

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of January, two thousand twenty.

Present:

Robert A. Katzmann,
Chief Judge,
Peter W. Hall,
Gerard E. Lynch,
Circuit Judges.

Farid Popal,

Plaintiff-Appellant,

v.

19-1869

Steven Brown, Queens District Attorney's Office,

Defendant-Appellee.

Appellant, pro se, moves for leave to proceed in forma pauperis and for appointment of counsel. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe



**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of February, two thousand twenty,

Present:

Robert A. Katzmann,
Chief Judge,
Peter W. Hall,
Gerard E. Lynch,
Circuit Judges.

Farid Popal,

Plaintiff - Appellant,

v.

Steven Brown, Queens District Attorney's Office,

Defendant - Appellee.

ORDER

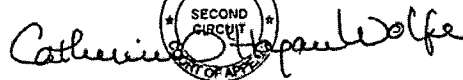

Docket No. 19-1869

Appellant Farid Popal filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ JUN 13 2019 ★

BROOKLYN OFFICE

-----X
FARID POPAL,

Plaintiff,

-against-

SERGEANT STEVEN BROWN, Queens County
District Attorney's Office,

Defendant.
-----X

MEMORANDUM & ORDER

19-CV-832 (KAM)

MATSUMOTO, United States District Judge:

Pro se plaintiff Farid Popal (hereinafter "plaintiff" or "Popal") brought this pro se action against a detective working with the Queens County District Attorney's ("QCDA") Office to oppose plaintiff's motion seeking collateral relief in a New York State criminal proceeding. The court grants plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, and for the reasons stated below, this action is hereby dismissed pursuant to 28 U.S.C. 1915A.

BACKGROUND¹

¹ Factual details regarding Popal's criminal trial, as relevant to the instant Order, are taken from the court's Memorandum and Order denying Popal's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *Popal v. Superintendent, Wende Corr. Facility*, No. 15-CV-1167-JG, 2015 WL 5316301 (E.D.N.Y. Sept. 11, 2015). The court also refers to the Complaint and attachments by page numbers assigned by the court's electronic case filing ("ECF") system.

Plaintiff asserts that defendant Sergeant Steven Brown violated his constitutional right to present a defense by preventing him from calling witnesses in a post-conviction proceeding.

Popal was convicted of murder and related charges on April 4, 2006, in New York State Court in connection with the disappearance of Samira Haqiqi on November 12, 1999. Haqiqi's body was never found, and the prosecution was based primarily on the testimony of multiple witnesses. One witness, Joseph Miata, was a friend of Popal and an owner of the automobile transmission shop where Popal's brother worked and where the only physical evidence in Popal's case was found. The testimony also implicated Popal's brother, Farhad Popal, also known as Frank Popal and Farhad Achekzayee, in covering up the crime. Defendant Steven Brown investigated Haqiqi's disappearance and testified at Popal's trial.

Popal appealed his conviction and sought collateral review in both state court and this court. None of his efforts were successful. See *New York v. Popal*, 879 N.Y.S.2d 185 (2009), *lv. denied*, 13 N.Y.3d 748 (2009), *cert. denied*, *Popal v. New York*, 559 U.S. 909 (2010); *New York v. Popal*, 986 N.Y.S.2d 341 (N.Y. App. Div. 2014) (denying post-conviction relief), *lv. denied*, 23 N.Y.3d 1066 (2014); *Popal v. Superintendent, Wende*

Corr. Facility, No. 15-CV-1167-JG, 2015 WL 5316301 (E.D.N.Y. Sept. 11, 2015) (dismissing habeas petition).

On May 4, 2017, Popal, represented by counsel, filed a new motion in New York State Court, Queens County, pursuant to New York's C.P.L. § 440.10, challenging his conviction based on newly discovered evidence. His new evidence consisted of the April 10, 2017, Affidavit of Joseph Miata, in which Miata stated that certain testimony he gave at trial was not true. (Compl., Ex. C-A, Miata Aff. 79.)² Miata averred: "I was told what to say by the District Attorney's office. . . . I feel I was misled by the district attorney's office." (Id.) He reached out to Popal's attorney to "correct[] the record" because he was dying of cancer. (Id.) He also asserted that he had not been given or promised any compensation in exchange for his affidavit or testimony. (Id.)

The state court held a hearing that commenced on October 17, 2017; Miata testified. Although Popal attaches to his Complaint incomplete portions of the transcript, a few details stand out: Miata recognized his signature on the affidavit, but could not remember who had presented it to him.

² Miata's Affidavit is a sub-exhibit attached to Exhibit C, Popal's May 4, 2017 C.P.L. § 440.10 Motions. (Compl., Ex. C, Pl.'s C.P.L. § 440.10 Mot. ("440 Mot.") 69-72.) The court notes that because plaintiff attached the exhibits to his Complaint in a single document, pagination is, at times, inconsistent and non-consecutive. Thus, for convenience, except for the hearing transcripts, citations to the record refer to pagination imprinted by the court's ECF system.

(Compl., Ex. A, Oct. 17, 2017 C.P.L. § 440 Mot. Hr'g Tr. ("Oct. 2017 Tr.") 45-46.) He could not remember details about his trial testimony in 2006 and gave inconsistent answers about whether he was coached by the state prosecuting attorney. (*Id.* at 93-96.) He denied that he was offered "a payday" in exchange for his testimony. (*Id.* at 103.) He also acknowledged that he had not been diagnosed with cancer. (*Id.* at 46.)

The court continued the hearing on July 16, 2018. According to the prosecutor, the hearing was reopened "for the purposes of establishing whether or not a witness in this case had been paid in exchange for their testimony." (Compl., Ex. B, July 16, 2018 C.P.L. § 440 Mot. Hr'g Tr. ("July 2018 Tr.") 274.) At the continued hearing, Miata testified, via Skype, from a police station in Florida; his assigned counsel was in the hearing room in Queens County. During Miata's remote testimony, Popal's counsel pointed out that Miata kept turning to look to his side while testifying. (*Id.* at 170-71.) At that point in the proceeding, the prosecutor acknowledged that Miata was in a room with Sergeant Steven Brown and two other detectives from the QCDA's Office. (*Id.* at 171.) Miata was apparently granted immunity for his testimony. (*Id.* at 164-65.) He recanted part of his recantation and testified that Farhad Popal had arranged to send him money in order to influence his decision to recant.

(*Id.* at 166.) Plaintiff's attached transcripts are incomplete and it is not clear how these payments were delivered.

The state court denied Popal's \$ 440.10 motion on November 29, 2018. (Compl. ¶ 32.) The state court found that Miata contradicted himself in the initial hearing on the truthfulness of his 2006 trial testimony about hearing Haqiqi's name, seeing damage to Popal's car, and witnessing the police remove hair from the transmission shop. (Compl., Ex. J, Mem. & Order, N. Y. Sup. Ct., Queens Cty. ("Nov. 29, 2018 Order") 205-06.) The court determined that "Miata's recantation proffered through his affidavit and testimony at the initial hearing-by itself-is incredible." (*Id.* at 211.) When the hearing was reopened in July 2018, Miata admitted that the affidavit included false statements and that he had been paid for his recantation testimony by "Frank Popal's girlfriend, Halime Aghdassi." (*Id.* at 207.) Miata largely confirmed that his testimony at the grand jury and at trial was truthful. (*Id.* at 210.) For these reasons, the court found that "the recantation by Miata is not credible on its face and is inherently unreliable as it was contradictory to Miata's claims at the hearing, unsupported by any other evidence in the record and motivated by a financial incentive." (*Id.* at 209.)

Popal now alleges that defendant Brown, who was the lead detective in the original criminal investigation that led

to his arrest and conviction, "did not wish this case, upon which his career was built to be reversed." (Compl. ¶ 21.) Popal alleges that Brown coached and coerced Miata into recanting his recantation and testifying that Popal's brother, Farhad Popal, had bribed him in order to influence his original decision to recant. (Id. ¶¶ 26-28.) He asserts that the prosecution manipulated Miata and his claim to be ill in order to present him at the July 2018 hearing via Skype, rather than in person. Miata testified from a Florida police station, in the presence of three New York City Police Department ("NYPD") officers, who did not appear on camera, and whose presence was not revealed until Popal's attorney questioned why Miata kept looking to the side while he was testifying. (Id. ¶¶ 27-29.)

Popal further alleges that Brown conspired with Vahid Mehdizadeh to destroy Miata's credibility and defeat Popal's § 440.10 motion. (Id. ¶¶ 19, 23.) The instant complaint, Popal's December 21, 2018 *pro se* motion to reopen his § 440.10 motion, and the attached statements from Farhad Popal, Mehdizadeh's former wife Halime Aghdasi ("Halime"), and Halime's sister Fereshte Aghdasi, along with copies of electronic messages sent by Mehdizadeh to Farhad, paint a story of changing

interpersonal relationships, community networks, betrayal, and revenge.³

According to Popal, his brother Farhad was friends with Mehdizadeh and Halime. In 2016, Mehdizadeh and Halime visited Popal in prison and offered to highlight Popal's case in the Asian community. (Mot. Recons. 95-96.) Mehdizadeh located and contacted Miata and learned that he "was eager to make things right before he dies." (*Id.* at 96.) Mehdizadeh and Halime began working on a book project about Popal's case. (*Id.* at 100.) According to Popal, the relationship between Farhad and Mehdizadeh deteriorated when Farhad sought to help Halime in a dispute with Mehdizadeh. (*Id.* at 98-99.) Mehdizadeh sought to use Popal's case to get back at Farhad and conspired with Brown to show that Farhad Popal and Halime Aghdasi, not Mehdizadeh, had offered money to Miata in exchange for his testimony. (*Id.* at 99.)

Plaintiff also submits a statement from Fereshte Aghdasi in which Fereshte avers that she traveled from Canada to the United States with Mehdizadeh to visit Miata in January 2017 in order to interview him for the book project. (Compl., Ex. E-

³ Farhad Popal's, Halime Aghdasi's, and Fereshte Aghdasi's statements are attached as sub-exhibits to Exhibit E, Popal's December 31, 2018 *pro se* motion to reconsider the November 29, 2018 denial of his C.P.L. § 440.10 motion. (Compl., Ex. E, Mot. Recons. 92.) These sub-exhibits are labeled A through F, and are referred to in this Order as E-A through E-F, as in, sub-exhibit A or sub-exhibit F, respectively, to parent Exhibit E. For ease of reference, the court primarily refers to ECF pagination.

A, Fereshte Aghdasi Letter 117.)⁴ Fereshte stated that she did not participate in the interview and had no other involvement in the project. She received a telephone call at work on July 27, 2018,⁵ from "James Brown," who identified himself as a police officer in the United States and told her that she and her sister would be indicted and go to jail and that she "must tell him the truth."

According to Halime's statement, she was very involved in the book project. (Compl., Ex. E-B, Halime Aghdasi Aff. ("HA Aff.") 120.)⁶ At Mehdizadeh's request, she began transferring money to Miata "to assist him with his medical bills." After she learned of her husband's financial misdeeds, she sought to leave the relationship. Mehdizadeh threatened to ruin her financially and to publish sexually explicit images of her within their community. As a result of his threats, she reported him to the authorities and received an order of protection against him in Toronto, Canada, where they lived.

Halime describes a June 2018 telephone call she received from the Toronto Police asking her to visit the police station to talk about Mehdizadeh's bail conditions. When she

⁴ Fereshte's statement appears to bear an original date of January 2016, but that date is crossed out and replaced with a handwritten "2017."

⁵ The last digit of the typed "July 27th 2017" is overwritten as "July 27th 2018", after Popal's reopened \$ 440.10 motion hearing.

⁶ Halime Aghdasi's affidavit, from which the following summary is drawn, is attached twice—the second time as Exhibit H of the Complaint. (HA Aff. 190.)

arrived, she was confronted by defendant Brown and another detective from the United States who questioned her and showed her files and documents containing information about her family members. "I was told by the Sergeants that if I don't cooperate with the case, I will be indicted to the USA including my entire family, specifically my sister who would be in a lot of trouble and I would be legally charged for breaking the law." The detectives told her that "the Popal[] brothers are murderers and I must stay away from them." Brown told her: "he will do anything to charge me with perjury if I do refuse to work with him and against Mr. Farhad Popal in order to incriminate him of a crime that he did not commit." The other American detective told Halime that they would give her a deal if she agreed to cooperate with them "and testify against the Popal brothers and lie." Halime refused "to be part of a conspiracy and provide false testimony" and was allowed to leave. However, as a result of this pressure, "I was left in a state of shock and terrified to come forward to New York and get involved in this matter"

"She stated that she was both "scared of my ex-husband . . . given all the power he has in our community," and "scared and terrified based on my interrogation by the detectives from New York." She affirmed: "[a]t the same time when the District Attorney contacted my sister, I had also received a phone call

from a payphone and it was my ex-husband Mr. Vahid Mehdizadeh telling me that I am in trouble. Therefore, I backed out."

Farhad's statement described a friendly and business relationship with Mehdizadeh and Halime that soured, and subsequent threats from Mehdizadeh. (Compl., Ex. E-C, Farhad Achekzayee Aff. ("FA Aff.") 131.)⁷ He denied asking Mehdizadeh and Halime to send money to Miata and denied any knowledge of any payments. He acknowledged speaking with Miata on multiple occasions. He stated that he began recording the conversations he had with Miata about his brother's case and contacted an attorney. The attorney interviewed Miata and determined that Miata's trial testimony was coerced. Farhad stated that he had a "horrific" experience involving the NYPD and that, as a result, he had not visited his brother in prison, because he is "afraid of going to the US (sic) and being conspired against by the District Attorney's office." When Brown began working with Mehdizadeh and interrogated Halime, Farhad feared that he could be implicated by false testimony, and thus was afraid to testify at his brother's reopened hearing on the \$ 440.10 motion.

⁷ Farhad Achekzayee's affidavit, from which the following summary is drawn, is also attached as Exhibit G of the Complaint. (Compl., Ex. G, FA Aff. 184.)

Popal also attaches copies of electronic messages from Mehdizadeh to Farhad.⁸ In one, Mehdizadeh demanded money from Farhad and forwarded a message from individuals in the QCDA's Office arranging for him to travel to New York. The email said: "I know farid is not guilty but I have to do what I have to do. I warned u I will see the DA if you no stay away from [Halime] and pay for my loss. . . . I am warning you again and again if u don't do I make sure farid stay in forever [sic]." Another message forwards email communication between Brown and Mehdizadeh and states: "[t]his is your last warning or else [sic] I will make sure farid dies there no mater [sic] what[.]" Popal also attaches a letter from the Acting Deputy Crown Attorney in Ontario to Brown, in which the Crown Attorney's office indicated that it would permit Mehdizadeh to make controlled phone calls to Farhad Achekzayee, despite the order of protection prohibiting Mehdizadeh from contacting Farhad. (Compl., Ex. E-D, Crown Att'y Letter 140-41.) Finally, Popal attaches a document entitled "Agreement between Vahid Mehdizadeh & Halime Aghdasi," in which Mehdizadeh states: "I accept and agree to continue providing funds necessary to assist Joseph Miata's ongoing medical expenses for the purpose of the book." (Compl. Ex. E-E, Mehdizadeh Agreement 143.)

⁸ These emails are also attached as part of Exhibit E-C. (Compl., Ex. E-C, Emails 127-29.)