

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Kenneth M. Delashmutt

v.

Civil No. 15-cv-372-JD

Mary M. Lisi, et al.

O R D E R

Kenneth M. Delashmutt, proceeding pro se, brought suit in Rhode Island state court, naming as defendants, among others, judges in the United States District Court for the District of Rhode Island and the assistant federal defender who previously represented him. The federal defendants removed the case to federal court. After all of the judges in the District of Rhode Island were recused, the case was referred to the District of New Hampshire and was assigned to the undersigned judge.

The federal defendants moved to substitute the United States as the proper defendant, and that motion has been granted. Assistant Federal Defender Olin W. Thompson, moved separately to join the federal defendants' motion to substitute, which is granted. The United States moves to dismiss the claims brought against it.

Background

Delashmutt considers himself to be a "sovereign citizen" and stopped filing income tax returns several years ago.¹ As a result, the IRS conducted examinations of his income taxes. Delashmutt then made threats against IRS agents. In September of 2013, he was charged with threatening to assault and murder IRS agents in violation of 18 U.S.C. § 115(a)(1)(B).² See United States v. Delashmutt, 13-cr-159-ML-PAS.

The case was assigned to Judge Mary M. Lisi and was referred to Magistrate Judge Patricia A. Sullivan. Thompson represented Delashmutt, and Gerard B. Sullivan, Assistant United States Attorney, represented the government. Following a jury trial, Delashmutt was convicted of the charge on May 6, 2014.

Delashmutt was sentenced on September 18, 2014, to probation for a term of five years with certain conditions. After a notice of appeal was filed, Thompson was terminated from representing Delashmutt because the court had determined that Delashmutt did not qualify for representation by the federal

¹ Delashmutt writes his name in the amended complaint in this case as "Kenneth-Michael: DeLashmutt" and identifies himself as "a free natural born sentient human being, with irrefutable claim of the life . . . with no attachments to government."

²A second charge was dismissed before trial.

public defender. The First Circuit later dismissed the appeal for lack of diligent prosecution.

On November 24, 2014, a summons issued to Delashmutt for violating conditions of his supervised release, and the initial appearance for revocation of supervised release was held before Magistrate Judge Sullivan on December 19, 2014. Following a hearing, Delashmutt was found guilty on January 13, 2015, of violating the conditions of supervised release, and his bail was revoked. A final revocation hearing was held before Judge Lisi on February 19, 2015. Delashmutt was released with conditions, including that he allow searches of his residence, automobile, and other property for firearms. The hearing was continued to August 14, 2015.

When Delashmutt did not appear for the August 14 hearing, he was arrested on a warrant. A revocation hearing was held on August 20, and the court appointed counsel to represent Delashmutt. Delashmutt was remanded into custody after the hearing. Following a sentencing hearing on September 11, 2015, the court took the sentencing issue under advisement. A final revocation hearing is now scheduled for October 20, 2015.

Delashmutt filed this civil case in Rhode Island state court on August 12, 2015. The civil case appears to arise from

the criminal case, United States v. Delashmutt, 13-cr-159-ML-PAS.

The United States has been substituted for the federal defendants, Judge Lisi, Magistrate Judge Sullivan, Chief Judge William E. Smith, the Clerk of Court in the District of Rhode Island and a deputy clerk, probation officers, Assistant United States Attorney Sullivan, United States Attorney Peter Neronha, IRS special agents, and Thompson. In addition to the federal defendants, Delashmutt names as defendants the mayor of North Providence, Rhode Island; the former and acting police chiefs of North Providence; and "unnamed wrongdoers." The mayor and the former and acting police chiefs of North Providence have filed a separate motion to dismiss.

Discussion

The United States moves to dismiss the claims alleged against it. In support, the United States contends that Delashmutt has not identified any specific claims or provided factual allegations to support any claims. Delashmutt did not respond to the motion to dismiss.

To avoid dismissal, a "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.

662, 678 (2009). Factual allegations that are “too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture” are insufficient to avoid dismissal. [Lorenzana v. South Am. Rests. Corp.](#), --- F.3d ---, 2015 WL 4979373, at *2 (1st Cir. Aug. 21, 2015) (internal quotation marks omitted). Legal allegations and conclusions are not credited for purposes of assessing the plausibility of the claims. [Garcia-Catalan v. United States](#), 734 F.3d 100, 103 (1st Cir. 2013).

Delashmutt’s amended complaint provides no facts or any specific claims. Instead, the complaint is a compilation of conclusory legal statements that have no apparent relevance to the defendants named. As such, the complaint does not state a claim against the United States.

Conclusion

For the foregoing reasons, Olin Thompson’s motion to substitute (document no. 11) is granted. The United States was previously substituted as the defendant for the federal defendants and is also substituted as the defendant for Olin Thompson.

The United States's motion to dismiss (document no. 7) is granted. All claims against the United States are dismissed.

SO ORDERED.

A handwritten signature in black ink that reads "Joseph A. DiClerico, Jr." with a horizontal line drawn across the signature.

Joseph DiClerico, Jr.
United States District Judge
(Sitting by designation.)

October 1, 2015

cc: Kenneth M. Delashmutt, pro se
Richard Myrus, Esq.
Glen R. Whitehead, Esq.
Shannon Gilheeney, Esq.