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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Wade Travis Webb,
Plaintiff,
v.
County of Pima, et al.,
Defendants.

No. CV-18-00268-TUC-FRZ
ORDER

Plaintiff simultaneously filed a Notice of Appeal and a Rule 60 Motion for Relief From Judgment. *See* Doc. 14 (Notice of Appeal) and Doc. 15 (alleging a “fundamental right to hold the defendants accountable”).

A Notice of Appeal generally divests a District Court of jurisdiction. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”). However, a District Court retains limited jurisdiction to resolve a “motion for relief filed under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.” Fed. R. App. P. 4(a)(4). Further, the Ninth Circuit has authorized this Court to determine whether Plaintiff’s appeal is “frivolous or taken in bad-faith” or if Plaintiff’s “in forma pauperis status should continue.” *See* Doc. 18.

In this case, Plaintiff, a citizen of Kentucky, alleges that Jill Shaw, an Arizona citizen, contacted him in January of 2014, and over the subsequent two month period they exchanged numerous phone calls and messages. *See* Doc. 10 at pgs. 5–8. Plaintiff and

1 Ms. Shaw had had a romantic relationship that started when Ms. Shaw was in high school
2 and Plaintiff was in college. *See id.* at pg. 15 (stating that “Ms. Shaw and Mr. Webb dated
3 off and on throughout the 1990s when they were mostly in college”).

4 Plaintiff alleges that Ms. Shaw was “mentally unstable,” and that Ms. Shaw’s
5 2014 text messages included a photo of Plaintiff’s “handwritten love note” from the
6 1990s and recent photos of Ms. Shaw’s bleeding wrists. *See Doc. 10* at pgs. 6–7. Plaintiff
7 claims the two had “communication issues for 3 weeks at the end of February,” but once
8 resolved, Ms. Shaw convinced Plaintiff to fly out to Tucson, AZ. *See id.* at pgs. 7–8.
9 Plaintiff left his job the next day and then purchased a one-way ticket to Arizona. *See id.*
10 at pgs. 8–9.

11 Further “communication issues” apparently prevented Plaintiff from contacting
12 Ms. Shaw once Plaintiff arrived in Tucson. *Id.* So when Plaintiff showed-up,
13 unannounced, at the Shaw’s residence on March 15, 2014, Ms. Shaw’s husband called
14 the police *Id.* at pg. 9.

15 Plaintiff claimed he was only there to check on Ms. Shaw’s health, but Ms. Shaw
16 told the responding officer that “she had not been suicidal or had suicidal thoughts since
17 June 2013 and any pictures [Plaintiff] would have would be from June of 2013.” *Id.* at
18 pg. 10. Pima County officials then contacted Plaintiff and requested he meet with them
19 in-person to further assess the situation, and “based on that in-person meeting and the 9-
20 1-1 call, Plaintiff was arrested on a felony stalking charge.” Doc. 6 (Order of the Court).

21 Pima County Detective Castillo was assigned to investigate the matter. *See Doc.*
22 *10* at pg. 16. Detective Castillo attempted to meet with Jill Shaw in-person before the
23 matter was set for a Grand Jury Hearing, but was only able to interview Ms. Shaw over
24 the phone due to scheduling conflicts. *Id.*

25 Plaintiff complains that because Detective Castillo did not meet with Ms. Shaw in-
26 person, the investigation was “unacceptable” and that an in-person meeting would have
27 revealed Ms. Shaw’s “deceptive communication.” *Id.* at pg. 17. Plaintiff also complains
28 that Detective Castillo’s Grand Jury testimony mischaracterized the true relationship

1 between Plaintiff and Ms. Shaw because Detective Castillo only presented Ms. Shaw's
2 side of the story (which Plaintiff alleges was fabricated). *Id.* at pgs. 18–20.

3 The jurors eventually indicted Plaintiff on a felony stalking charge, but after a
4 number of pretrial motions — including Plaintiff's motion to Remand to Grand Jury for
5 Redetermination of Probable Cause — the government voluntarily moved to dismiss the
6 case. *Id.* at pgs. 20–25.

7 Plaintiff's Complaint alleged a violation of 42 U.S.C. § 1983 against a number of
8 Pima County officials, including Detective Castillo. *See* Doc. 1 at pgs. 26–35. This Court
9 dismissed the original Complaint for failure to state a cognizable claim, and subsequently
10 closed the case after Plaintiff failed to correct the deficiencies in an Amended Complaint.
11 *See* Docs. 6 & 12 (Orders of the Court).

12 Plaintiff's pending Rule 60 motion now claims that Pima County has an official
13 policy regarding “a mentally unstable person already known to the [Pima County
14 Sheriff's Department]”. *See* Doc. 15 at pg. 6. The motion cites to just one isolated
15 incident that gave rise to two separate, yet related, federal cases. *See id.* (citing *Larson v.*
16 *Napier*, No. 16-16259, at pg. 4 (9th Cir. June 27, 2017), and *Jackson v. Nanos*, 15-CV-52
17 (D. Ariz.)). In *Larson v. Napier*, the Ninth Circuit affirmed that “the record reflects that
18 the district court based its ruling on the specific custom or practice of the Pima County
19 Sheriff's Department – namely, seizing individuals and searching their homes before
20 establishing a factual basis for doing so.” The case makes no mention or finding of any
21 official County policy regarding “mentally unstable persons” like Plaintiff argues. *See*
22 *Larson v. Napier*. The related case, *Jackson v. Nanos*, eventually settled after the Ninth
23 Circuit's ruling in *Larson*, and also does not mention any policy, custom, or practice
24 regarding “mentally unstable persons.” *See* Doc. 15 at pg. 7.

25 Plaintiff has not established that Pima County had any unconstitutional policy,
26 custom or practice that caused the deprivation of Plaintiff's rights. Nor has Plaintiff
27 alleged that Detective Castillo was improperly trained to conduct investigations. Further,
28 Plaintiff has not established — nor does there exist — a constitutional right to have state

1 investigators interview key witnesses *in-person* before a Grand Jury proceeding occurs.
 2 Finally, Detective Castillo’s Grand Jury testimony itself is protected by common law
 3 immunity. *See Rehberg v. Paulk*, 566 U.S. 356, 375 (2012) (holding that “a grand jury
 4 witness has absolute immunity from any § 1983 claim based on the witness’ testimony”).

5 In conclusion, the Court understands that Plaintiff had limited means, and that
 6 Plaintiff’s arrest and indictment required state imposed non de minimis expenses, such as
 7 securing temporary housing for the 84 days from when Plaintiff was arrested until the
 8 indictment was dismissed. *See* Doc. 15 at pg. 2. However, Plaintiff has not shown that
 9 any of the Defendants’ actions rose to the level of a constitutional violation.¹ Plaintiff
 10 was arrested and indicted, despite claims of innocence; but Plaintiff was also exonerated
 11 according to the due process of law. Plaintiff alleges that Pima County’s justice “system
 12 is inherently flawed ... and dangerous to United States citizens as they have no means of
 13 defending themselves until they are actually indicted on a felony charge.” *See* Doc. 15 at
 14 pg. 5. The Federal Courts’ co-equal role in our constitutional system of governance does
 15 not include mandating the witness interviewing procedure that local state officials must
 16 follow when conducting their criminal investigations.²

17 Accordingly, IT IS DETERMINED that although Plaintiff’s appeal may lack a
 18 realistic probability of success, the appeal is not “frivolous or taken in bad faith.”

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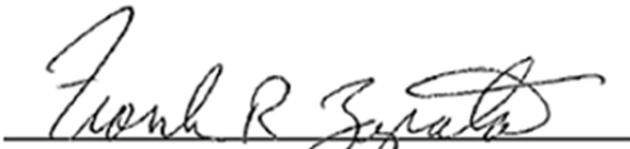
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 24 ¹ *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (guiding that the Fourteenth
 25 Amendment protects “fundamental rights” so “deeply rooted in this Nation’s history and tradition,
 26 and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if
 they were sacrificed’ ”) (quoting *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494 (1977), and
Palko v. State of Connecticut, 302 U.S. 319 (1937)).

27 ² *See, e.g., Missouri v. Jenkins*, 515 U.S. 70, 132–138 (1995) (Thomas, J., concurring) (“Article
 28 III courts are constrained by the inherent constitutional limitations on their powers. There simply are
 certain things that courts, in order to remain courts, cannot and should not do.... [W]e must recognize
 that the judiciary is not omniscient, and that all problems do not require a remedy of constitutional
 proportions.”).

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Further, IT IS ORDERED that Plaintiff's Rule 60 Motion (Doc. 15) is DENIED, and the Clerk of the Clerk send a certified copy of this Order to the Ninth Circuit pursuant to the REFERRAL NOTICE.

Dated this 12th day of September, 2018.



Honorable Frank R. Zapata
Senior United States District Judge