

C/M

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

----- X
 EDDIE ROBINSON, :
 :
 Plaintiff, :
 :
 - against - :
 :
 KINGS COUNTY, :
 :
 Defendant. :
 ----- X

MEMORANDUM
DECISION AND ORDER

18-cv-3314 (BMC) (JO)

COGAN, District Judge.

Plaintiff *pro se* moves for reconsideration of this Court’s Order and Judgment, each dated July 2, 2018, dismissing his case under 42 U.S.C. § 1983 pursuant to the Court’s review obligations under 28 U.S.C. § 1915. Familiarity with the Court’s July 2, 2018 Order (the “July Order”) is assumed. In this latest motion, plaintiff repeats his request for discovery, appointment of counsel, and damages against Kings County, and seeks to vacate his conviction.

The motion is denied. As the Court explained in its July Order, Kings County cannot be liable for damages under 28 U.S.C. § 1983 unless plaintiff alleges a policy and practice that led to his wrongful conviction. In addition, plaintiff cannot recover damages under § 1983 against any person based on the wrongful conduct that he alleges unless and until his conviction in state court is vacated. And as the July Order pointed out, petitioner’s federal habeas corpus petition was denied (Robinson v. Kings County District Attorney Office, No. 16-cv-2245 (E.D.N.Y. Nov. 22, 2016), app. dismissed, No. 16-4084 (2d Cir. April 7, 2017)), and the state courts have not vacated his conviction. There is thus no basis for this motion.

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 purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Digitally signed by Brian
M. Cogan 

U.S.D.J.

Dated: Brooklyn, New York
September 20, 2018