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US DISTRICT COURT E.D.N.Y.
★ MAY 31, 2018
BROOKLYN OFFICE
Pacivil
5/31/18
(8)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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James Philogene-Bey, :
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 Plaintiff, :
 :
 :
 -against- :
 :
 New York City Police Commissioner James P. :
 O'Neill, *in his individual and official capacity*, :
 Mayor Bill De Blasio, *in his individual and official* :
 capacity, The City of New York, New York City :
 Police Officer Roman Rushtlion, New York City :
 Police Officer Lt. Lee Lapkeung, *in his individual* :
 and official capacity, New York City Police Officer :
 Sgt. Sandoval, *in his individual and official* :
 capacity, New York City Police Officer Sgt. Olsen, :
 in his individual and official capacity, and New :
 York City Police John Doe, *in his individual and* :
 official capacity, :
 :
 Defendants. :
----- x

Memorandum & Order

17-cv-1486 (ENV) (RLM)

VITALIANO, D.J.

In December 2017, Chief Magistrate Judge Roanne L. Mann entered an order granting a stay of this civil case pending resolution of a related state court criminal proceeding. Plaintiff James Philogene-Bey has objected to Judge Mann's order. For the reasons that follow, his objections are overruled.

Background

On March 16, 2017, Philogene-Bey filed a § 1983 complaint against various defendants, raising false arrest and malicious prosecution claims relating to a traffic stop, subsequent arrest, and open criminal case in Kings County Criminal Court. Dkt. No. 1. It was that open proceeding that prompted defendants to seek a stay. Dkt. No. 37. After an initial conference before Judge Mann, on November 1, 2017, Dkt. No. 39, defendants renewed their motion, offering the

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indictment resulting from facts at the core of Philogene-Bey's claims here. Dkt. No. 40 & 40-1. In response, plaintiff filed a self-styled "Motion to Vacate Matters Related at Nisi Prius Court." Dkt. No. 42. In her December 27, 2017, Memorandum and Order, Judge Mann granted the stay and denied Philogene-Bey's motion to vacate. Dkt. No. 44. On February 1, 2018, plaintiff filed a four page document, which the Court liberally construes as an appeal of Judge Mann's order staying this action. Dkt. No. 45.

Discussion

When a magistrate judge has entered an order in a civil case, parties have 14 days to file an appeal. 28 U.S.C. § 636(b)(1). Where a party has timely appealed and specifically pointed out claimed errors, a district court reviews the order *de novo*. *4 B's Realty 1530 CR39, LLC v. Toscano*, 818 F. Supp. 2d 654, 658 (E.D.N.Y. 2011). Where an appeal to a non-dispositive order is untimely, the appealing party has generally waived his right to object. *Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008). Finally, where the contentions are conclusory or general, a district court reviews the order for plain error. *Toscano*, 818 F. Supp. 2d at 659.

Philogene-Bey's appeal fails. It suffers from two fatal defects. First, his appeal was untimely filed, some two weeks past the deadline to file. He has, therefore, waived his right to appeal. *Caidor*, 517 F.3d at 604. Second, if it is any consolation to him, even if the appeal was timely or could be construed as such, Philogene-Bey's general non-specific claim of error in Judge Mann's well-reasoned decision, which imposed a stay but did not dismiss the case, does not pass muster. Whether under the applicable plain error review, *see Toscano*, 818 F. Supp. 2d at 659, or under *de novo* review, there is no error. Consequently, his appeal is dismissed.

Conclusion

In line with the foregoing, plaintiff's appeal from the order of Judge Mann imposing a

stay of proceedings is dismissed.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith, and, therefore, *in forma pauperis* status is denied for the purpose of any appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45, 82 S. Ct. 917, 920-21, 8 L. Ed. 2d 21 (1962).

The Clerk of Court is directed to mail a copy of the order to plaintiff. ✓

Dated: Brooklyn, New York
May 5, 2018

/S/ USDJ ERIC N. VITALIANO

ERIC N. VITALIANO
United States District Judge