

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 12-cv-00383-WYD-KMT

THERON JOHNNY MAXTON, # 85599-071,

Plaintiff,

v.

UNITED STATES OF AMERICA;
BOP DIRECTOR, Washington, D.C.;
T.K COZZA-RHODES, Warden F.C.I.;
CHARLES DANIEL, Warden F.C.I.;
S. COLLINS, Health Service, U.S.P.;
LT. ANTHONY, U.S.P. Florence,

Defendants.

ORDER

This matter is before the Court on Plaintiff's Motion for a Court Order filed on October 3, 2012, and his motion seeking to have Magistrate Judge Tafoya removed from the case filed on October 22, 2012. I first address the Motion for a Court Order, which seeks a restraining order against Defendants.

Plaintiff's Motion for a Court Order was referred to Magistrate Judge Tafoya by Order of Reference of April 6, 2012, and Memorandum of October 3, 2012. A Recommendation of United States Magistrate Judge was issued on October 4, 2012, in which it was recommended that the Motion for a Court Order be denied. This was based on the fact that Plaintiff did not show that all four elements necessary to obtain injunctive relief were satisfied. Specifically, Magistrate Judge Tafoya found that while

Plaintiff alleges he will suffer irreparable harm without injunctive relief, he failed to address or show a substantial likelihood of success on the merits, the balance of harm and the impact of an injunction on the public. The Recommendation stated as to the likelihood of success on the merits, “[g]iven the tenuous nature of the relationship between Plaintiff’s current allegations and the claims underlying his Complaint, even assuming the truth of the allegations Plaintiff makes here, these allegations do not tend to make his underlying claims any more or less meritorious. (Recommendation at 2.)

Magistrate Judge Tafoya advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. (Recommendation at 3.) Plaintiff’s only response was to file the motion seeking to have Magistrate Judge Tafoya removed from the case, which I find below to be without merit. Plaintiff did not file any specific written objections to the Recommendation. No objections having been filed, I am vested with discretion to review the Recommendations “under any standard [I] deem[] appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings”). Nonetheless, though not required to do so, I review the Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”¹ See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

¹ Note, this standard of review is something less than a “clearly erroneous or contrary to law” standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review, Fed. R. Civ. P. 72(b).

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Tafoya correctly identified the factors required to obtain injunctive relief and correctly found that Plaintiff's Motion for Court Order did not show that all four factors were met. Accordingly, I find that the Recommendation should be affirmed and adopted in its entirety.

I now turn to the motion asking that Magistrate Judge Tafoya be removed from the case. Plaintiff asserts therein that he has shown how Defendants have set him up to kill him, and that Magistrate Judge Tafoya should be removed as she is racist and prejudiced towards prisoners. I deny this motion as the allegations are conclusory and without merit. The only basis for the motion is that Magistrate Judge Tafoya recommended the denial of Plaintiff's Motion for a Court Order seeking a restraining order against Defendants. However, this does not show any prejudice or racial bias on the part of the magistrate judge. Instead, the recommendation to deny Plaintiff's motion was based on the fact that Plaintiff did not satisfy the necessary elements for obtaining a restraining order, as discussed previously. This required that the motion for a restraining order be denied. I also note, however, that Plaintiff made a threat to kill Magistrate Judge Tafoya in that motion, which I have referred to the United States Marshal Service. I leave it to Magistrate Judge Tafoya to determine whether to recuse herself from the case based on this threat.

Based upon the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 38) is **AFFIRMED AND ADOPTED**. Consistent therewith, it is

ORDERED that Plaintiff's Motion for a Court Order (ECF No. 36) is **DENIED**.

It is

FURTHER ORDERED that Plaintiff's motion seeking to have Magistrate Judge Tafoya removed from the case (ECF No. 39) is **DENIED**.

Dated: October 30, 2012

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge