

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ROBERT D. CUNNINGHAM, JR.,)
) C.A. No. 03C-08-013 JTV
Plaintiff,)
)
v.)
)
JEFFREY HORVATH, Chief of)
Police, and M. JANE BRADY,)
Attorney General,)
)
Defendants.)

Submitted: April 16, 2004
Decided: July 30, 2004

Robert D. Cunningham, Jr., Dover, Delaware. *Pro Se.*

William W. Pepper, Sr., Esq., Schmittinger & Rodriguez, Dover, Delaware.
Attorney for Defendant Horvath.

Stuart B. Drowos, Esq., Department of Justice, Wilmington, Delaware. Attorney
for Defendant Brady.

Upon Consideration of
Plaintiff's Motion for Reargument
DENIED

VAUGHN, Resident Judge

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ORDER

Upon consideration of plaintiff's motion for reargument, defendants' opposition, and the record in this case, it appears that:

1. Plaintiff filed a *pro se* complaint August 8, 2003, naming Jeffrey Horvath, the Chief of Police for the City of Dover Police, and M. Jane Brady, the Attorney General for the State of Delaware, as defendants. In counts one through eight, plaintiff alleged that the City of Dover violated plaintiff's rights by failing to prosecute plaintiff's allegations of theft by false pretense and promise, criminal impersonation, and harassment. Plaintiff also claimed that defendants have violated plaintiff's federal and state constitutional rights. Count nine essentially reiterates these allegations with respect to the Attorney Generals Office.

2. Defendant Horvath filed a motion to dismiss plaintiff's complaint for a lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Oral argument was held December 12, 2003. The Attorney General joined in defendant's motion and argued similar grounds for dismissal. Plaintiff primarily desired an order to compel the City of Dover Police and the Attorney General's Office to prosecute an individual by the name of Linda Jones and her accomplices based upon his criminal complaints. The Court found plaintiff's *pro se* complaint as one primarily requesting injunctive relief. The Court recognized that it is without jurisdiction to provide injunctive relief.¹ Additionally, the Court held that the

¹ 10 *Del. C.* § 341, *see also Pottock v. Continental Can Co.*, 210 A.2d 295, 296 (Del. Ch. 1965) (granting of injunctive relief is part of equity's traditional jurisdiction).

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Attorney General has absolute immunity with respect to discretionary decisions and this likewise extends to the involved police agency where the decision is not to prosecute. The Court found *Mandamus* inappropriate for the same reasons. The Court granted defendants' motion on March 31, 2004. Plaintiff then filed this motion for reargument.

3. "Under Delaware law, reargument will usually be denied unless it is shown that the Court overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision."² A motion for reargument should not be used merely to "rehash the arguments already decided by the court."³

4. Plaintiff reiterates substantially all of his previous arguments adding that the Court erred in its determination of immunity as applied to the defendants; in failing to address the issues as laid out by plaintiff; and in misrepresenting the facts as presented by plaintiff. Plaintiff disagrees with the Court's characterization of the facts as being a police decision not to prosecute and asserts that the real issue is police failure to accept the criminal complaints. In either case, it is a discretionary decision subject to the same analysis. Plaintiff asks the Court to determine whether the facts as alleged constitute the crimes alleged. As stated in the previous order,

² *Monsanto Co. v. Aetna Cas. And Sur. Co.*, Del. Super., C.A. 88-JA-118, Ridgely, P.J. (Jan. 14, 1994) (Mem. Op.) (quoting *Wilshire Restaurant Group, Inc. v. Ramada, Inc.*, Del. Ch., C.A. No. 11506, Jacobs, V.C. (Letter Op.)).

³ *McElroy v. Shell Petroleum, Inc.*, 1992 Del. LEXIS 449.

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it is not this Court' s place to determine whether a crime has occurred for investigative purposes. That is a function delegated to the executive branch of government.

5. It is clear that the Court did not overlook a precedent or legal principle that would have controlling effect, and did not misapprehend the law or the facts such as would affect the outcome of this decision. Consistent with the principle that a motion for reargument should not be used merely to “ rehash the arguments already decided by the court,” the Court is not persuaded that plaintiff' s motion for reargument has any merit.

NOW THEREFORE, IT IS ORDERED that plaintiff' s motion for reargument is *denied*.

/s/ James T. Vaughn, Jr

Resident Judge

oc: Prothonotary
cc: Order Distribution
File