U.S. Supreme Court
For the Third Circuit

John E. Reardon,

Petitioner

v

Judge Zonies, Mr. Luongo,
Officers Smith and
Dougherty

Respondents

Petition of Certiorari

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Question/Issue for Review

Does Heck v Humphrey, 512 U.S. 477, 1994 apply to a case where (A) the Court in question lacked, lost or usurped its jurisdiction; (B) Where there is an ongoing or continuous tort or wrong that has been going on for 115 years; (C) where there is a fraud that has been going on for 115 years; (D) Where there has been a Constitutional challenge to the state's laws seeking injunctive and declaratory relief; (E) where this is not an imprisoned or Habeas Corpus claim and (F) where the full faith and credit clause of Article 4 is not in effect for Issues (A)-(E)?

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Jurisdiction of Lower Courts

1. Appellate Court, 28 U.S.C. 1291;

2. District Court, 28 U.S.C. 1331, 1343, 2201, 2202; 42 U.S.C. 1983, 1985, 1988;

Jurisdiction of this court

28 U.S.C. 1292.

Facts/Procedural History

1. In June or July 2014 I was doing research for a friend on Constitutional rights and found this court's decision of Tull v U.S., 107 S.Ct. 1831, 1836, 1837, 1987 where this court held that a suit by the government to recover a statutory penalties for violation of the statute is a common law action of debt on a statute requiring a civil trial by jury.

2. On 12/14/15 I filed civil case 1:15-cv-08597.

3. The defendants did move to dismiss the case on numerous issues.

4. This lawsuit did raise equity and legal relief in the form of a declaration of rights and injunctive relief and damages for so violating these rights.

5. District Court Judge Noel Hillman did dismiss the case as being time barred since he believed that the Statute of limitation ran out In 1991 since the actions involved in this lawsuit occurred in 1989.

6. Judge Hillman's decision is contrary to this court's decision of Gabelli v SEC, 130 S.Ct. 1831, 2010 and the cases from the 1st, 7th Circuits and the New Jersey case of Judge Pisano in Watson v Doe, 2005 as to when the accrual period for a lawsuit is premised upon when a party learns his or her rights have been violated.

7. Mr. Reardon did then file his notice of Appeal on November 18, 2017.

8. Since Judge Hillman chose only to dismiss the matter as being time barred, I sought relief from Judge Hillman's order as being inconsistent with the cases in Statement 6 above. Appendix Pages 1-8.

9. The Court of Appeals upheld Judge Hillman's order by relying on this court's decision in Heck v Humphrey, 512 U.S. 477, 1994 when this issue was not raised by Mr. Reardon on his appeal. The court abused its discretion by making a ruling on an issue that was not on appeal. Appendix Pages 9-14.

10. The Court has ruled on the narrow issue involving Heck v Humphrey, 512 U.S. 477, 1994 but has failed to consider Article 4 of the U.S. Constitution and the issues of (A) An ongoing and continuous tort or wrong for 115 years; (B) Lack of, loss of or usurpation of Jurisdiction under Thompson v Whitman, 18 Wall (85 U.S.) 457, 467-469 and United Student Aid Fund v Espinosa, 130 S.Ct. 1367, 1375, 2010; (C) where there is a continuous or ongoing fraud that has been going on for 115 years; (D) where there has been a Constitutional Challenge to the State's Statutes seeking declaratory and Injunctive relief along with damages and (E) Mr. Reardon was never jailed and did not have Habeas Corpus relief Available to him in the State proceedings and Heck v Humphry deals with said issues.

11. The Court has ruled that a Constitutional Challenge to a state statute has no right to be brought in the Federal Court in the 1st Instance and in so doing has denied Mr. Reardon of his 1st and 5th Amendment Rights by claiming Heck v.

Humphrey, 512 US 477, 1994 bars such a challenge and contrary to Mohawk Industrial Inc. V Norman Carpenter, 130 S.Ct. 599, 2009 for the district Court's denial of my 1st and 5th Amendment right to petition and be heard.

12. The court has ignored the finding that state proceedings that are void are not entitled to the Full Faith and credit under Article 4 and as such, these defects must be considered before the application of Heck v Humphrey can be upheld.

13. If the state court's decision is in fact given full faith and credit under article 4 then there is obviously a need for the state's decision to be proceeded on through the State courts till a final state decision is made by the State Appellate Court, the State Supreme Court or the U.S. Supreme Court. This is, and should be, the criteria that the Heck v Humphrey case relies on. Failure to exhaust state remedies when the state court acted without jurisdiction or did commit a continuing or ongoing tort or wrong, which is what was alleged in this lawsuit, or there is an ongoing or continuos fraud or there is a Constitutional challenge to the laws should not be a bar to such a lawsuit.

14. The 3rd Circuit's decision in Juzwin v Asbestos Corp., 900 F.2d 686, 692, 1990 clearly lays the foundation that it is the people's understanding of the law as to the statutes, court decisions, Common Law and Constitutions that is to be our guide and this court's decision can only be valid and sound if the state proceedings are in fact valid and not void for either (a) Lack of Notice; (b) Lack of a Hearing; (c) lack of personal jurisdiction; (d) Lack of subject matter jurisdiction;

(e) for a fraud that, in this case, has been ongoing for 115 years; (f) For a collateral attack/ lawsuit for void proceedings or (g) where there is a continuous or ongoing tort or wrong for the past 115 years.

15. The law clearly is that a party does not have to honor any court decision if the defects listed in statements 10 and 14 above are present and the 3rd Circuit has failed to consider the interplay between this law and the court's reliance on Heck v Humphrey in general.

16. Constitutional challenges to State Statutes and proceedings have no time limit in which to bring them to the court's attention. Mr. Reardon did so challenge the Constitutionality of Title 39 Laws which has no time limit or claim that they must be first sought in the State and the Appellate court has thrown out law that has been well settled for centuries on the claim that exhaustion of state remedies must be first sought.

17. Mr. Reardon is aware of no law that requires the exhaustion of, or even the issue of, the claim that a person has to give the state the first opportunity to decide the Constitutionality of the State's Statutes as being in violation of the 9th and 14th Amendment Rights of the People or that where equity and law issues are joined there is a requirement to seek state redress first and the 3rd Circuit court of Appeals has not provided any such case law so holding to the proposition alleged in this petition.

18. Mr. Reardon cannot find any court decision from the lowest State Court all the way to this court in which the issues raised in this matter can be denied

on the general principles of Heck v Humphrey Supra when it involves the issues set out in statements 10 and 14 above.

19. The third Circuit abused its discretion by dismissing Mr. Reardon's Appeal on grounds that were not before the Appellate court and did not involve subject mater jurisdiction of the U.S. District Court. It has in fact discriminated against Mr. Reardon.

20. Mr. Reardon, in his lawsuit before the U.S. District Court stated that he did not know of his Common Law right to a civil jury trial, that the defendants withheld this information from him and he was thus defrauded of his right to a civil jury trial on his Motor vehicle offenses so he sued in federal Court for the denial of his 9th and 14th Amendment Common Law right to a jury trial due to this fraud and that I did not learn of this fraud till June to July 2014 and this lawsuit was filed about 16 months after this discovery and that Judge Zonies lacked subject matter jurisdiction to try the offenses summarily and that Mr. Reardon was then injured in his property to an amount in excess of $14,000.00. The Lawsuit challenged the Constitutionality of the State's Motor Vehicle laws, he did challenge the jurisdiction of the Municipal Court, he did claim there is and was a continuing fraud and that, in plaintiff's rebuttal brief to the defendants motion to dismiss, did state that he could not possibly have discovered this fraud as in 115 years, in which 35,000,000+ cases had been heard that there was no way to discover this fraud as in excess of 6,000,000 attorney in 115 years did not know this or they have disavowed this so how could a laymen

know this or be expected to know this or discover this. This failure to disclose is a fraud that has been going on for 115 years.

21. Mr. Reardon is not an imprisoned litigant seeking to reduce his sentence and there is no Habeas Corpus issue or claim involved.

22. Mr. Reardon was never jailed by the State Court and was not in jail during or after the state proceedings in question and that Habeas Corpus is not and was not available to Mr. Reardon at any time.

Reasons to grant the Writ

Mr. Reardon would agree with the court in its reliance on Heck v Humphrey if the State court's decision is in fact not void. As the Court said in.... Thompson v Whitman, 18 Wall (85 U.S.) 457, 467-469, 1874.....

> In Harris v. Hardeman et al.,[†] which was a writ of error to a judgment held void by the court for want of service of process on the defendant, the subject now under consideration was gone over by Mr. Justice Daniel at some length, and several cases in the State courts were cited and approved, which held that a judgment may be attacked in a collateral proceeding by showing that the court had no jurisdiction of the person, or, in proceedings in rem, no jurisdiction of the thing. Amongst other cases quoted were those of Borden v. Fitch,[‡] and Starbuck v. Murray;[§] and from the latter the following remarks were quoted with apparent approval. "But it is contended that if other matter may be pleaded by the defendant he is estopped from asserting anything against the allegation contained in the record. It imports perfect verity, it is said, and the parties to it cannot be heard to impeach it. It appears to me that this proposition assumes the very fact to be established, which is the only question in issue. *For what purpose does the defendant question the jurisdiction of the court? Solely to show that its proceedings and judgment are judgment are void, and, therefore, the*

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> *supposed record is, in truth, no record.. The plaintiffs, in effect, declare to the defendant,— the paper declared on is a record, because it says you appeared, and you appeared because the paper is a record. This is reasoning in a circle."*

The subject is adverted to in several subsequent cases in this court, and generally, if not universally, in terms implying acquiescence in the doctrine stated in D'Arcy v. Ketchum.

Thus, in Christmas v. Russell,[*] where the court decided that fraud in obtaining a judgment in another State is a good ground of defence to an action on the judgment, it was distinctly stated,[†] in the opinion, that such judgments are open to inquiry as to the jurisdiction of the court, and notice to the defendant. And in a number of cases, in which was questioned the jurisdiction of a court, whether of the same or another State, over the general subject-matter in which the particular case adjudicated was embraced, this court has maintained the same general language. Thus, in Elliott et al. v. Peirsol et al.,[‡] it was held that the Circuit Court of the United States for the District of Kentucky might question the jurisdiction of a county court of that State to order a certificate of acknowledgment to be corrected; and for want of such jurisdiction to regard the order as void. Justice Trimble, delivering the opinion of this court in that case, said:

"Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void."

The same views were repeated in The United States v. Arredondo,[§] Vorhees v. Bank of the United States,[†] Wilcox v. Jackson,[¶] Shriver's Lessee v. Lynn,[**] Hickey's Lessee v. Stewart,[†] and Williamson v. Berry.[†] In the last case the authorities are reviewed, and the court say:

"The jurisdiction of any

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court exercising authority over a subject may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings;" and "the rule prevails whether the decree or judgment has been given in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of States."

But it must be admitted that no decision has ever been made on the precise point involved in the case before us,in which evidence was admitted to contradict the record as to jurisdictional facts asserted therein, and especially as to facts stated to have been passed upon by the court.

But if it is once conceded that the validity of a judgment may be attacked collaterally by evidence showing that the court had no jurisdiction, it is not perceived how any allegation contained in the record itself, however strongly made, can affect the right so to question it. The very object of the evidence is to invalidate the paper as a record. If that can be successfully done no statements contained therein have any force. If any such statements could be used to prevent inquiry, a slight form of words might always be adopted so as effectually to nullify the right of such inquiry. Recitals of this kind must be regarded like asseverations of good faith in a in a deed, which avail nothing if the instrument is shown to be fraudulent. The records of the domestic tribunals of England and some of the States, it is true, are held to import absolute verity as well in relation to jurisdictional as to other facts, in all collateral proceedings. Public policy and the dignity of the courts are supposed to require that no averment shall be admitted to contradict the record. But, as we have seen, that rule has no extra-territorial force.

It may be observed that no courts have more decidedly affirmed the doctrine that want of jurisdiction may be shown by proof to invalidate the judgments of the courts of other States, than have the courts of New Jersey. The subject was examined and the doctrine affirmed, after a careful review

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of the cases, in the case of Moulin v. Insurance Company, in 4 Zabriskie,[*] and again in the same case in 1 Dutcher,[†] and in Price v. Ward;[‡] and as lately as November, 1870, in the case of Mackay et al. v. Gordon et al.[§] The judgment of Chief Justice Beasley in the last case is an able exposition of the law. **Clearly, if the State Court lacked jurisdiction or usurped its jurisdiction then the proceedings in the state would be void and there is no full faith and credit to be given to such orders/ decisions of State Courts.**

The Court also said in United Student Aid Fund v Espinosa Supra.....

"A judgment is not void," for example, "simply because it is or may have been erroneous." Hoult v. Hoult, 57 F.3d 1, 6 (C.A.1 1995); 12 J. Moore et al., Moore's Federal Practice § 60.44[1][a], pp. 60-150 to 60-151 (3d ed.2007) (hereinafter Moore's). Similarly, a motion under Rule 60(b)(4) is not a substitute for a timely appeal. Kocher v. Dow Chemical Co., 132 F.3d 1225, 1229 (C.A.8 1997); see Moore's § 60.44[1][a], at 60-150. Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard. See United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (C.A.1 1990); Moore's § 60.44[1][a]; 11 Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice & Procedure § 2862, p. 331 (2d ed.1995 and Supp. 2009);

cf. Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 376, 60 S.Ct. 317, 84 L.Ed. 329 (1940); Stoll v. Gottlieb, 305 U.S. 165, 171-172, 59 S.Ct. 134, 83 L.Ed. 104 (1938).

The very reason the State Municipal Court Judge lost or usurped his jurisdiction is due to the fact that N.J. Title 39 Statutes are in fact Common Law actions of debt on a statute, that they require civil jury trials and for which the Municipal Court Judge has no jurisdiction to sit on a case that requires a civil jury trial. Thus, he usurped his jurisdiction and the proceedings are void, of no force or effect, don't have to be obeyed, can't be given credence and cannot act as a bar to a damages lawsuit but for which the 3rd Circuit Court of appeals held that Heck v Humphrey Supra in general prevents such a lawsuit from being filed and prosecuted in Federal Court under section 42 U.S.C. 1983 or 28 U.S.C. 1331, 1343, 2201 or 2202. The 3rd Circuit has in effect voided this law by making a general claim under the guise of Heck v Humphrey preventing such a lawsuit.

Also, since Mr. Reardon did not raise a Heck v Humphrey Issue on Appeal, and since such a claim has nothing to do with subject matter jurisdiction, the 3rd Circuit court of appeals order is void since it did not give me notice of the court's position and also denied me of a right to be heard for said issue.

If we do not have to comply with Void orders, rulings, decisions, etc., How Does Heck v Humphrey even come into play in this lawsuit? Jurisdictional defects are such that the State Proceedings are void, that the injured party has the right to contest the fact of it being void and that the injured party does not have to comply with said void proceedings, this pro se person is at a loss as to

how the court's decision to ignore the right to challenge the record as being void and of no consequence and for which Thompson v Whitman even upholds this position that collateral attacks on the proceedings of any court is permissible. See also Savis, Inc. v. Warner Lambert, Inc., 967 F. Supp. 632, 641, Dist. Court, D. Puerto Rico 1997 and Norex Petroleum Ltd. v. Access Industries, 416 F. 3d 146, 160, 161, 2nd Cir. 2005; U.S. v Bigford, 365 F.3d 859, 865, 10th Cir. 2004; Which hold there is a right to challenge jurisdiction in a collateral Proceeding.

The Appellate court failed to address the issues raised in statements 10 and 14 above and has committed error in its basic reliance on Heck v Humphrey without considering these issues. If an injured party seeks to have the state court proceedings to be declared void for any basis in Statements 10 and 14, if the court cannot rely on any alleged fact that would bar the inquiry, where the loss of jurisdiction of the State Court is premised on the 9th and 14th Amendment rights to the common law, where such defect stripped the jurisdiction of the state court, and where there is an ongoing tort or wrong or fraud, the Appellate court's reliance on Heck v Humphrey as a general principle of law that bars such a collateral attack, the Appellate court would and did do what the Thompson v Whitman, and Norex Petroleum Ltd. V Access Industries held cannot deny the right to so challenge the state proceedings.

This is further substantiated by this courts in Hazel-Atlas Glass Co. V Hartford Empire Co., 322 U.S. 238, 246-249 and U.S. v Beggerly, 524 U.S. 38, 42-43, 1998, said:

The court has power to set aside a judgment for errors of fact or law; @45,

If time has run out for a motion, an independent action will survive. And in Aoude v Mobile Oil Corp., 892 F.2d 1115, 1119, 1st Cir. 1989:

Fraud to get a favorable ruling is a public interest and concern.

The fact of the matter is that Judge Zonies usurped his jurisdiction by upholding an unconstitutional law, a law that Mr. Reardon was challenging, in which the right stripped the judge of jurisdiction and where that Lack of jurisdiction can be attacked in a Collateral Lawsuit at any time, the Appellate court is in error in claiming that Heck v Humphrey somehow applies to this lawsuit. This law is well settled and should have been known to the respondents. The clear law on the constitutionality of a state statute or practice is made clear in....

Cooper v. Aaron, 358 US 1, 18, 19, 1958 where the court said:

> *No state* legislator or executive or *judicial officer* can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that:
>
> "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery . . . ." United States v. Peters, 5 Cranch 115, 136. A Governor who asserts a

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> similarly restrained. If he had such power, said Chief Justice Hughes, in 1932, also for a unanimous Court,
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> "it is manifest that the fiat power to nullify a federal court order is of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases . . . ." Sterling v. Constantin, 287 U. S. 378, 397-398.
>
> And in Scheuer v. Rhodes, 416 US 232, 237, 1974 this court said:

However, since Ex parte Young, 209 U. S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. Ex parte Young teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he

"comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." Id., at 159-160. (Emphasis supplied.) Ex parte Young, like Sterling v. Constantin, 287 U. S. 378 (1932), involved a question of the federal courts'

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injunctive power, not, as here, a claim form monetary damages. While it is clear that the doctrine of Ex parte Young is of no aid to a plaintiff seeking damages from the public treasury, Edelman v. Jordan, supra; Kennecott Copper Corp. v. State Tax Comm'n, 327 U. S. 573 (19460; Ford Motor Co. V Dept. of Treasury, 323 U. S. 459 (1945); Great Northern Life Insurance Co. v. Read, 322 U. S. 47 (1944), damages against individual defendants are a permissible remedy in some circumstances notwithstanding the fact that they hold public office. Myers v. Anderson, 238 U. S. 368 (1915). See generally Monroe v. Pape, 365 U. S. 167 (1961); Moor v. County of Alameda, 411 U. S. 693 (1973). In some situations a damage remedy can be as effective a redress for the infringement of a constitutional right as injunctive relief might be in another.

Gabelli v. SEC, 133 S. Ct. 1216, 1221, 2013:

Notwithstanding these considerations, the Government argues that the discovery rule should apply instead. Under this rule, accrual is delayed "until the plaintiff has `discovered'" his cause of action. Merck & Co. v. Reynolds, 559 U.S. 633, ___, 130 S.Ct. 1784, 1793, 176 L.Ed.2d 582 (2010). The doctrine arose in 18th-century fraud cases as an "exception" to the standard rule, based on the recognition that "something different was needed in the case of fraud, where a defendant's deceptive conduct may prevent a plaintiff from even knowing that he or she has been defrauded." Ibid. This Court has held that "where a plaintiff has been injured by fraud and `remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered.'" Holmberg v. Armbrecht, 327 U.S. 392, 397, 66 S.Ct. 582, 90 L.Ed. 743 (1946) (quoting Bailey v. Glover, 21 Wall. 342, 348, 22 L.Ed. 636 (1875)). And we have explained that "fraud is deemed to be discovered when, in the exercise of reasonable diligence, it could have been

discovered." Merck & Co., supra, at ___, 130 S.Ct., at 1794 (internal quotation marks and alterations omitted).

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There are good reasons why the fraud discovery rule has not been extended to Government enforcement actions for civil penalties. The discovery rule exists in part to preserve the claims of victims who do not know they are injured and who reasonably do not inquire as to any injury. Usually when a private party is injured, he is immediately aware of that injury and put on notice that his time to sue is running. But when the injury is self-concealing, private parties may be unaware that they have been harmed. Most of us do not live in a state of constant investigation; absent any reason to think we have been injured, we do not typically spend our days looking for evidence that we were lied to or defrauded. And the law does not does not require that we do so. Instead, courts have developed the discovery rule, providing that the statute of limitations in fraud cases should typically begin to run only when the imnjury is or reasonably could have been discovered.

Again, the Appellate court threw out the right to challenge a state court proceedings due to 1 or more of the claims as set out in Statements 10 and 14 above and this too had to be taken into consideration and not just the claims in Heck v Humphrey as the Appellate court did. The Appellate court has thrown out well settled principles of law that have a direct bearing on this lawsuit and appeal that the Appellate court has ignored and not taken into consideration in its opinion.

The well settled law on frauds and ongoing or continuous torts or wrongs is clear and well settled since they have no statute of limitations and can be challenged collaterally. Thus, the issues raised by the Appellate court are inapposite to the issues and claims raised in the appeal and this Writ.

Collateral attacks are also permissible as to continuing or ongoing torts or wrongs or frauds. Heard v Shehan, 253 F.2d 316, 318, 7th Cir. 2001; Newell

Recycling Co. V EPA, 231 F.3d 204, 206-207, 5th Cir. 2000; Tibert v Cigna Corp., 89 F.3d 1423, 1430, 1431, 10th Cir. 1996 and Provincher v CVS Pharmacy, 145 F.3d 5, 14, 1st Cir. 1998.

The District Court did claim that the accrual time is not affected by a denial of a right, only as to evidence or facts. However, the 3rd Circuit has ruled in Juzwin V Asbestos Corp., 900 F.2d 686, 692 as follows:

> It is not surprising, then, that modern jurisprudence recognizes no set principle of retroactivity.[8] **Instead, modern decisions reflect a balancing approach which recognizes that "statutory or even judge-made rules of law are hard facts on which people must rely in making decisions and in shaping their conduct." Id. at 199, 93 S.Ct. at 1468. Justice Harlan aptly called this approach the "ambulatory retroactivity doctrine." Mackey v. United States, 401 U.S. 667, 681, 91 S.Ct. 1160, 1174, 28 L.Ed.2d 404 (1971) (Harlan, J., concurring).**

Since the facts are the evidence to prove or disprove a particular point of law or issue in a lawsuit then the decisions of the lower court's have denied the petitioner of his rights due to their abusive or erroneous findings of the law and facts and their decisions have denied this pro se petitioner of the same treatment under the law that is accorded to those who are represented by counsel and denied me of my 1st and 5th Amendment Rights in so doing. National Life Insurance Co. v United States, 277 U.S. 508, 530, 1928; Lawrence v State Tax Commission, 282 U.S. 276, 282, 1862; Olmstead v L.C., 527 U.S. 581, 614, 1989; Jackson v Birmingham Brd. Of Ed., 544 U.S. 167, 174, 2005 and State v Presley, 94 A.3d 921, N.J. App. 2014.

This Petition also seeks for this court to establish whether Judge Hillman and the 3rd Circuit Court of Appeals is correct as to the accrual time or whether

Judge Pisano of N.J. and the 1st and 7th Circuit Court's of Appeal are correct in their understanding of the law. That is this court is asked to settle this apparent dispute between the courts. The courts have said on the accrual time as follows: Torres v Superintendent of Police, 893 F.2d 404, 1st Cir. 1990; Albright v Oliver, 510 U.S. 266, 311, 1994; Calero-Colon v. Betancourt-Lebron, 68 F. 3d 1, 2, 1st Cir. 1994:

> **@407: Accrual period for a section 1983 Lawsuit is when the plaintiff knows or has reason to know of his injury which is the basis for the action.**
>
> **@408: If damages are not discovered because of fraud, misrepresentation, or concealment of the facts, claim is not barred by limitation period. Wilson v Geisen, 956 F.2d 730, 740, 7th Cir. 1992:**
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> Generally, a claim accrues when the plaintiff knows or has reason to know of the injury giving rise to the cause of action. Torres v. Superintendent of Police of Puerto Rico, 893 F.2d 404, 407 (1st Cir.1990). **Civil rights claims, therefore, accrue when the plaintiff knows or should know that his or her constitutional rights have been violated.** See Barrett v. United States, 689 F.2d 324 (2d Cir.), cert. denied, 462 U.S. 1131, 103 S.Ct. 3111, 77 L.Ed.2d 1366 (1983); Rinehart v. Locke, 454 F.2d 313, 315 (7th Cir.1971) **See**

Also Ernstes v. Warner, 860 F. Supp. 1338 , 1340,1341, Dist. Court, SD Indiana 1994; Newsome v. James, 968 F. Supp. 1318, 1324, 1325, Dist. Court, ND Illinois,1997; Hileman v Maze, 367 F.3d 694, 696, 7th Cir. 2004; LEE SAVORY v. Lyons, 7th Cir. 2006.

Judge Pisano, Watson v Doe, D.C., D.N.J. 2005:

> Here, the Complaint alleges no extraordinary circumstances that would permit equitable tolling under either New Jersey or federal law. **There are no allegations that Watson was unaware of his rights in 1999,** nor are there any allegations that defendants prevented Watson in any way from timely filing his Complaint until more than four years after his claim had accrued. **See Appendix Page 3.**

On the issue of lawsuits involving Equitable and Legal relief this court has said:

Dairy Queen, Inc. v. Wood, 369 US 469, 470, 1962:

> At the outset, we may dispose of one of the grounds upon which the trial court acted in striking the demand for trial by jury—that based upon the view that the right to trial by jury may be lost as to legal issues where those issues are characterized as "incidental" to equitable issues—for our previous decisions make it plain that no such rule may be applied in the federal courts. In Scott

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> v. Neely, decided in 1891, this Court held that a court of equity could not even take jurisdiction of a suit "in which a claim properly cognizable only at law is united in the same pleadings with a claim for equitable relief."[3] That holding, which was based upon both the historical separation between law and equity and the duty of the Court to insure "that the right to a trial by a jury in the legal action may be preserved intact,"[4] created considerable inconvenience in that it necessitated two separate trials in the same case whenever that case contained both legal and equitable claims. Consequently, when the procedure in the federal courts was modernized by the adoption of the Federal Rules of Civil Procedure in 1938, it was deemed advisable to abandon that part of the holding of Scott v. Neely which rested upon the separation of law and equity and to permit the joinder of legal and equitable claims in a single action. Thus Rule 18 (a) provides that a plaintiff "may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party." And Rule 18 (b) provides:
>
> "Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money." The Federal Rules did not, however, purport to change the basic holding of Scott v. Neely that the right to trial

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> by jury of legal claims must be preserved. [5] Quite the contrary, Rule 38 (a) expressly reaffirms that constitutional principle, declaring: "The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate." Nonetheless, after the adoption of the Federal

were filed decide the equitable claim first. The result of this procedure in those cases in which it was followed was that any issue common to both the legal and equitable claims was dfinally determined by the court and the party seeking trial by jury on the legal claim was deprived of that right as to these common issues. This procedure finally came before us in Beacon Theatres, Inc., v. Westover,[6] a case which, like this one, arose from the denial of a petition for mandamus to compel a district judge to vacate his order striking a demand for trial by jury.

Our decision reversing that case not only emphasizes the responsibility of the Federal Courts of Appeals to grant mandamus where necessary to protect the constitutional right to trial by jury but also limits the issues open for determination here by defining the protection to which that right is entitled in cases involving both legal and equitable claims. The holding in Beacon Theatres was that where both legal and equitable issues are presented in a single case, "only under the most imperative circumstances, circumstances which in

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view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims."[7] That holding, of course, applies whether the trial judge chooses to characterize the legal issues presented as "incidental" to equitable issues or not.[8] Consequently, in a case such as this where there cannot even be a contention of such "imperative circumstances," Beacon Theatres requires that any legal issues for which a trial by jury is timely and properly demanded be submitted to a jury.

As to the constitutional challenges of Stat Statutes, this Pro Se litigant can find no case law at any level that dictates that he must seek relief in the state forum first and only if he is successful can he bring a claim in the Federal Courts. Case law on Joint issues of equity and law claims is that the law claims must remain even if there is only an equity claim that will survive.

See Also Ross v. Bernhard, 396 US 531, 542-543, 1970; Lytle v. Household Mfg., Inc., 494 US 545, 550, 1990; Feltner v. Columbia Pictures Television, Inc., 523 US 340, 346, 1998; Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S.

687, 730-731, 1999.

The 3rd Circuit Court of appeals not only abused its discretion by failing to consider all these issues and points of law, but it acted sua sponte to decide my appeal on an issue that was not ruled on by the U.S. District Court, Judge Noel Hillman, and for which Mr. Reardon never put the issue before the 3rd Circuit in my appeal and for which the issue had nothing to do with subject matter jurisdiction for which the court has a duty to decide regardless of whether it was brought by any party. Appendix Pages 1-14 and thereby denied Petitioner's Due Process rights to notice and to be heard.

This petition also seeks to clarify if the correct application of the law on frauds and also deals with (A) Rights in that if a person is defrauded into believing he has no right to a jury trial, does the discovery rule in Gabelli v SEC, 130 S.Ct. 1831, 2010 apply and (B) Where the 3rd Circuit Court of Appeals held in Juzwin v Asbestos corp., 900 F.2d 686, 692, 1990 that the court decisions are the "HARD FACTS" That the people are entitled to know and rely on to guide their actions and conduct and thus if this is a fraud of the facts and thus a fraud as to evidence and thus there is no statute of limitations for or for which the accrual period is tolled.

On December 19, 2017 Judge George Singley of Clementon Municipal Court stated at about 2:50 p.m.That there is no time limit in which to bring a constitutional challenge to state customs, laws or practices to the attention of the court.

Wherefore, Mr. Reardon prays that this court grant this writ and settle the disputes in the law and protect my 1st and 5th Amendment Rights, my Due Process rights to notice and to be heard and to settle the disputes involving Heck v Humphrey Supra, Gabellie v SEC Supra, on ongoing and continuous torts and wrongs and Frauds and what fraud are covered by the Case laws cited by Mr. Reardon as Opposed to Judge Hillman and the 3rd Cir. Which held in Juzwin v Asbestos Corp., 900 F.2d 686, 692, 1990 that the decisions of the courts are the hard facts the people can rely on and that facts are the evidence to the law and issues in a lawsuit and as per R.P.C. 3.3 and U.S. v Beggerly, 524 U.S. 38, 45, 1998 and that as such are said case law and facts withheld by a party in fact a fraud covered by the tolling time for frauds.

Wherefore, Mr. Reardon states, attests and affirms before Almighty God as my witness that the forgoing facts are true and correct and that he may be punished under the law if any are wilfully and materially false.

Dated: April 17, 2018

/s/ John E. Reardon
John E. Reardon, Petitioner

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

No. 1:15-cv-8597 (NLH/KMW)

JOHN E. REARDON,

Plaintiff,

v.

MAGISTRATE ZONIES, et al.,

Defendants.

OPINION

APPEARANCES:

JOHN E. REARDON
1 JOANS LANE
BERLIN, NEW JERSEY 08009

Pro se Plaintiff

DEAN R. WITTMAN
MICHAEL J. HUNTOWSKI
ZELLER & WIELICZKO, LLP
120 HADDONTOWNE COURT
CHERRY HILL, NEW JERSEY 08034

On behalf of Defendants

HILLMAN, District Judge

This Motion for Reconsideration follows the Court's March 29, 2017 grant of Defendants' Motion to Dismiss for failure to state a claim. The Court finds Plaintiff has failed to argue an intervening change in the controlling law, the availability of new evidence, or a clear error of law or fact in the Court's March 29, 2017 decision. Accordingly, the Motion for Reconsideration will be denied.

I.

The Court takes the following underlying facts from its March 29, 2017

Opinion. Plaintiff's complaint alleged he was pulled over three times in 1988. Plaintiff was first pulled over on June 24, 1988, when Defendant Officer Russell J. Smith pulled Plaintiff over and issued him traffic tickets. Second, on October 14, 1988, Defendant Officer Smith again allegedly pulled over Plaintiff, issuing additional tickets. Finally, on November 17, 1988, Defendant Officer Daniel J. Dougherty pulled Plaintiff over and issued Plaintiff traffic tickets.

Plaintiff alleged he was "summarily tried and convicted" on April 24, 1989 in municipal court. Plaintiff alleged Defendant "Magistrate" Daniel B. Zonies, Esq. presided over all adjudications and that Defendant Lawrence Luongo, Esq. was the "prosecutor."

"On the [June 24, 1988] offenses" Plaintiff alleged he was "fined" $10.00 and assessed $15.00 in "costs" for driving an unregistered vehicle; and "fined" $350.000 and assessed $15.00 in "costs" "for having no insurance." He also alleged that "as a result of" these "convictions," he "was given $3,000.00 in surcharges and had his license suspended for 6 months."

"On the [October 14, 1988] offenses," Plaintiff alleged he was "fined" $25.00 for driving an unregistered vehicle, and $500.00 for "having no insurance." He was also allegedly assessed $15.00 in costs for each violation. Plaintiff also alleged his license was suspended for two years and he "was given $3,000.00 in surcharges."

"On the [November 17, 1988] offenses," Plaintiff alleged he was "fined" as follows:

- "No registration: $35.00 Fine, $15.00 Costs"

- "Fictitious Tags: $25.00 Fine and $15.00 Costs"
- "4th Offense for no Insurance: $500.00 Fine, $15.00 Costs."
- "3rd Offense for Driving while suspended: $750.00 Fine, $15.00 Costs."

"As a result of" the "convictions" of driving without insurance and while suspended, Plaintiff was allegedly "given $6,000.00 in surcharges."

Plaintiff alleged that he was not told that he had a right to a jury trial and that he did not waive his right to a jury trial. Plaintiff further alleged "Defendant [Officers] Dougherty and Smith" purposefully "wait[ed] for Plaintiff to [drive] home from work" so that they could issue the tickets identified above "to get (Plaintiff] to stop challenging the State's Motor Vehicle Laws as being Unconstitutional" and "to stop filing Lawsuits."

The complaint asserted violations of federal statutory law and New Jersey state law. The Court liberally construed the complaint to assert 42 U.S.C. § 1983 claims for violation of Plaintiff's right to a jury trial and Plaintiff's First Amendment right to be free from retaliation, as well as the New Jersey statutory and common law analogs of those claims.

Defendants moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12 (b) (6). On March 29, 2017, this Court granted Defendants' Motion to Dismiss Plaintiff's federal law claims and dismissed Plaintiff's remaining state law claims without prejudice, declining to exercise supplemental jurisdiction. as follows.

The Court found Plaintiff's§ 1983 claims were time-barred, The Court summarizes its March 29, 2017 Opinion as they were founded on events occurring

in 1988 and 1989 and the limitations period for§ 1983 claims is two years. The Court found the jury trial claim accrued in 1989, when Plaintiff alleged his municipal court summary trial occurred. The Court further found Plaintiff's First Amendment retaliation claim accrued either in 1988 when Defendants conducted a traffic stop or in 1989 when Plaintiff was allegedly "convicted" of the ticketed offenses. Accordingly, the Court found Plaintiff's time to file suit expired over two decades before Plaintiff filed his December 14, 2015 lawsuit.

The Court rejected Plaintiff's argument that his claims were timely because he did not discover his legal right to a jurv trial until 2014. The Court relied on established case law explaining that accrual of a cause of action is not keyed to knowledge of a legal cause of action, but rather to knowledge of injury.

The Court further rejected Plaintiff's argument that Defendants Zonies and Luongo had a duty to advise Plaintiff of his right to a jury trial, amounting to fraudulent concealment which would allow equitable tolling to apply. The Court determined that equitable tolling based on fraudulent concealment applies to the fraudulent concealment of the alleged injury, not the legal right asserted to be violated.

Accordingly, the Court dismissed Plaintiff's federal law claims pursuant to Defendants' motion. The Court then determined there was no affirmative justification to retain supplemental jurisdiction over the remaining state law claims. Accordingly, the state law claims were dismissed without prejudice.

On April 5, 2017, Plaintiff moved for reconsideration of the Court's March 29, 2017 Order.

II.

A motion for reconsideration may be treated as a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment or order under Federal Rule of Civil Procedure 60(b), or it may be filed pursuant to Local Civil Rule 7.1(i) The purpose of a motion for reconsideration "is to correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). A judgment may be altered or amended only if the party seeking reconsideration shows: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court rendered its decision; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. Id.

A motion for reconsideration may not be used to re-litigate old matters or argue new matters that could have been raised before the original decision was reached. P. Schoenfeld Asset Mgmt., L.L.C. v. Cendant Corp., 161 F. Supp. 3d 349, 352 (D.N.J. 2001) . Mere disagreement with the Court will not suffice to show that the Court overlooked relevant facts or controlling law, United States v. Compaction Sys. Corp., 88 F. Supp. 2d 339, 345 (D.N.J. 1999), and should be dealt with through the normal appellate process, S.C. ex rel. C.C. v. Deptford Twp. Bd. of Educ., 248 F. Supp. 2d 368, 381 (D.N.J. 2003).

III.

The Court has reviewed Plaintiff's brief in support of his motion and his reply brief, as well as the fifteen submissions asserting additional facts and case law filed by Plaintiff. Nowhere in these submissions that the Court can discern has Plaintiff

advanced any arguments regarding an intervening change in the law or the availability of new evidence. Plaintiff's arguments alleging an error in law or fact merely recite his arguments in his opposition to the underlying motion.

Plaintiff argues both the Court's decision on timeliness and on equitable tolling were erroneous. Plaintiff argues there is no time limit for his claims, as he argues a "lack of" or "loss of" or "usurpation" of jurisdiction by the municipal court. As this Court has stated, however, the Court construes Plaintiff's complaint as asserting federal claims under 42 U.S.C. § 1983. As the Court stated in its March 29, 2017 Opinion, the limitations period for the§ 1983 claims is two years. See Dique v. N.J. State Police, 603 F.3d 181, 185 (3d Cir. 2010) (" [A] section 1983 claim arising in New Jersey has a two-year statute of limitations."). Plaintiff's two-year window in which he could bring his§ 1983 claims has long since closed.

As to equitable tolling, Plaintiff appears to principally argue the Court failed to recognize his argument that Defendants "failed to disclose the law" regarding ~is right to a jury trial and the nature of a motor vehicle action. 1 he argues this led him to believe there was no right to a trial by jury. This is exactly the argument Plaintiff advanced in opposition to the underlying motion. As this Court stated in its March 29, 2017 Opinion, this is insufficient to allow for equitable tolling to apply. Plaintiff was aware of all of the facts that gave rise to his claims. That he was unaware of their potential legal significance is of no event.

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1 As with the underlying Opinion, the Court assumes without deciding that Plaintiff did indeed have a federal constitutional right to a jury trial. The Court again notes that Defendants argue Plaintiff had no such right insofar as there is no such right in so far as there is no right to a jury trial in Municipal Court.

Plaintiff's motion clearly registers mere disagreement with this Court's initial decision, which is not an appropriate reason to pursue reconsideration. Schiano v. MBNA Corp., No. 05-1771, 2006 WL 3831225, at *2 (D.N.J. Dec. 27, 2006) ("Mere disagreement with the Court will not suffice to show that the Court overlooked relevant facts or controlling law, and should be dealt with through the normal appellate process." (citations omitted) (first citing Compaction Sys. Corp., 88 F. Supp. 2d at 345; and then citing S.C. ex rel. C.C., 248 F. Supp. 2d at 381)).

Indeed, "[a] motion for reconsideration is improper when it is used 'to ask the Court to rethink what it had already thought through - rightly or wrongly.'" Oritani Sav. & Loan Ass'n v. Fidelity & Deposit Co., 744 F. Supp. 1311, 1314 (D.N.J. 1990) (quoting Above the Belt v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983)) "Each step of the litigation should build upon the last and, in the absence of newly discovered, non-cumulative evidence, the parties should not be permitted to reargue previous rulings made in the case." Id. (citing Johnson v. Township of Bensalem, 609 F. Supp. 1340, 1342 n.1 (E.D. Pa. 1985)). Plaintiff's motion and its accompanying briefing and filings amount to a re-argument of his opposition to the underlying motion. Accordingly, Plaintiff's motion for reconsideration will be denied.

Finally, Plaintiff argues the Court did not explain why it did not grant him leave to amend his complaint. To the contrary, the Court specifically addressed its decision to not grant Plaintiff leave to amend. The Court stated: "The Court need not allow Plaintiff an opportunity to amend because the Court's holding that the

claims are time-barred also supports the conclusion that amendment would be futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 106, 108 (3d Cir. 2002) ." Plaintiff argues he is entitled to amend his complaint since the Court "did not find that there was absolutely no factual basis for this lawsuit." The Court is not bound to grant leave to amend in every case, as long as it does not find "absolutely no factual basis" for the lawsuit. Rather, leave to amend should be granted only "in the absence of undue delay or bad faith on the part of the movant" and "as long as the amendment would not be futile and the opposing party would not suffer undue prejudice." Hunter v. Dematic USA, No. 16-00872, 2016 WL 2904955, at *3 (D.N.J. May 18, 2016). "'Futility' means that the complaint, as amended, would fail to state a claim upon which relief could be granted." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997). The Court's finding that amendment would be futile thus was a sufficient basis for denying Plaintiff leave to amend. Since the Court is not convinced that its decision that Plaintiff's claims are time-barred was in error, the Court's finding of futility remains.

An appropriate Order will be entered.

Date: November 9, 2017
At Camden, New Jersey

/s/ Noel L. Hillman
Noel Hillman U.S.D.J.