06/01/2018
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT
May 25, 2018 BCO-079
No. 17-3408
STANLEY WEISS, Appellant
v.
STATE OF NEW JERSEY

(D.N.J. *No. 2-17-cv-01406*)

Present: RESTREPO, BIBAS, and NYGAARD,
Circuit Judges

Motion by Appellant to Reopen Appeal; Motion by Appellant to File Brief Out of Time.

ORDER

Appellant's motion to reopen this appeal is denied. His motion does not state adequate grounds to excuse his delay of more than three months. Appellant's motion to file his brief out of time is denied as moot.

By the Court,
s/Stephanos Bibas

Date Filed: 05/10/2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17-3408

Stanley Weiss v. State of New Jersey

(District Court No. 2-17-cv-01406)

O R D E R

Pursuant to Fed. R. App. P. 3(a) and 3rd Cir. Misc. LAR 107.2(b), it is

ORDERED that the above-captioned case is hereby dismissed for failure to timely prosecute insofar as appellant failed to file a brief and appendix as directed. It is

FURTHER ORDERED that a certified copy of this order be issued in lieu of a formal mandate.

For the Court,

s/ Patricia S. Dodszuweit, Clerk

NOT FOR PUBLICATION
United States District Court,
D. New Jersey.

Stanley WEISS, Plaintiff,
v.
State of NEW JERSEY, Defendant.

Civil Action No.: 17–1406 (JLL)

Signed 10/12/2017

Attorneys and Law Firms

Stanley Weiss, South Orange, NJ, pro se.
Brett Joseph Haroldson, New Jersey Department of Law and Public Safety, David Andrew Tuason, State of New Jersey Office of the Attorney General, Trenton, NJ, for Defendant.

OPINION

JOSE L. LINARES Chief Judge, United States District Court

This matter comes before the Court by way of Plaintiff's Motion for Reconsideration of this Court's August 21, 2017 Order and Opinion Dismissing Plaintiffs Complaint without prejudice. (ECF No. 14). Defendant has Opposed Plaintiffs Motion (ECF No. 16), to which Plaintiff has replied. (ECF No. 17). The Court has considered the parties' submissions and decides this matter without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons

set forth below, the Court denies Plaintiff's Motion for Reconsideration.

I. BACKGROUND[1]

The Court presumes the parties are familiar with the factual background and the allegations asserted in Plaintiff's Complaint based on the parties' own involvement in this case as well as this Court's Opinion dated August 21, 2017. (ECF No. 12). Accordingly the Court will set forth a brief procedural background. On February 27, 2017 *pro se* Plaintiff Stanley Weiss instituted this action against Defendant State of New Jersey seeking to enforce some unidentified "constitutional rights pursuant to the majority opinion in United States v. Jones, 565 U.S. 945 (2012)." (ECF No. 1 ("Compl.") at 1) (underlining in original). The Court noted that the Complaint was difficult to decipher, but gleaned the following facts. (ECF No. 12 at 2). At some point in August of 2013, a Municipal Court Action was instituted against Plaintiff "for failure to take down a tree which was alleged to be dead and found to be so after trial." (Compl. ¶ 1). Thereafter, Plaintiff appeared in South Orange Municipal Court where he was "convicted" and "assessed a penalty of $830.oo [*sic*] which was paid." (Id.). "Plaintiff's principal defense was The Rule was unconstitutional under the Jones case and that the Municipal Court lacked the power to even consider the issue." (Id.) (underlining in original).

Plaintiff then engaged in various appeals of the Municipal Court's ruling to the Superior Court of New Jersey.[2] (Compl. ¶¶ 2–4). The Superior Court reviewed the matter *de novo*, and affirmed the Municipal Court. (Compl. ¶ 2). On June 1, 2016, the Appellate Division

affirmed the Superior Court's holding. (Compl. ¶ 3) New Jersey's Supreme Court denied Plaintiff's petition for certification. (Compl. ¶ 4).

Accordingly, Plaintiff brought this action because he "still does not understand how he can be convicted of a crime before any court has ruled on the merits of his basic defense." (Id.). On June 23, 2017, Plaintiff was directed to move the action by requesting default. (ECF No. 5). Thereafter, on June 30, 2017, Defendant sought an extension of time to answer or otherwise plead, which this Court granted. (ECF Nos. 6, 7). Plaintiff then filed a Motion for Summary Judgment, which was administratively terminated as premature and procedurally improper. (ECF Nos. 8, 9). Defendant moved to dismiss Plaintiff's Complaint in lieu of filing an Answer. (ECF No. 11). The matter was fully briefed, and, on August 21, 2017, this Court dismissed Plaintiff's Complaint. (ECF Nos. 12, 13).

In dismissing the Complaint, this Court found that, based on the current state of the Complaint, the action was barred by the *Rooker–Feldman* doctrine. (ECF No. 12 at 5–6). Hence, the Court held that it was without subject matter jurisdiction. (Id.). The Court further held that, even if this Court had subject matter jurisdiction, the action could not proceed because Plaintiff's Complaint failed to meet the pleading standards set forth in Rule 8 of the Federal Rules of Civil Procedure, as well as under the cases of *Twombly* and *Iqbal*. (Id. at 6). Finally, the Court noted that this matter could not proceed against the State of New Jersey for claims under 42 U.S.C. § 1983 because the State is not a "person" under § 1983. (Id. at 7). Accordingly, the Court dismissed the Complaint and granted Plaintiff leave to file a First Amended Complaint. (Id.). The Court provided Plaintiff with

clear instructions on how to formulate the First Amended Complaint and specifically noted that Plaintiff was to address the subject matter jurisdiction issues identified therein. (Id. at 7–8).

Instead of filing a First Amended Complaint, Plaintiff filed the instant Motion for Reconsideration. (ECF No. 14). As Defendant correctly notes, Plaintiffs Motion for Reconsideration only addresses the dismissal under the *Rooker–Feldman* doctrine and does not address the other reasons for dismissal. (Id.).

II. LEGAL STANDARD

"[R]econsideration is an extraordinary remedy that is granted *'very sparingly.'* " L. Civ. R. 7.1 (i) cmt. 6(d) (quoting *Brackett v. Ashcroft*, No. 03–3988, 2003 WL 22303078, *2 (D.N.J. Oct. 7, 2003)) (emphasis added); *see also Fellenz v. Lombard Investment Corp.*, 400 F. Supp. 2d 681, 683 (D.N.J. 2005). A motion for reconsideration "may not be used to re-litigate old matters, nor to raise arguments or present evidence that could have been raised prior to the entry of judgment." *P. Schoenfeld Asset Mgmt., LLC v. Cendant Corp.*, 161 F. Supp. 2d 349, 352 (D.N.J. 2001). To prevail on a motion for reconsideration, the moving party must "set[ ] forth concisely the matter or controlling decisions which the party believes the Judge or Magistrate Judge has overlooked." L. Civ. R. 7.1(i).

The Court will reconsider a prior order only where a different outcome is justified by: "(1) an intervening change in controlling law; (2) the availability of new evidence not available previously; or (3) the need to correct a clear error of law or prevent manifest injustice." *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)

(internal quotations omitted). A court commits clear error of law "only if the record cannot support the findings that led to that ruling." *ABS Brokerage Servs. v. Penson Fin. Servs., Inc.*, No. 09–4590, 2010 WL 3257992, at *6 (D.N.J. Aug. 16, 2010) (*citing United States v. Grape*, 549 F.3d 591, 603–04 (3d Cir. 2008)). "Thus, a party must... demonstrate that (1) the holdings on which it bases its request were without support in the record, or (2) would result in 'manifest injustice' if not addressed." *Id.* "Mere 'disagreement with the Court's decision' does not suffice." *Id.* (*quoting P. Schoenfeld*, 161 F. Supp. 2d at 353). Moreover, when the assertion is that the Court overlooked something, the Court must have overlooked some dispositive factual or legal matter that was presented to it. *See* L. Civ. R. 7.1(i).

III. ANALYSIS

As this Court explained in its first Opinion, under the *Rooker–Feldman* doctrine, federal district courts are barred from hearing cases "that are essentially appeals from state-court judgments." *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 165 (3d Cir. 2010). Put another way, a suit is barred under the *Rooker–Feldman* doctrine where "a favorable decision in federal court would require negating or reversing the state-court decision." *Id.* at 170 n.4 (citations omitted). The Third Circuit has explicitly held that federal courts are barred by the *Rooker–Feldman* doctrine from providing relief that would overturn a state court decision. *See, e.g., Gage v. Wells Fargo Bank, NA AS*, 521 Fed.Appx. 49, 51 (3d Cir. 2013); *Manu v. Nat'l City Bank of Indiana*, 471 Fed.Appx. 101, 105 (3d Cir. 2012); *Moncrief v. Chase*

Manhattan Mortg. Corp., 275 Fed.Appx. 149, 152 (3d Cir. 2008); *Ayres–Fountain v. E. Sav. Bank*, 153 Fed.Appx. 91, 92 (3d Cir. 2005).

In order for the *Rooker–Feldman* doctrine to apply, four requirements must be met: "(1) the federal plaintiff lost in state court; (2) the plaintiff 'complain[s] of injuries caused by [the] state-court judgments'; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments." *Great W. Mining*, 615 F.3d at 166 (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). "The second and fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim" and are "closely related." *Id.* at 166, 168.

Plaintiff's Motion for Reconsideration fails to explain how his Complaint is not barred under the *Rooker–Feldman* doctrine. Indeed, Plaintiff's Motion for Reconsideration suffers from the same undecipherable infirmities. Plaintiff begins by noting that he has no interest in recovering the fine levied by the Municipal Court and that he "attended Harvard Law School on a Felix Frankfurter scholarship." (ECF No. 14 at 1). Plaintiff goes on to say that "this suit does not seek to reverse any particular lower Court decision." (Id. at 2). However, Plaintiff's Motion fails to explain how this Court has any authority to act, or what legal or equitable remedy is available to Plaintiff.

As noted in the Court's August 21, 2017 Opinion, Plaintiff's Complaint is a prime example of a Complaint that cannot proceed under the *Rooker–Feldman* doctrine. Nowhere within Plaintiff's Motion for Reconsideration does Plaintiff address this fatal flaw. Plaintiff cites no intervening change in law or facts that

this Court overlooked. Instead, Plaintiff "contends that the OPINION is unduly harsh because it requires an abandonment of principle in favor or adopting the regular, routine type of case brought in the Federal Court to recover something-most often money damages." (ECF No. 14 at 2) (capitals in original). Plaintiff's one-page, hand-written reply also offers no guidance as it simply states that Plaintiff "contend[s] that [the Court's] Opinion contains two mistakes." (ECF No. 17). The first "mistake" is that the Court purportedly "ignored the extraordinary fact that the only damage [Plaintiff] seek[s] to recover in this suit is future payment of the costs of removing the tree." (Id.) (emphasis in original). "The second [mistake] is that New Jersey may never apply the Jones decision unless a Federal Court requires it to do so." (Id.) (emphasis in original). Accordingly, Plaintiff has failed to meet his burden to succeed on a motion for reconsideration as his Motion does not address the infirmities highlighted in the Court's August 21, 2017 Opinion nor does it attempt to explain why reconsideration is appropriate under the aforementioned legal standard.

Moreover, as discussed, Plaintiff's Complaint is difficult to decipher. At the very least, Plaintiff's Complaint fails to meet the pleading standards set forth in Rule 8 of the Federal Rules of Civil Procedure. Plaintiff's Complaint, along with his Motion for Reconsideration, do not apprise this Court, let alone Defendant, what remedy he seeks or how this Court could possibly fashion a legal remedy consistent with his demand. Such a complaint simply cannot survive a motion to dismiss and was appropriately dismissed.

IV. CONCLUSION

For the reasons above, the Court denies Plaintiff's Motion for Reconsideration. Given Plaintiff's *pro-se* status, the Complaint remains dismissed without prejudice. Plaintiff shall have until Friday, November 3, 2017 to file a First Amended Complaint that addresses the deficiencies identified in the Court's August 21, 2017. Once again, the First Amended Complaint is to include a separate section for each cause of action being asserted. Each section shall contain separate numbered paragraphs with substantive facts relating to the cause of action being asserted. Finally, Plaintiff's First Amended Complaint shall address the subject matter jurisdiction issues discussed above. Failure to comply with these instructions shall result in a dismissal *with* prejudice. An appropriate Order accompanies this Opinion.

Footnotes

1This background is derived from Plaintiff's Complaint, which the Court must accept as true at this stage of the proceedings. *See Alston v. Countrywide Fin. Corp.*, 585 F.3d 753, 758 (3d Cir. 2009).

2While Plaintiff does not specify which vicinage his appeal was taken to, the Court presumes that the action was appealed to the Superior Court of New Jersey, Essex County, Law Division, Criminal Part, based on the allegations contained in Compl. and the fact that the Township of South Orange is located within Essex County.

NOT FOR PUBLICATION
United States District Court,
D. New Jersey.

Stanley WEISS, Plaintiff,
v.
State of NEW JERSEY, Defendant.

Civil Action No.: 17-1406 (JLL)

Signed 08/18/2017 Filed 08/21/2017

Attorneys and Law Firms

Stanley Weiss, South Orange, NJ, pro se.
David Andrew Tuason, State of New Jersey Office of the Attorney General, Trenton, NJ, for Defendant.

OPINION

JOSE L. LINARES, Chief Judge

This matter comes before the Court by way of Defendant State of New Jersey's Motion to Dismiss Plaintiff's Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (ECF No. 10). Plaintiff has Opposed the Motion. (ECF No. 11) The Court has considered the parties' submissions and decides this matter without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court grants the Motion to Dismiss.

I. BACKGROUND[1]

Pro se Plaintiff Stanley Weiss is a New Jersey resident and lives in the Township of South Orange. (*See* ECF No. 1 ("Compl.") ¶ 1). The sole defendant in the action is the State of New Jersey. (*See generally* Compl.). Plaintiff appears to bring this action seeking to enforce some unidentified "constitutional rights pursuant to the majority opinion in *United States v. Jones*, 565 U.S. 945 (2012)." (Compl. at 1) (underlining in original).

While the Complaint is difficult to decipher, the Court gleans the following facts. At some point in August of 2013, a Municipal Court Action was instituted against Plaintiff "for failure to take down a tree which was alleged to be dead and found to be so after trial." (Compl. ¶ 1). Thereafter, Plaintiff appeared in South Orange Municipal Court where he was "convicted" and "assessed a penalty of S830.oo [*sic*] which was paid." (Id.). "Plaintiff's principal defense was The Rule was unconstitutional under the Jones case and that the Municipal Court lacked the power to even consider the issue." (Id.) (underlining in original).

Plaintiff appealed the Municipal Court's ruling to the Superior Court of New Jersey.[2] (Compl. ¶ 2). The Superior Court reviewed the matter *de novo*, and affirmed the Municipal Court. (Id.). According to Plaintiff, the Superior Court

> relied upon a string of cases, all of which were decided prior to Jones and largely reflected the views of the minority opinion in Jones. It also distinguished Jones by erroneously finding that it was based upon a fact, not present in this case, that a global position system had been used to track the movement of the suspects automobile—which has nothing to do with

> trespass. In fact, the Jones decision was based on a finding that the device involved was installed on a car in the legal possession of the party involves and that the installation was a physical intrusion considered a trespass upon that party's property.

(Compl. ¶ 2) (underlining in original).

Thereafter, Plaintiff filed a notice of appeal with the New Jersey Superior Court, Appellate Division. (Compl. ¶ 3). The Appellate Division rendered its decision on June 1, 2016 and "strongly endorsed the lower Court opinion but [*sic*] held that Plaintiff lacked standing to sue, apparently unaware of the fact that the lower Court specifically found that plaintiff had standing to sue, citing two New Jersey Supreme Court cases for that view." (Id.). Plaintiff filed a petition of certification with New Jersey's Supreme Court which "contended that his constitutional rights protected by Jones had been violated." (Compl. ¶ 4). The petition was denied. (Id.). Plaintiff brings this action because he "still does not understand how he can be convicted of a crime before any court has ruled on the merits of his basic defense." (Id.).

Plaintiff instituted the within action on February 27, 2017. (*See generally* Compl.). On June 23, 2017, Plaintiff was directed to move the action by requesting default. (ECF No. 5). Thereafter, on June 30, 2017, Defendant sought an extension of time to answer or otherwise plead, which this Court granted. (ECF Nos. 6, 7). Plaintiff then filed a Motion for Summary Judgment, which was administratively terminated as premature and procedurally improper. (ECF Nos. 8, 9). Defendant now moves to dismiss Plaintiff's Complaint. (ECF No. 11).

II. LEGAL STANDARD

A. Motion to Dismiss Pursuant to F.R.C.P. 12(b)(1)

Under Rule 12 (b)(1) of the Federal Rules of Civil Procedure, a Defendant may move to dismiss a complaint for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The plaintiff, as the party asserting jurisdiction, bears the burden to establish the federal court's authority to hear the matter. *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1045 (3d Cir. 1993). However, depending on the nature of the attack under Fed. R. Civ. P. 12 (b)(1), which may either assert a factual or facial challenge to the court's jurisdiction, a presumption of truthfulness may attach to the plaintiff's allegations. *See Taliaferro v. Darby Twp. Zoning Bd.*, 458 F.3d 181, 188 (3d Cir. 2006); *Gould Electronics Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000); *Turicentro, S.A. v. Am. Airlines, Inc.*, 303 F.3d 293, 300 n.4 (3d Cir. 2002). When a defendant facially attacks the Court's jurisdiction under Rule 12 (b)(1), this type of challenge effectively contests the adequacy of the language used in the pleading; the trial court must therefore construe the pleadings in a light most favorable to the plaintiff and presume all well-pleaded factual allegations in the complaint as true. *Turicentro*, 303 F.3d at 300 n.4; *Gould*, 220 F.3d at 176. Alternatively, when bringing a factual attack, the defendant contends that the facts on which the plaintiff's allegations rely are not true as a matter of fact. *Id.* Therefore, the plaintiff's allegations do not benefit from a presumption of truthfulness; the court, instead, must weigh the evidence in its discretion by taking into account affidavits, documents, and even limited evidentiary hearings. *Id.*

B. Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6)

To withstand a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937 (citing *Twombly*, 550 U.S. at 556, 127 S.Ct. 1955). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

To determine the sufficiency of a complaint under *Twombly* and *Iqbal* in the Third Circuit, the court must take three steps: first, the court must take note of the elements a plaintiff must plead to state a claim; second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief. *See Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016) (citations omitted). "In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010).

III. ANALYSIS

As mentioned, Plaintiff's Complaint is difficult to decipher. At the very least, Plaintiff's Complaint fails to meet the pleading standards set forth in Rule 8 of the Federal Rules of Civil Procedure. Insomuch that Plaintiff's Complaint seeks relief from the Municipal Court fine, said claim cannot proceed.

Under the *Rooker-Feldman* doctrine, federal district courts are barred from hearing cases "that are essentially appeals from state-court judgments." *Great W Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 165 (3d Cir. 2010). Put another way, a suit is barred under the *Rooker–Feldman* doctrine where "a favorable decision in federal court would require negating or reversing the state-court decision." *Id.* at 170 n.4 (citations omitted). The Third Circuit has explicitly held that federal courts are barred by the *Rooker-Feldman* doctrine from providing relief that would overturn a state court decision. *See, e.g.*, *Gage v. Wells Fargo Bank, NA AS*, 521 Fed.Appx. 49, 51 (3d Cir. 2013); *Manu v. Nat'l City Bank of Indiana*, 471 Fed.Appx. 101, 105 (3d Cir. 2012); *Moncrief v. Chase Manhattan Mortg. Corp.*, 275 Fed.Appx. 149, 152 (3d Cir. 2008); *Ayres-Fountain v. E. Sav. Bank*, 153 Fed.Appx. 91, 92 (3d Cir. 2005).

In order for the *Rooker-Feldman* doctrine to apply, four requirements must be met: "(1) the federal plaintiff lost in state court; (2) the plaintiff 'complain[s] of injuries caused by [the] state-court judgments'; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments." *Great W. Mining*, 615 F.3d at 166 (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S.Ct.

1517, 161 L.Ed.2d 454 (2005)). "The second and fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim" and are "closely related." *Id.* at 166, 168.

The first and third prongs are clearly met in the instant action: Plaintiff lost in the Municipal Court Action and that judgment was rendered in or about September 2013—prior to Plaintiff's filing of the instant action in this Court on February 27, 2017. Additionally, the second prong is met because Plaintiff complains of "injuries" caused by the Municipal Court's judgment. (Compl. ¶¶ 1-2). Finally, the fourth prong is met as any decision by this Court would result in a rejection of the Municipal Court's judgment, as well as both the Superior Court and Appellate Division's affirmances. Hence, this Court is without subject matter jurisdiction over this action.

Even if this Court had subject matter jurisdiction, which it does not, the action could not proceed. This is because Plaintiff's Complaint simply fails to meet the pleading standards set forth under Rule 8 of the Federal Rules of Civil Procedure, as well as under *Iqbal and Twombly*. Indeed, Plaintiff's Complaint does not apprise the Court, let alone Defendant, of what cause of action is being asserted, the basis of Federal Court jurisdiction, nor any additional facts necessary to meet said pleading standard. Moreover, the Complaint is devoid of any explanation as to why the State of New Jersey should be liable for the Municipal Court of South Orange's alleged wrongdoings.

Finally, if this action were to be pled sufficiently, the State of New Jersey cannot be liable for violations of 42 U.S.C. § 1983. Section 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ....

42 U.S.C. § 1983. Therefore, to state a claim for relief under § 1983, a plaintiff must allege two elements: (1) a person deprived him or caused him to be deprived of a right secured by the Constitution or laws of the United States, and (2) the deprivation was done under color of state law. *See West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988); *Piecknick v. Pennsylvania*, 36 F.3d 1250, 1255-56 (3d Cir. 1994).

It has long been established that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989); *Grabow v. S. State Corr. Facility*, 726 F.Supp. 537, 538-39 (D.N.J. 1989); *see Marsden v. Federal BOP*, 856 F.Supp. 832, 836 (S.D.N.Y. 1994); *see also Mitchell v. Chester County Farms Prison*, 426 F.Supp. 271, 274 (E.D. Pa. 1976). Accordingly, Defendant State of New Jersey cannot be liable for the claims herein. *See e.g. Salerno v. Corzine*, 2006 U.S. Dist. LEXIS 92353, 2006 WL 3780587, at *3 (D.N.J. Dec. 20, 2006).

IV. CONCLUSION

For the reasons above, the Court grants the Motion to Dismiss and dismisses Plaintiff's Complaint. Given Plaintiff's *pro-se* status, the Complaint is dismissed without prejudice. Plaintiff shall have until Thursday, September 28, 2017 to file a First Amended Complaint to address the deficiencies identified herein. The First Amended Complaint is to include a separate section for each cause of action being asserted. Each section shall contain separate numbered paragraphs with substantive facts relating to the cause of action being asserted. Finally, Plaintiff's First Amended Complaint shall address the subject matter issues discussed above. Failure to comply with these instructions shall result in a dismissal *with* prejudice. An appropriate Order accompanies this Opinion.

Footnotes

1This background is derived from Plaintiff's Complaint, which the Court must accept as true at this stage of the proceedings. *See Alston v. Countrywide Fin. Corp.*, 585 F.3d 753, 758 (3d Cir. 2009).

2While Plaintiff does not specify which vicinage his appeal was taken to, the Court presumes that the action was appealed to the Superior Court of New Jersey, Essex County, Law Division, Criminal Part, based on the allegations contained in Compl. and the fact that the Township of South Orange is located within Essex County.

Filed: 06/26/2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17-3408

STANLEY WEISS, Appellant

v.

STATE OF NEW JERSEY

(D.N.J. No. 2-17-cv-01406)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO, and BIBAS, Circuit Judges, and NYGAARD,* Senior Circuit Judge

The petition for rehearing filed by appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

By the Court, s/ Stephanos Bibas Circuit Judge

Footnote

* Judge Nygaard's vote is limited to panel rehearing only.

Superior Court of New Jersey,
Appellate Division.

STATE of New Jersey, Plaintiff–Respondent,
v.
Stanley WEISS, Defendant–Appellant.

Argued Jan. 25, 2016.Decided June 1, 2016.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Municipal Appeal No.2014–006.

Attorneys and Law Firms
Stanley Weiss, appellant, argued the cause pro se.
Gracia Robert Montilus, Municipal Prosecutor, argued the cause for respondent.

Before Judges NUGENT and HIGBEE.

Opinion

PER CURIAM.

Defendant Stanley Weiss appeals from an August 8, 2014 order finding him guilty following a trial de novo of failing to remove a hazardous dead or dying tree from his property in violation of the *Township of South Orange Village Code*, § 56–3. He challenges the constitutionality of the municipal ordinance, which allows the Code Enforcement Officer (CEO) to inspect his property without a warrant to determine if there is a code violation. Defendant raises the following points on appeal:

POINT I—THE GUILTY VERDICT SHOULD BE REVERSED BECAUSE THE RULE AND CHAPTER 56 OF THE SOUTH ORANGE CODE PERMIT UNCONSTITUTIONAL SEARCHES AND SEIZURES; AND ALSO BECAUSE PLAINTIFF FAILED TO PROVE THAT NONE OF ITS REPRESENTATIVES TRESPASSED ON THE CURTILAGE OF THE HOME OF THE DEFENDANT AND HIS WIFE.

POINT II—THE MUNICIPAL COURT AND THE LOWER COURT LACKED THE POWER TO DECIDE WHETHER THE RULE WAS CONSTITUTIONAL; AND THEY BOTH ERRED IN CONVICTING DEFENDANT AND VIOLATING HIS DUE PROCESS RIGHTS TO HAVE HIS DEFENSES DECIDED BEFORE HE WAS CONVICTED.

POINT III—DEFENDANT'S WIFE IS AN INDISPENSABLE PARTY TO THIS LITIGATION; AND THE $830 PENALTY IMPOSED ON DEFENDANT UNDER SECTION 56-5 IS BOTH UNCONSTITUTIONAL AND NOT PROVIDED FOR IN THE SOUTH ORANGE CODE.

In an August 8, 2014 written opinion, Judge Sherry Hutchins-Henderson concisely explained the case's relevant facts, procedural history, and her findings. We determine there is no need to recite the same in detail. After carefully reviewing the record, we affirm substantially for the reasons expressed by Judge Hutchins-Henderson in her written opinion. We add only the following brief comments.

The record supports the judge's finding the CEO did not enter defendant's property to inspect the tree. The CEO testified he observed the dying tree, which was in the rear of defendant's property, while standing in the yard of defendant's neighbor. It was the neighbor who reported the hazardous condition of the tree to the CEO. Since there was no entry or search on defendant's property, as the dead tree was in plain view from the neighbor's property, the question of whether it would be unconstitutional for the CEO to enter defendant's property without a warrant is not properly before us. Generally, "a litigant only has standing to vindicate his own constitutional rights." *Members of the City Council v. Taxpayers for Vincent,* 466 *U.S.* 789, 796, 104 *S.Ct.* 2118, 2124, 80 *L. Ed.*2d 772, 781 (1984). Since defendant lacks standing because his rights were not violated, we decline to rule on the constitutionality of the ordinance. Defendant's other arguments lack sufficient merit to warrant discussion in a written opinion. *R.* 2:11–3(e)(2). Affirmed.