SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK - against - DONALD J. TRUMP, Defendant.	DECISION AND ORDER ON DEFENDANT'S MOTION TO VACATE THE COURT'S ORDER ON THE FILING OF MOTIONS Ind. No. 71543/2023

HON. JUAN M. MERCHAN A.J.S.C.:

The Defendant was arraigned before this Court on the instant matter on April 4, 2023. On May 23, 2023, this Court set a firm trial date of March 25, 2024. Both parties were directed not to engage or otherwise commit to anything that would prevent them from commencing and completing the trial. Since that time, Defendant has repeatedly tried to delay the start of trial. Indeed, the March 25, 2024 start date has now been moved to April 15, 2024.

The parties have filed numerous motions since the arraignment, including but not limited to Defendant's omnibus motion and the respective motions *in limine*. The omnibus motion was filed on September 29, 2023, and decided on February 15, 2024. The motions *in limine* were filed on February 22, 2024, and rulings issued on March 18, 2024.

On March 7, 2024, Defendant filed a motion to exclude evidence and for an adjournment based on a claim of presidential immunity. The motion was filed a mere two and a half weeks before the scheduled trial date. On March 8, 2024, this Court issued the Order that is the subject of Defendant's instant motion.

CONTENTIONS OF THE PARTIES

This Court's Order of March 8, 2024, directed the parties to obtain leave of the Court before filing any additional motions by filing a one page pre-motion letter, setting forth the basis for the motion and the relief being sought. Defendant moves to vacate the Order. Defendant also moves for this Court to "vacate" the Court's March 8, 2024, email in which it informed Defendant that his pre-motion letter had been accepted. Defendant's Memo at pg. 2.

Defendant argues that the March 8 Order violates Criminal Procedure Law ("CPL") §§ 255.20, 210.45, and 710.60. Defendant further argues that the Order violates his Sixth Amendment right to a fair trial. The People argue that this Court has the authority to require the parties to submit pre-motion letters. They further argue that the time restrictions proscribed by CPL § 255.20 "reflect 'the strong public policy to further orderly trial procedures and preserve scarce trial resources." People's March 12, 2024, pre-motion letter[1], *citing to People v. Davidson*, 98 NY2d 738, 739 [2002].

DISCUSSION

"Except as otherwise expressly provided by law, whether the defendant is represented by counsel or elects to proceed pro se, all pre-trial motions shall be served or filed within forty-five days after arraignment and before commencement of trial, or within such additional time as the court may fix upon application of the defendant made prior to entry of judgment." CPL § 255.20(1). "The Legislature's purpose in enacting CPL 255.20 was to regulate pretrial proceedings by requiring a single omnibus motion to be made promptly after arraignment and thus to avoid the proliferation experienced under prior procedure in which defendants could bombard the courts and Judges with dilatory tactics continuing right up to the eve of trial." *People v. Lawrence*, 64 NY2d 200 [1984]. "A pre-trial motion for suppression must be made in writing within the forty-five day window for pre-trial motions." Peter Preiser, Supp Practice Commentary, McKinney's Cons Laws of NY, CPL 710.60.

Defendant agrees with the prosecution that this Court has the authority to implement measures as necessary to manage its docket and prevent "dilatory tactics" right up until the eve of trial. *Lawrence*, 64 NY2d 200 at 204, 205. "Moreover, while we have no objection to the Court seeking previews of incoming motions as a docket-management measure, we believe that it violates the CPL, the Sixth Amendment and other constitutional rights of President Trump if the Court were to refuse to permit the defense to file any particular motion …" Defendant's March 8, 2024, pre-motion letter re discovery sanctions at 1 n. 1.

The Court's measure was indeed intended to assist with the management of its docket as well as to efficiently manage the case at bar[2]. In this regard, the Court also wanted to ensure that both

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[1] On March 18, 2024, the Court accepted the Defendant's motion to vacate the Court's Order on Filing of Motions and asked the People how much time they would need to file a response. By email the same day, March 18, 2024, the People indicated that they would rely on their March 12, 2024, pre-motion letter as their formal response.

[2] Defendant, either directly or through counsel, has repeatedly stated publicly that the defense goal is to delay these proceedings, if possible, past the 2024 presidential election.

parties (and the Court) would have the time to prepare for trial while at the same time, providing the necessary time for the parties to fully flesh out potentially valid motions they intend to file. Further, the Court's measure would allow this Court to judiciously expend a valuable resource - time - to properly consider, analyze and rule on those motions that were filed. In an attempt to do so, this Court, in its discretion, required the *additional* step of requiring the parties to succinctly present their arguments in the form of a written pre-motion letter.

Because Defendant's omnibus motion has already been decided and the respective motions *in limine* have already been ruled on in various respects, and there being no dispute by either party that the Court has the inherent authority to exercise discretion in the management of its docket, Defendant's motion to vacate this Court's Order of March 8, 2024, is **DENIED**.

Defendant's claim that the Court's March 8 Order violates his Sixth Amendment right to a fair trial is without merit. Defendant's Memo at pg. 6. As the People correctly note in their pre-motion letter, *the Order does not deny either party the right to file any motion* provided that a pre-motion letter is filed first. This aspect of Defendant's argument is not persuasive.

The second part of Defendant's motion, that the Court vacate its e-mail of March 8, 2024, is **DENIED** as premature.

The Court's Order of March 8 was issued at approximately 4:10pm. At 7:57pm that evening, Defendant filed what he characterized as a "pre-motion letter" seeking discovery sanctions. However, the "pre-motion letter" was accompanied by a notice of motion, a motion consisting of 51 pages and 214 pages in exhibits. In the cover e-mail, Defendant stated that they would "communicate with the People regarding redactions prior to filing." In essence, Defendant disregarded this Court's Order regarding the filing of motions. In response, this Court circulated an e-mail at 9:17pm reminding the parties of its earlier Order. This Court was well within its authority and demonstrated restraint in doing so. *See Dalessio v. Kressler*, 6 AD3d 57 [2d Dept 2004] ("A court of record has the power to punish a party for disobedience of a lawful mandate of the court ... the 'lawful mandate of the court' constitutes an order of a court of competent jurisdiction which is not void on its face." Notably, the Court later accepted the proposed motion and directed the People to file a response, if they wished. As of the date of this Order, no party has been denied the ability to file a motion.

Despite the Court's e-mail of March 8, two days later, on Sunday, March 10, 2024, between approximately 5:17pm and 5:22pm, Defendant filed three additional "pre-motion letters," including the one that is the subject of this Decision and Order. In what appears to be an attempt to circumvent this Court's Order and e-mail of March 8, Defendant this time did not "attach" a notice of motion,

motion or exhibits. Instead, the motion and accompanying submissions were appended to the pre-motion letter as "exhibits."

This Court advises counsel that it expects and welcome zealous advocacy and creative lawyering. *See Application of Giampa*, 147 Misc.2d 397 [Sup Ct, Bronx Cnty April 16, 1990]. However, the Court also expects those advocates to demonstrate the proper respect and decorum that is owed to the courts and its judicial officers and to never forget that they are officers of the court. As such, counsel is expected to follow this Court's orders. Even "[a] good faith belief that a court order is improper or unlawful will not render the order unlawful nor will it excuse willful disobedience." *Matter of Rankin*, 78 Misc3d 337 [Sup Ct, Kings Cnty Jan 3, 2023]. As such, "a court of record has power to punish for a criminal contempt, a person guilty of … [w]illful disobedience to its lawful mandate." *Id. citing to* Judiciary Law §750(3). This Court emphasizes that it hopes for and fully expects zealous advocacy from counsel as well as spirited contribution from witnesses and parties alike. Nonetheless, the Court expects that the line between zealous advocacy and willful disregard of its orders will not be crossed.

The above constitutes the Decision and Order of the Court.

March 26, 2024
New York, New York

Juan M. Merchan
Acting Justice of the Supreme Court
Judge of the Court of Claims

MAR 26 2024

HON. J. MERCHAN