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AUG - 4 2010

United States District Court

U. S. DISTRICT COURT EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT OF MO
ST. LOUIS

GREGORY MCKENNA,

Plaintiff

Vs.

THE COUNTY OF ST. LOUIS, OFFICERS CHARLES

Case No. 4:09cv1113CDP

BOSCHERT, KENNETH WILLIAMS,

8 UNKNOWN AGENTS OF THE FEDERAL

BUREAU OF INVESTIGATION, MARK

JURY DEMANDED

KAPPELHOFF, APPLE INC., A-1 PRIVATE

INVESTIGATIONS, TIMOTHY BONINE,

D'ANGELO AUTOMOTIVE

Defendants

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF HIS MOTION FOR RELIEF FROM
JUDGMENT**

COMES NOW, pro se Plaintiff Gregory McKenna, and for his Memorandum In Support of His Motion for Relief From Judgment pursuant to Rules 60(b)(2), (5) and (6), Plaintiff states the following:

- 1) On January 4, 2010, this Court dismissed Plaintiff's Complaint against the Defendants, *sua sponte*, for failing to state a cause of action. Particularly, the Court relied on *DeShaney*, *Dorothy Sellers* and others to dismiss Plaintiff's Section 1983, 1985, 1986 and 1988 claims and rule that the Defendant Government officials have no duty to protect Plaintiff from continuing acts of Mafia stalking, extortion, torture and other extreme acts of terrorism caused

by their criminal neglect and violations of law, particularly, 18 USC §2, §3, §4, 18 USC §1510, 18 USC §1512(b), 18 USC §2381, 18 USC §2382 and others.

- 2) Despite relying on *DeShaney*, *Dorothy*, *Sellers* and others, the cases do not apply to situations where Government officials deliberately neglect their affirmative duty to protect. The Supreme Court in *Daniels* ruled that Government officials cannot cause deliberate deprivations and the Constitution forbids arbitrary decision making. *Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). In agreement with the Supreme Court in *Daniels*, the Eighth Circuit has consistently ruled that conduct evinces a “deliberate indifference” to protected rights if Government officials had an opportunity to consider other alternatives before choosing a course of action [and then fails to enforce the law]. *Neal v. St. Louis County Bd. of Police Comm'rs*, 217 F.3d 955, 958 (8th Cir. 2000). Accordingly, since the Defendants had time to deliberate their decision to enforce the laws and then refused to offer protective services (see Complaint ¶¶ 6, 50, 51, 54, 57, 63, 64, 65, 66, 69, 70, 76, 81, 84, 85, 88, 99, 100-105, 112, 114-116, 119, 121, 122, 132-138, 162-163, 170, 177, 186, 188-189), the Defendants deliberately deprived Plaintiff of his Constitutional right to Due Process. Moreover, the Court’s Judgment wrongfully misapplied case law to dismiss Plaintiff’s Section 1983 claim. Therefore, Plaintiff is entitled to Relief From Judgment pursuant to Rule 60(b)(5).
- 3) The deliberate deprivation rule is a well established Constitutional norm that opposes arbitrary enforcement and imputes liability to Government officials when violated. *Archie v. City of Racine*, 847 F.2d 1211 at 1233 (7th Cir. 1988)(“...whoever wields official power may not deliberately injure anyone.”); see also *Steven Kern v. City of Gerald*, 2008 U.S. Dist. LEXIS 89447, p.10 (8th Cir. 2008)(“Plaintiffs have set forth very broad allegations stating that the

defendants acted *recklessly* and *willfully* in failing to properly train, hire and supervise the police officers... these facts would likely overcome the protections afforded by official immunity or the public duty doctrine, even assuming that these defenses were applicable... dismissal at this stage is not warranted.”)(quoting Judge Perry). Concurrently, since acts of deliberate neglect by Government officials are strictly forbidden, the Defendant Government officials’ decision to refuse enforcement of the laws was patently egregious, arbitrary and conscience-shocking. Effectively, the Defendants wrongfully deprived Plaintiff of his rights and discriminated against him to cause him injuries. Therefore, the Court wrongfully neglected fundamental Constitutional principles to dismiss his Section 1983, 1985, 1986 and 1988 claims.

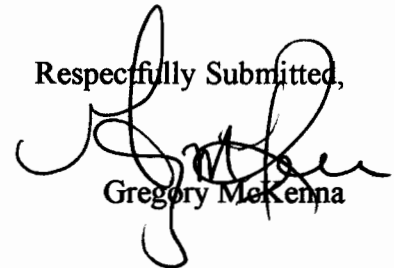
4) Finally, Plaintiff obtained new evidence of newly discovered violations of law that entitle him to relief from the Court’s Judgment. As a direct result of the Police and FBI’s criminal neglect of the Mafia crimes and Constitutional rights violations, the Mafia proceeded to bug Plaintiff’s new BlackBerry cellular phones to transmit death threats and torture him from January 13, 2010 to the present. In accord with Plaintiff’s evidence proffered in his former Motion To Proffer Evidence (See Exhibits 1-12), the new evidence proves that the Judgment wrongfully sanctioned the Defendants’ deliberate neglect of *new* violations of the Communications Act and his Constitutional rights. Therefore, Plaintiff is is entitled to Relief From Judgment pursuant to Rule 60(b)(2).

5) WHEREFORE, pursuant to Rule 60(b)(2), (5) and (6), Plaintiff respectfully requests that this Court grant his Motion For Relief From Judgment. The Court’s January 4th Judgment has no prospective application since Government officials cannot arbitrarily enforce the laws and commit deliberate deprivations. Additionally, the newly discovered evidence proves new

violations of the Communications Act that extends the statute of limitations for an additional 2 years. Therefore, Plaintiff is entitled to relief as warranted by law.

Date: July 31, 2010.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Gregory McKenna', is written over the typed name below.

Gregory McKenna

Pro Se Plaintiff
9937 Young Drive, H
Beverly Hills, CA 90212
(310) 493-499044