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In Pro Per

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

In re: Nicholas Fiorillo	§
Petitioner,	§
v,	§
UNITED STATES DISTRICT COURT	§
FOR THE DISTRICT OF MASSACHUSETTS,	§
BOSTON MUNICIPAL COURT,	§
Respondents,	§
and	§
UNITED STATES OF AMERICA,	§
Real Party In Interest.	§

RELIEF REQUESTED

Nicholas Fiorillo, a victim in District Court No. 1:22-cv-12182-DJC, and BMC Trial Court No. 2201CR002384, petitions this Court for a Writ of Mandamus reversing the district court order remanding the case to the BMC, and a Writ of Mandamus ***directing the BMC Trial Court to dismiss the criminal charges against Petitioner***, charges which were brought fraudulently, and with malice.

ISSUES PRESENTED

Whether the district court erred in finding, under a clear and convincing evidence standard, that Petitioner’s removal of a fraudulently charged criminal case was unfounded, since “the prosecution of Nicholas Fiorillo does not fall within any of the few categories of State criminal actions that may be removed to a Federal District Court.” Also at issue is whether the original

case before the BMC Trial Court was brought in violation of Massachusetts G.L. c. 269, § 13A: False Reports to Police Officers, by the Complainant, *a practicing Massachusetts attorney*, who was *aided and abetted* by members of the Boston Police Department, as well as Municipal Court Clerks and a Judge.

FACTUAL BACKGROUND

On or about June 6, 2022, during a deposition of Petitioner's wife conducted by attorney Kevin T. Peters at his Boston law office, a proceeding at which Mrs. Fiorillo *was denied counsel representation*, based upon repeated threats by Peters to incarcerate her should she be unable to answer a question, Mrs. Fiorillo, suffering from *a pre-existing heart condition which both Mr. Peters and the Suffolk Superior Court had been previously made aware of*, suffered a cardiac incident resulting in her transportation to the hospital, where she spent four days in the cardiac care unit.

Knowing that Petitioner made repeated attempts in Superior Court to adjourn the scheduled deposition until such time that Mrs. Fiorillo had counsel representation, and also knowing full well that an attorney would not have allowed the assaulting line of questioning which caused Mrs. Fiorillo's collapse, Mr. Peters knew that he was in serious trouble. Making matters worse was the fact that as Petitioner rushed to his wife's aid, Mr. Peters made physical contact with him. Peters grabbed Mr. Fiorillo by his jacket in an attempt to prevent him from getting to his wife, making the audacious claim that Mrs. Fiorillo was "faking." Four days in a cardiac unit isn't faking, nor is being currently evaluated for a pacemaker.

When Boston Police officers responded to the scene prior to Paramedic transport of Mrs. Fiorillo to the hospital, Mr. Peters fraudulently told the Police that Petitioner had assaulted him, and that the mild mannered, affable Nicholas Fiorillo, without a violent bone in his body, had struck a man of his age with a closed fist. An incident which *plain and simply did not take place*, but one well known to Peters, would bring heightened charges due to his age. Although Peters would later admit that he was not assaulted by Petitioner and wished that the entire

incident would just go away, a combination of Police and clerical “assists” resulted in criminal charges being filed against Petitioner, instead of Mr. Peters, the actual aggressor. While this would have been conscience-shocking in any other Municipality, in a City where a homeless man had recently been charged with assault upon a Police Officer when it was that Boston Police Officer who assaulted the victim, it was just another day at the Precinct.

THIS COURT MUST ISSUE A WRIT OF MANDAMUS REVERSING THE RULING OF THE DISTRICT COURT THAT REMANDED A CASE TO THE SAME COURT THAT MALICIOUSLY PROSECUTED FALSE CHARGES. A SECOND WRIT MUST ISSUE ORDERING THE BMC TO DISMISS ALL FRAUDULENTLY FILED CRIMINAL CHARGES AGAINST PETITIONER.

I. This Issue Is Properly Reviewed by Mandamus

Pursuant to 28 U.S.C. § 1651 and 18 U.S.C. § 3771(d)(3), the district court’s order is reviewable pursuant to a writ of mandamus. This Court analyzes five factors in determining the propriety of mandamus:

- (1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires.
- (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is closely related to the first).
- (3) The district court’s order is clearly erroneous as a matter of law.
- (4) The district court’s order is an oft-repeated error, or manifests a persistent disregard of the federal rules.
- (5) The district court’s order raises new and important problems, or issues of law of first impression.

Bauman v. United States Dist. Court, 557 F.2d 650, 654-55 (9th Cir. 1977) (citations omitted).

These factors are only guidelines and raise questions of degree, including how clearly erroneous the district court's order is as a matter of law and how severe the damage to the petitioner will be without relief. 557 F.2d at 655. Furthermore, these factors need not all point the same way or even all be applicable in cases where relief is warranted. *Id.* The existence of clear error as a matter of law, however, is dispositive. Calderon v. United States Dist. Court (Nicolaus), 98 F.3d 1102, 1105 (9th Cir. 1996).

The Bauman factors favor issuance of the writ in this case. As to (1) and (2), the victim Petitioner has no other adequate means to obtain relief, and cannot obtain review by direct appeal from an Order for Remand, because the harm – the return of the matter to the same lower Court which should have refrained from false and malicious prosecution of Nicholas Fiorillo – will already have occurred during the appeal. Moreover, the resolution of this issue does not depend on facts to be developed at trial, since the instant action must be dismissed by the Trial Court since no trial of Nicholas Fiorillo on trumped up charges, is warranted.

Nicholas Fiorillo has taken a possibly unprecedented, courageous step, by turning a glaring spotlight up full blast on the systemic corruption within the Courts of the Commonwealth, mirroring that of the Boston Police Department and current District Attorney's Office. A true swamp in need of draining, starting with the undoing of a clear cut conspiracy resulting in the deprivation of citizen-Petitioner Nicholas Fiorillo's civil rights.

Starting at the end of 2021, the first of what would be the start of a series of frivolous civil actions little more than iterations of the same unlawful debt collection action by associates-in-fact involved in a racketeering scheme involving predatory, hard money lending by fraud in the inducement, was filed. The objective of these enterprising racketeers was to expropriate the real property and business interests of Nicholas Fiorillo, and his Ocean Development and Gotspace business entities. As to the latter, recent contractual agreements for

the purchase of land in the State of Connecticut for the development of critically needed data storage facilities, put the potential value of Gotspace Data Partners at or over one billion dollars.

Engaging in a close to two year pattern of “bait and switch” “loan-to-own” tactics, in order to fraudulently induce Nicholas Fiorillo into pledging personal assets by way of “guarantees” to “notes” originally presented to him by commercial brokers as “investments,” these racketeering, would be Plaintiffs then leveraged these “debt obligations” against Fiorillo, in order to extort monetary payment and transfer of significant percentages of company stock under threats made against his personal safety, the safety of his family, and threats to foreclose on his family home.

Such extortion was facilitated by the use of criminal cyber-spying by the Spitalny family, the Patriarch of which was a convicted tax evader who served time in Federal prison. Samuel B. Spitalny was discovered through investigation, to be the mastermind of the wiretapping of Fiorillo’s iPhone, iPad and other electronic devices, and it was discovered that Fiorillo and his family were being tracked by GPS locators. In light of the threats to life and limb which had been relayed to Fiorillo as having come from the Spitalnys and others, this put the entire Fiorillo family in fear of imminent harm. In the civil action filed against Nicholas Fiorillo by the Spitalnys, they were represented by attorney Kevin T. Peters of the Gesmer Updegrave law firm.

In their fraudulent and frivolous civil action, the Spitalny’s claimed with knowing falsity that they were entitled to payment of millions of dollars from Nicholas Fiorillo, that they were not entitled to. The Spitalnys, reputed Boston loan shark Raymond Green and former Gotspace principal Thomas Quinn, among others, strategized that multiple civil actions filed against Fiorillo would be sufficient to coerce him into settlement, in the face of mounting legal expenses. After previous attempts to extort payment from Fiorillo on the eve(s) of attempted foreclosures on his home failed, attorney Peters decided to take this Enterprise’s corruption to a higher level.

The plan concocted by Peters, with a little help from friends Powers and Dugal of BPD Precinct I, which Fiorillo learned “off the record” had been dubbed “Operation Schoolhouse,” involved using Mrs. Fiorillo, a special needs school teacher, as “bait” during a deposition at Peters’ office at which Peters would ensure she would not be accompanied by counsel. Both Peters and Suffolk Superior Court Judge Peter Krupp, before whom Fiorillo tried in vain to have the deposition rescheduled so that his wife, who had no involvement with Gotspace or Ocean Development, could have counsel representation, had been made aware of Mrs. Fiorillo’s pre-existing heart condition, and the understandable anxiety she was experiencing after being deposed to give testimony as to matters she knew nothing about. Despite this advisement, Judge Krupp orders Mrs. Fiorillo to appear at the scheduled deposition unrepresented by counsel.

The best laid plans of Peters and Police-men went awry, after Mrs. Fiorillo collapsed to the ground in his office, withering under his threats to have her removed and taken to jail, something he told Mrs. Fiorillo that “the Judge had given him permission to do.” A series of rapidly moving incidents after that involved Petitioner rushing to his wife’s aid while shouting to office staff to call 911, Peters grabbing Petitioner by his jacket, and a secretary yelling “Kevin, what are you doing?” Operation Schoolhouse had failed miserably, and now Mr. Peters was facing serious trouble.

As “luck would have it,” Officers Powers and Dugal just so happened to be nearby. As in *already at the office location when the call came in*, nearby. While other officers may have taken Mr. Peters out in handcuffs once learning what transpired, Peters and Dugal, as part of their pre-planned conspiracy with attorney Peters, facilitated charges being sworn out against Petitioner for assault. Even after Peters admitted under oath that he had not been assaulted by Nicholas Fiorillo, that he regretted the entire incident and wished that it would all go away, criminal charges still came forth *against the victim*. This by intent, in order to leverage the prospect of criminal prosecution against Petitioner, in order to force him into civil settlement with Peters’ clients, the Spitalnys.

By way of a conspiracy by and between attorney Peters and two Boston Police Officers, the unlawful prosecution of Nicholas Fiorillo was ultimately aided and abetted by Clerks Hogan, Lawless and Miller, as well as Judge Coffey, no stranger to overstepping when it came to criminal prosecutions. As a Prosecutor himself, Judge Coffey was known to have “used hideous, derogatory, anti-transgender language to invalidate a potential juror. Partway through Coffey’s transphobic ranting, the judge cut him off.”

Attorney Peters, therefore, was able to put all of the proper players into place, against the grossly disadvantaged Petitioner, Nicholas Fiorillo. Exacerbating matters *to the point of criminality on the part of the BMC*, is the issuance of a warrant by Judge Coffey against Nicholas Fiorillo. Upon information and belief, a retaliatory reaction by a Judge completely overstepping his bounds may have been “triggered,” after the matter was properly removed to District Court, pursuant to Fiorillo’s efforts to have the false criminal charges against him dismissed. While such removal resulted in the requirement that *all hearings scheduled in Municipal Court be canceled*, Judge Coffey may have taken extraordinary action, by having a “failure to appear” warrant issued under completely false pretenses. Abuse of judicial discretion, taken to an entirely new level, and if true, an egregious affront to Mr. Fiorillo’s freedom.

As previously well-established by Petitioner in the Notice of Appeal appended hereto as Exhibit A, Mr. Fiorillo succinctly parallels his case to a previous incident by which a man was fraudulently charged with assault by the Boston Police Department, and covered up by the District Attorney’s Office. The fact that this conduct is more so “routine” than an outlier when it comes to the current “officials” involved, is beyond indicative that the most prudent and exigent course of action at this time, is to ensure that “damage control” is thorough. *If* there is an “outstanding warrant” for Mr. Fiorillo in the system, immediate cancellation is a given, concurrent with the dismissal of all criminal charges, stemming from a “crime” which never took place.

The errors here are glaring, and the bias blatant. Embarrassing even, given the inherent conflict of interest previously raised by Petitioner, which should have kept any and all matters involving him in the District Court, from being “randomly assigned” by the Clerks, to Judge Denise Casper. Judge Casper was the Judge who issued the erroneous District Court ruling the subject of Petitioner’s writ, a Judge who should have recused herself once it was brought to her attention that the Company that her husband, Mark N. Casper is the President and CEO of, Thermo Fisher Scientific. This Company has not only been represented in the past by the law firm of Gesmer Updegrave, the *same firm that employs Kevin T. Peters*, the Complainant in the fraudulent BMC action, there is a mutual exchange of employees between this law firm and Company, giving Peters a direct conduit to the Judge’s husband. Accordingly, recusal should have been automatic.

While in the ruling pursuant to remand of the subject action, Judge Casper asserted that “Fiorillo's allegations do not provide the Court any basis to believe that he cannot enforce his federal rights in a state forum,” this was not an accurate assessment. Whether in recusal motions or removal pleadings, Petitioner has repeatedly pointed out the fact that by virtue of common attorney representation of Fiorillo and an unrelated pro se litigant, whose prolific filings have resulted in complaints and investigation of both State and Federal Court Judges, Mr. Mohan Harihar, Fiorillo has been deemed to be a “Harihar redux,” and the judicial bias against him prevents any remedy, redress and recourse in the State courts.

No Commonwealth citizen should endure what Petitioner has been subjected to. In the event that this Court determines that there was a warrant issued by the BMC Trial Court, relief must be swift, by way of the immediate extinguishing of this egregious threat to Fiorillo’s personal freedom.

That this “criminal” matter should be dismissed in light of the information succinctly presented in this petition, is a foregone conclusion. As is the conclusion that the Remand Order issued by Judge Casper was issued with bias in the aftermath of Petitioner's recusal motion, as well as in error. A matter that should have never been brought in the BMC Trial Court, most certainly should not be returned there.

Respectfully submitted this 7th day of February, 2023

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