS] (Entered: 01/14/2011)
01/05/2011	<u>9</u>	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to ANDREW COX. K. ANTHONY THOMAS for ANDREW COX appointed. Signed by Magistrate Judge Patty Shwartz on 1/5/11. (aa,) [2:10-mj-03201-PS] (Entered: 01/14/2011)