

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SHAMARK WILLIAMS,

Plaintiff,

-against-

MICHAEL VACCARO, ET AL.,

Defendants.

No. 19 Civ. 03548 (CM) (SDA)

ORDER DISMISSING OFFICER VACCARO FROM THE ACTION WITH PREJUDICE

McMahon, J:

On April 13, 2022, Magistrate Judge Aaron ordered that Plaintiff show cause why this action should not be dismissed without prejudice against Defendant New York City Police Officer Michael Vaccaro (“Officer Vaccaro”) for failure to timely serve Officer Vaccaro, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (*See* Docket No. 46). For the reasons set forth in his Report and Recommendation issued June 1, 2022 (Report and Recommendation of the Magistrate Judge, Docket No. 61), Magistrate Judge Aaron recommended that the court dismiss the action without prejudice as to Officer Vaccaro.

The court, understanding that Mr. Williams was not asked why his claim should be dismissed *with* prejudice, accepted the Report’s recommendation, and dismissed the action against Officer Vaccaro *without* prejudice. (*See* Docket No. 62). However, the court ordered that Mr. Williams to show cause, no later than July 15, 2022, why the dismissal should not be converted to one with prejudice on the ground that the statute of limitations has run. (*Id.*).

Mr. Williams did not file anything in response to the court’s June 16, 2022, order to show cause. The case against Officer Vaccaro is facially time-barred: the claim accrued on January 12,

2018, and the statute of limitations is three years, making the last day for serving Officer Vaccaro January 12, 2021. In a 42 U.S.C. § 1983 (“Section 1983”) action like this one, a defendant must be served before the statute runs or the claims against him are barred. *Zapata v. City of New York*, 502 F.3d 192, 194 n. 3 (2d Cir. 2007). As far as the court knows, Officer Vaccaro has not been served even unto today. And by failing to respond to the court’s order to show cause, Plaintiff has not pointed to any reason why the running of the statute of limitations should or could have been equitably tolled.

Accordingly, Officer Vaccaro’s dismissal from this action without prejudice is hereby converted to a dismissal with prejudice.

Dated: July 26, 2022

A handwritten signature in black ink, appearing to read "C. J. [unclear]", written over a horizontal line.

U.S.D.J.

BY ECF TO ALL COUNSEL