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EXHIBITS

A

A1

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3744

JOHN TEDESCO; TINA TEDESCO

v.

MONROE COUNTY; MICHAEL MANCUSO, ASSISTANT DISTRICT ATTORNEY; KELLY LOMBARDO, ASSISTANT DISTRICT ATTORNEY

John Tedesco,
Appellant

(M.D. Pa. No. 3-17-cv-01282)

SUR PETITION FOR REHEARING

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

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

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

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

Dated: June 14, 2018

kr/cc: John Tedesco
Michael Mancuso, Esq.

EXHIBITS

B

B 1

BLD-204

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3744

JOHN TEDESCO; TINA TEDESCO

v.

MONROE COUNTY; MICHAEL MANCUSO, ASSISTANT DISTRICT ATTORNEY;
KELLY LOMBARDO, ASSISTANT DISTRICT ATTORNEY

John Tedesco,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3-17-cv-01282)
District Judge: Honorable A. Richard Caputo

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6
May 10, 2018
Before: RESTREPO, BIBAS, and NYGAARD, Circuit Judges

(Filed: May 18, 2018)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

B2

Pro se appellant John Tedesco[1] appeals the District Court's order dismissing his complaint. For the reasons set forth below, we will summarily affirm the District Court's judgment. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

In 2013, Tedesco was charged with third-degree murder, neglect of a care-dependent person, and several other offenses for his role in the death of an elderly, disabled woman. Among the other charges was "criminal conspiracy," which was charged in the criminal complaint as follows:

> The District Attorney of Monroe County by this information charges that on or about January 1, 2009, through August 19, 2011, [John Tedesco] along with his wife, Tina Tedesco, did agree to keep the victim, Barbara Rabins, a depend[e]nt care person, in a place of seclusion or isolation and subjected the said victim to the prolonged denial of adequate food, hydration, care and concern, all despite being under a legal obligation to care for the victim. The victim died as a result. During the period of their control over the victim, [John] and Tina Tedesco stole approximately $110,000.00 of the victim's finances.

D.C. dkt. #1-1 at 38.

Tedesco interprets this count to charge only conspiracy to commit neglect of a care-dependent person. At trial, however, he says that the jury was asked to return a verdict on both conspiracy to commit third-degree murder and conspiracy to commit

[1] Tedesco seeks also to litigate this appeal on behalf of his wife, Tina Tedesco, but it is well settled that an individual proceeding pro se may not represent third parties in federal court. See Lazaridis v. Wehmer, 591 F.3d 666, 672 (3d Cir. 2010) (per curiam); Osei-Afriyie v. Med. Coll. of Pa., 937 F.2d 876, 883 (3d Cir. 1991). We will therefore treat John Tedesco as the sole appellant.

neglect of a care-dependent person; the jury found Tedesco guilty of both conspiracy offenses (as well as the related substantive offenses).[2]

Tedesco filed this action under 42 U.S.C. § 1983, alleging that the prosecutors committed misconduct by "amending" the criminal information to charge him with this additional conspiracy count and violated his rights under the Double Jeopardy Clause by converting a single count of conspiracy into multiple charges. He sought to be released from prison and to be awarded money damages for his "illegal incarceration." The District Court dismissed the complaint. Tedesco filed a motion for reconsideration under Fed. R. Civ. P. 59(e), which the District Court denied. Tedesco then filed a timely notice of appeal.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over the dismissal order, see Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000), and review the denial of a motion for reconsideration for abuse of discretion, see Max's Seafood Cafe ex rel. Lou–Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999).

We agree with the District Court's analysis of this case. Tedesco's claims, without exception, present frontal attacks on his still-valid state conviction—indeed, he explicitly asks to have his conviction and sentence set aside. He must assert these claims via a petition under 28 U.S.C. § 2254, not in a § 1983 complaint. See Heck v.

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[2] The Superior Court affirmed Tedesco's criminal judgment, and explicitly rejected his challenge to the criminal information. See Commonwealth v. Tedesco, No. 787 EDA 2016, 2017 WL 568538, at *2 (Pa. Super. Ct. Feb. 13, 2017). The Pennsylvania Supreme Court denied permission for allowance of appeal, see Commonwealth v. Tedesco, 170 A.3d 1060 (Pa. 2017), and the United States Supreme Court denied certiorari, see Tedesco v. Pennsylvania, No. 17-7956, 2018 WL 1994834, at *1 (U.S. Apr. 30, 2018).

B4

Humphrey, 512 U.S. 477, 486-87 (1994); Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). As the Supreme Court has explained, "a state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit . . .—if success in that action would necessarily demonstrate the invalidity of confinement or its duration." Wilkinson v. Dotson, 544 U.S. 74, 81–82 (2005). Tedesco's claims challenging the validity of his conspiracy-to-commit-third-degree-murder conviction are therefore barred under this rule.[3]

Moreover, in his Rule 59(e) motion, Tedesco did not identify any error of fact or law in the District Court's dismissal order, and the Court therefore did not err in denying that motion. See generally Max's Seafood Cafe ex rel. Lou–Ann, 176 F.3d at 677.

Accordingly, we will summarily affirm the District Court's judgment.

[3] Further, because Tedesco's proposed amended complaint merely reasserted these same barred claims, we are satisfied that the District Court did not err when it did not give Johnson leave to amend. See generally Grayson v. Mayview State Hosp., 293 F.3d 103, 114 (3d Cir. 2002).

BLD-204

B5

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3744

JOHN TEDESCO; TINA TEDESCO

v.

MONROE COUNTY; MICHAEL MANCUSO, ASSISTANT DISTRICT ATTORNEY;
KELLY LOMBARDO, ASSISTANT DISTRICT ATTORNEY

John Tedesco,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 3-17-cv-01282)
District Judge: Honorable A. Richard Caputo

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6
May 10, 2018
Before: RESTREPO, BIBAS, and NYGAARD, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) or summary action pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6 on May 10, 2018. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered November 21, 2017, be and the same is hereby affirmed. Costs are taxed against the Appellant.

B6

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: May 18, 2018

Certified as a true copy and issued in lieu of a formal mandate on June 22, 2018

Teste: Patricia A Dodszuweit

Clerk, U.S. Court of Appeals for the Third Circuit

EXHIBITS

C

C1.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN TEDESCO and TINA TEDESCO,

Plaintiffs,

v.

MONROE COUNTY, et. al.,

Defendants.

CIVIL ACTION NO. 3:17-CV-01282

(JUDGE CAPUTO)

MEMORANDUM

Presently before this Court is the Motion for Reconsideration (Doc. 13) and Motion to Appoint Counsel (Doc. 17) filed by Plaintiff John Tedesco. In his Motion for Reconsideration, Mr. Tedesco requests reconsideration of this Court's decision to dismiss his complaint for failing to state a claim upon which relief could be granted. Because Mr. Tedesco fails to satisfy the standard for reconsideration, his Motion will be denied. Further, since Mr. Tedesco's claim will not be re-opened, his Motion to Appoint Counsel will be denied as moot.

I. Background

A. Factual History

The facts as stated in this Court's September 29, 2017 Memorandum are as follows[1]:

Plaintiff John Tedesco and his wife, Tina Tedesco, were arrested in July of 2013 and charged with a number of crimes related to the death of an elderly, disabled woman. Ultimately, both John and Tina Tedesco were convicted of: third-degree murder; neglect of care-dependent person; theft by unlawful taking; theft by failing to make required disposition of funds received; and tempering with or fabricating physical evidence.

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[1] Mr. Tedesco has offered no new or additional facts in his Motion for Reconsideration or in the Brief in Support of his Motion.

Following their convictions at trial in August of 2015, they were both sentenced to a term of incarceration between 183 and 366 months. Now, Plaintiff seeks to sue the prosecutors who convicted him and his wife.

Prior to Plaintiff's trial, Plaintiff alleges that members of the District Attorney's Office "amended the criminal information and jury verdict slip" in an attempt to ensure that Plaintiff was convicted of crimes never formally charged. (*see, e.g.*, Doc. 1, at ¶ V.) Additionally, Plaintiff claims that a number of his constitutional rights[2], including his right to be free from double jeopardy, were violated as a result of his prosecution. He contends that the prosecutors were aware of these constitutional defects, but decided to proceed with the criminal action because the defendants had a "malicious intent" to see him convicted. (Doc. 1-1, at 15.)

Following his sentencing on October 26, 2015, Plaintiff pursued an appeal seeking to address the alleged defects in both his conviction and sentence. On September 19, 2017, Plaintiff's state court appeal ended when the Pennsylvania Supreme Court denied Plaintiff's Petition for Allowance of Appeal. *Pa. v. Tedesco*, No. 159 MAL 2017 (Pa. Sept. 19, 2017).

There are four Defendants named in the Complaint: (1) Monroe County; (2) Assistant District Attorney for Monroe County Michael Mancuso in his individual and official capacities; (3) Assistant District Attorney for Monroe County Kelly Lombardo in her individual and official capacities; and (4) District Attorney for Monroe County David Christine in his individual and official capacities. Plaintiff alleges that each Defendant had a role in the "plot" to see his constitutional rights trampled.

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[2] Plaintiff sporadically identifies amendments to the United States Constitution, but continually fails to provide any facts that would demonstrate why the given amendment would be implicated.

B. Procedural History

Plaintiff filed a Complaint and a Motion for Leave to Proceed *in forma pauperis* in the United States District Court for the Middle District of Pennsylvania on July 20, 2017. Pursuant to the Prison Litigation Reform Act ("PLRA"), Magistrate Judge Carlson conducted an initial screening of Plaintiff's Complaint and provided this Court with a Report and Recommendation ("R&R"). Magistrate Judge Carlson's R&R was filed on July 21, 2017. The R&R recommended granting *in forma pauperis* status to Plaintiff, but dismissing his Complaint with prejudice for failing to state a claim upon which relief could be granted.

On September 29, 2017 this Court adopted Magistrate Judge Carlson's recommendation. Specifically, this Court noted that Plaintiff's claims were barred by the precedent set by the United States Supreme Court in *Heck v. Humphery*, 512 U.S. 477 (1994). Additionally, this Court noted that the prosecutors named in Plaintiff's Complaint were immune from suit as they were acting as advocates for the Commonwealth of Pennsylvania.

Mr. Tedesco filed the instant Motion for Reconsideration on October 12, 2017, and he filed a Brief in Support of his Motion for Reconsideration on October 30, 2017. In anticipation of this matter re-opening, Mr. Tedesco filed a Motion to Appoint Counsel on November 3, 2017. Both Motions are ripe for review.

II. Discussion

The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. *See Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration may be granted if the movant establishes: (1) an intervening change in controlling law; (2) the availability of new evidence that was not available when the court decided the motion; or (3) the need to correct a clear error of law

C5

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN TEDESCO and TINA TEDESCO,

Plaintiffs,

v.

MONROE COUNTY, et. al.,

Defendants.

CIVIL ACTION NO. 3:17-CV-01282

(JUDGE CAPUTO)

ORDER

NOW, this 21st day of November, 2017, **IT IS HEREBY ORDERED** that:

(1) Plaintiff John Tedesco's Motion for Reconsideration (Doc. 13) is **DENIED**;

(2) Plaintiff John Tedesco's Motion to Appoint Counsel (Doc. 17) is **DENIED as moot**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

EXHIBITS

D

01

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN TEDESCO and TINA TEDESCO,

Plaintiffs,

v.

MONROE COUNTY, et. al.,

Defendants.

CIVIL ACTION NO. 3:17-CV-01282

(JUDGE CAPUTO)

(MAGISTRATE JUDGE CARLSON)

MEMORANDUM

Presently before this Court is: Magistrate Judge Carlson's Report and Recommendation ("R&R") (Doc. 6) to Plaintiff John Tedesco's ("Plaintiff") Motion for Leave to Proceed *in forma pauperis* (Doc. 3); Magistrate Judge Carlson's *sua sponte* recommendation that Plaintiff's Complaint be dismissed (Doc. 6); and Plaintiff's filings (Docs. 8-9) which are construed as a Motion for Leave to Amend the Complaint. Because Plaintiff's financial means are sufficiently limited, Magistrate Judge Carlson's recommendation will be adopted, and Plaintiff's Motion for Leave to Proceed *in forma pauperis* will be granted. But, Plaintiff's Complaint will be dismissed because the claims pled either lack subject matter jurisdiction or are asserted against individuals who are immune from suit. Finally, Plaintiff's Motion for Leave to Amend will be denied because providing an opportunity to amend would be futile.

I. Background

A. Factual Background

The facts as constructed from Plaintiff's *pro se* Complaint (Doc. 1) and the public record can be summarized as follows:

Plaintiff John Tedesco and his wife, Tina Tedesco, were arrested in July of 2013 and charged with a number of crimes related to the death of an elderly, disabled woman. Ultimately, both John and Tina Tedesco were convicted of: third-degree murder; neglect of

care-dependent person; theft by unlawful taking; theft by failing to make required disposition of funds received; and tempering with or fabricating physical evidence. Following their convictions at trial in August of 2015, they were both sentenced to a term of incarceration between 183 and 366 months. Now, Plaintiff seeks to sue the prosecutors who convicted him and his wife.

Prior to Plaintiff's trial, Plaintiff alleges that members of the District Attorney's Office "amended the criminal information and jury verdict slip" in an attempt to ensure that Plaintiff was convicted of crimes never formally charged. (*see, e.g.*, Doc. 1, at ¶ V.) Additionally, Plaintiff claims that a number of his constitutional rights[1], including his right to be free from double jeopardy, were violated as a result of his prosecution. He contends that the prosecutors were aware of these constitutional defects, but decided to proceed with the criminal action because the defendants had a "malicious intent" to see him convicted. (Doc. 1-1, at 15.)

Following his sentencing on October 26, 2015, Plaintiff pursued an appeal seeking to address the alleged defects in both his conviction and sentence. On September 19, 2017, Plaintiff's state court appeal ended when the Pennsylvania Supreme Court denied Plaintiff's Petition for Allowance of Appeal. *Pa. v. Tedesco*, No. 159 MAL 2017 (Pa. Sept. 19, 2017).

There are four Defendants named in the Complaint: (1) Monroe County; (2) Assistant District Attorney for Monroe County Michael Mancuso in his individual and official capacities; (3) Assistant District Attorney for Monroe County Kelly Lombardo in her individual and official capacities; and (4) District Attorney for Monroe County David Christine in his individual and official capacities. Plaintiff alleges that each Defendant had a role in the "plot" to see his constitutional rights trampled.

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[1] Plaintiff sporadically identifies amendments to the United States Constitution, but continually fails to provide any facts that would demonstrate why the given amendment would be implicated.

B. Procedural History

Plaintiff filed the instant action and a Motion for Leave to Proceed *in forma pauperis* in the United States District Court for the Middle District of Pennsylvania on July 20, 2017. Pursuant to the Prison Litigation Reform Act ("PLRA"), Magistrate Judge Carlson has conducted an initial screening of Plaintiff's Complaint and provided this Court with a R&R. Magistrate Judge Carlson's R&R was filed on July 21, 2017. It is Magistrate Judge Carlson's recommendation that Plaintiff's Motion for Leave to Proceed *in forma pauperis* be granted and Plaintiff's Complaint be dismissed with prejudice for failure to state a claim upon which relief can be granted. On August 3, 2017, Plaintiff filed timely objections to Magistrate Judge Carlson's R&R.

The R&R and Plaintiff's objections are now ripe for review.

II. Legal Standards

A. Review of the Report and Recommendation

Where objections to a magistrate judge's R&R are filed, the Court must conduct a *de novo* review of the contested portions. *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(c)). This only applies to the extent that a party's objections are both timely and specific. *Goney v. Clark*, 749 F.2d 5, 6-7 (3d Cir. 1984).

In conducting a *de novo* review, a court may accept, reject, or modify, in whole or in part, the factual findings or legal conclusions of the magistrate judge. *See* 28 U.S.C. § 636(b)(1); *Owens v. Beard*, 829 F. Supp. 736, 738 (M.D. Pa. 1993). Although the review is *de novo*, the law permits the court to rely on the recommendations of the magistrate judge to the extent it deems proper. *See United States v. Raddatz*, 447 U.S. 667, 675–76 (1980); *Goney*, 749 F.2d at 7; *Ball v. United States Parole Comm'n*, 849 F. Supp. 328, 330 (M.D. Pa. 1994). Uncontested portions of the report may be reviewed at

a standard determined by the district court. *See Thomas v. Arn*, 474 U.S. 140, 154 (1985); *Goney*, 749 F.2d at 7. At the least, the court should review uncontested portions for clear error or manifest injustice. *See, e.g., Cruz v. Chater*, 990 F. Supp. 375, 376-77 (M.D. Pa. 1998).

B. Motion to Dismiss

A court screening a Complaint pursuant to the Prison Reform Litigation Act uses the same standard as it does for a 12(b)(6) motion to dismiss. *See Shover v. York Cty. Prison*, No. 11-CV-2248, 2012 WL 720858, at *2 (M.D. Pa. Mar. 1, 2012).

Federal Rule of Civil Procedure 12(b)(6) provides for the dismissal of a complaint, in whole or in part, for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). When considering a Rule 12(b)(6) motion, the Court's role is limited to determining if a plaintiff is entitled to offer evidence in support of their claims. *See Semerenko v. Cendant Corp.*, 223 F.3d 165, 173 (3d Cir. 2000).

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). The statement required by Rule 8(a)(2) must give the defendant fair notice of what the . . . claim is and the grounds upon which it rests. *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (per curiam) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). Detailed factual allegations are not required. *Twombly*, 550 U.S. at 555, 127 S. Ct. 1955. However, mere conclusory statements will not do; "a complaint must do more than allege the plaintiff's entitlement to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). Instead, a complaint must "show" this entitlement by alleging sufficient facts. *Id.* "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1950, 173 L. Ed.

2d 868 (2009). As such, "[t]he touchstone of the pleading standard is plausability." *Bistrian v. Levi*, 696 F.3d 352, 365 (3d Cir. 2012).

The inquiry at the motion to dismiss stage is "normally broken into three parts: (1) identifying the elements of the claim, (2) reviewing the complaint to strike conclusory allegations, and then (3) looking at the well-pleaded components of the complaint and evaluating whether all of the elements identified in part one of the inquiry are sufficiently alleged." *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011).

Dismissal is appropriate only if, accepting as true all the facts alleged in the complaint, a plaintiff has not pleaded "enough facts to state a claim to relief that is plausible on its face," *Twombly*, 550 U.S. at 570, 127 S. Ct. 1955, meaning enough factual allegations "'to raise a reasonable expectation that discovery will reveal evidence of'" each necessary element. *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (quoting *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." *Iqbal*, 556 U.S. at 678, 129 S. Ct. 1937.

In deciding a motion to dismiss, the Court should consider the allegations in the complaint, exhibits attached to the complaint, and matters of public record. *See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993). The Court may also consider "undisputedly authentic" documents when the plaintiff's claims are based on the documents and the defendant has attached copies of the documents to the motion to dismiss. *Id.* The Court need not assume the plaintiff can prove facts that were not alleged in the complaint, *see City of Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 263 & n.13 (3d Cir. 1998), or credit a complaint's "'bald assertions'" or "'legal conclusions.'" *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1429–30

D.6

(3d Cir. 1997)).

III. Discussion

A. Motion For Leave to Proceed *In Forma Pauperis*

Plaintiff's Motion for Leave to Proceed *in forma pauperis* will be granted. The decision whether to grant or deny *in forma pauperis* status rests within the sound discretion of the district court. *United States v. Holiday*, 436 F.2d 1079, 1070-80 (3d Cir. 1971). To qualify for such status, courts do not require penniless destitution, but rather look to determine whether the plaintiff would be precluded from court due to a potential financial burden imposed by the Court. *See Ward v. Werner*, 61 F.R.D 639, 639 (M.D. Pa. 1974) (citing *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948)). Notably, there is "no fixed net worth which disqualifies a party as a pauper." *Id.* at 640.

Plaintiff is presently employed, but his current compensation is only $15.00 per month. As such, this Court agrees with and will adopt the recommendation provided by Magistrate Judge Carlson: Plaintiff's Motion for Leave to Proceed *in forma pauperis* will be granted.

B. Recommendation To Dismiss Plaintiff's Complaint

Pursuant to the PLRA, courts are required to screen complaints when a prisoner wishes to proceed *in forma pauperis*. The screening required is comprehensive. Title 28 U.S.C. §1915 provides that the district court shall dismiss a complaint if the court determines that the action is frivolous, malicious, fails to state a claim, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A,1915(e)(2)(B). During the screening of a complaint proceeding *in forma pauperis*, the court is also free to consider questions related to subject matter jurisdiction and abstention. *See Day v. Florida*, 563 Fed. App'x. 878, 880, 881 n.2 (3d Cir. 2014) (per curiam).

While screening Plaintiff's Complaint, Magistrate Judge Carlson identified four

grounds for dismissal: (1) Plaintiff is barred from suing officials for their role in a criminal case which resulted in a conviction; (2) the *Rooker-Feldman* Doctrine deprives this case of subject matter jurisdiction; (3) the *Younger* abstention doctrine advises against ruling upon claims for injunctive relief; and (4) the Prosecutors named in the Complaint are entitled to immunity from liability. Additionally, Magistrate Judge Carlson noted that while two parties are named in the instant action–John and Tina Tedesco–the pleading was construed to apply only to Mr. John Tedesco because as a non-lawyer Mr. Tedesco is only permitted to represent himself.

Plaintiff has filed timely objections to each of the four bases for dismissal identified by Magistrate Judge Carlson. Mr. Tedesco has also objected to the exclusion of his wife, Tina, from these proceedings. Each objection raised by Plaintiff will be addressed below:

1. Plaintiff John Tedesco may not represent his wife Tina Tedesco in this action

Magistrate Judge Carlson correctly notes that this action is brought on behalf of both John and Tina Tedesco. But, it is evident that the complaint and subsequent filings were solely prepared by John Tedesco. "It is a well established principle that while a layman may represent himself with respect to his individual claims, he is not entitled to act as an attorney for others in a federal court." *Lutz v. Lavelle*, 809 F. Supp. 323, 325 (M.D. Pa. 1991); *see* 28 U.S.C. §1654 ("In all courts of the United States, the parties may plead and conduct their own cases personally, or by counsel. . . ."); FED.R.CIV.P. 11(a) (requiring that all pleadings, motions, and submissions to federal courts be signed by an attorney of record, or by the unrepresented party); *see also DePonceau v. Pataki*, 315 F. Supp. 2d 338, 341 (W.D.N.Y. 2004) ("[P]laintiffs have no statutory [or] constitutional right to be represented in federal court by a non-lawyer."). For this reason, Plaintiff John Tedesco will be unable to raise claims on behalf of his wife Tina Tedesco.

Plaintiff has objected to Magistrate Judge Carlson's R&R in so far that it would preclude Plaintiff from raising claims on behalf of his wife. In doing so, Plaintiff solely relies

on the federal rule governing class action litigation: Federal Rule of Civil Procedure 23. However, reliance on Rule 23 is misplaced. This Rule does not obfuscate the prohibition against *pro se* litigants representing others in federal court. Further, even if Rule 23 could be applied to cure the deficiency in the structure of this action, class certification would fail. *See* FED.R.CIV.P. 23(a)(1), (4). As such, Plaintiff may not include claims related to injuries suffered by his wife in this action, and any claim predicated on the injury of Tina Tedesco will be dismissed.

2. *Plaintiff's claims seeking damages or equitable relief for constitutional violations related to his criminal proceeding are barred by Heck v. Humphrey*

Plaintiff objects to Magistrate Judge Carlson's R&R where it suggests that dismissal is warranted as Plaintiff may not sue a state official for their role in a criminal case which resulted in an undisturbed conviction. While Plaintiff's objection discusses the differences between the claims of malicious prosecution and false arrest, it is unclear what portion of Magistrate Judge Carlson's R&R Plaintiff found objectionable. So, even though Plaintiff's objection is not specific in nature, this Court will still review the recommendation of Magistrate Judge Carlson for clear error. *See Goney*, 749 F.2d at 6-7; *Cruz*, 990 F. Supp. 375, at 376-77.

At bottom, Magistrate Judge Carlson recommends dismissing Plaintiff's Complaint as it is barred by the precedent set in *Heck v. Humphery*, 512 U.S. 477 (1994). In *Heck*, the United State Supreme Court held that if the success of a §1983 damages suit brought by a plaintiff would "necessarily imply the invalidity of his conviction or sentence," the plaintiff may only bring the claim where the conviction or sentence has been invalidated. 512 U.S. at 486. This holding has been referred to as the "favorable termination rule." *See Curry v. Yachera*, 835 F.3d 373, 378 (3d Cir. 2016). Specifically, the Court in *Heck* stated:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not

cognizable under § 1983.
512 U.S. at 486-87. In other words, "a prisoner's civil rights suit for damages is barred unless he can demonstrate that his conviction or sentence has been invalidated." *Holmes v. Dreyer*, 431 Fed. App'x 69, 70 (3d Cir. 2011) (per curiam). Notably, "a prisoner's §1983 action is barred (absent prior invalidation) – no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit. . .– if success in the action would necessarily demonstrate the invalidity of [a Plaintiff's] confinement. . . ." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005).

Here, Plaintiff appears to claim that he was maliciously prosecuted, denied effective legal counsel, wrongly convicted, and denied Fifth and Fourteenth Amendment protections. But, Plaintiff has failed to show that his conviction or sentence has been invalidated. As such, *Heck*'s "favorable termination" rule applies and bars plaintiff's claims for damages and equitable relief arising from his criminal prosecution. For this reason, Plaintiff's claims related to his prosecution or subsequent imprisonment will be dismissed.[2]

3. *The Rooker-Feldman doctrine deprives this case of subject matter jurisdiction*

As properly identified by Magistrate Judge Carlson, this Court does not have jurisdiction to review the constitutionality of Plaintiff's detention at this time due to the implication of the *Rooker-Feldman* doctrine. At its core, the *Rooker-Feldman* doctrine provides that federal district courts lack subject matter jurisdiction to sit in direct review of state court decisions. *See Day*, 563 Fed. App'x at 880 (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). "The doctrine is derived from 28 U.S.C. §1257 which states that '[f]inal judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court. . . .'" *Gary v. Braddock Cemetery*, 517 F.3d 195, 200 (3d Cir. 2008). "Since Congress has never conferred a similar power of review on the United States District Courts, the Supreme Court

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[2] Notably, all claims raised by Plaintiff will be Heck barred because all claims raised by plaintiff seek to demonstrate the invalidity of his confinement and/or sentence and he has failed to show that his conviction has been invalidated.

has inferred that Congress did not intend to empower District Courts to review state court decisions." *Desi's Pizza, Inc. v. City of Wilkes Barre*, 321 F.3d 411, 419 (3d Cir. 2003). This doctrine applies equally to criminal and civil decisions rendered by a state court. In order for this Doctrine to apply, there are four requirements that 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 and Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010) (internal quotation omitted)..

Here, as suggested by Magistrate Judge Carlson, all four factors are met. Plaintiff was prosecuted and convicted in state court. Additionally, Plaintiff's current Complaint, filed after his conviction in state court, alleges in part that the judgment of the state court violated his constitutional rights[3], and thus caused injury. Finally, Plaintiff both expressly and implicitly requests this Court review the decision of the state court.[4] In fact, Plaintiff's complaint reads more like a habeas petition than an action under 42 U.S.C. §1983. *See Abdus Shahid v. Borough of Eddystone*, No. 11-2501, 2012 WL 1858954, at *8 (E.D. Pa. May 22, 2012) (explaining that a federal district court does not have jurisdiction when a Plaintiff brings an action under 42 U.S.C. §1983 seeking to reopen a state criminal case to determine that he was wrongfully convicted). *Rooker-Feldman* will apply in this case

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[3] While not immediately clear from Plaintiff's Complaint, it appears that Plaintiff argues that the judgment itself violated the Due Process Clause of the Fifth Amendment, and that the Court's sentence was discriminatory.

[4] Plaintiff expressly requests that the court "release [his] wife and myself due to our illegal incarceration and constitutional violations." (Doc. 1, at ¶ VI.) Such relief would only be provided following a substantive review of the actions taken by the state court. This request is improperly brought under 42 U.S.C. §1983 instead of 28 U.S.C. §2254. Further, Plaintiff contends in his Complaint that no "appeal" has been pursued until this point because his lawyers feared they would appear "incompetent." This suggests that Plaintiff acknowledges this action is intended to serve as an appeal. (Doc. 1-1, at 23.)

because: (1) Plaintiff, having been convicted, was the "loser" in the state court proceeding; (2) Plaintiff is claiming injury resulted from the state court judgment; (3) Plaintiff filed his federal complaint after the state court rendered judgment; and (4) Plaintiff is inviting appellate review of the state court's judgment.

Plaintiff objects to Magistrate Judge Carlson's analysis and argues the *Rooker-Feldman* doctrine does not apply in this case. Thus, Plaintiff contends that this Court has jurisdiction to hear this matter. Specifically, Plaintiff states that he is "not asking [for] what would amount to appellate review, [but is] stating that [his] constitutional rights have been violated." (Doc. 7, at 5). Unfortunately, the relief explicitly requested by Plaintiff–namely release from custody–would require this Court to review the decision of the state trial court for reversible error. *See Bolus v. Cappy*, 141 Fed. App'x 63, 65 (3d Cir. 2005) ("In order for us to grant the injunction, we would have to conclude that the state court made an incorrect factual or legal determination regarding Plaintiff's custody and would have to effectively reverse his state decision or void its ruling.") This Court must not conduct such inquiry.

Because the *Rooker-Feldman* elements are satisfied, this Court must dismiss any claim raised by Plaintiff that improperly invites this Court to act as an appellate court within the Commonwealth of Pennsylvania. As such, Plaintiff's claims related to the conduct of the state court will be dismissed because this Court lacks subject matter jurisdiction.)

Notably, however, *Rooker-Feldman* will not bar claims related to injury caused by the actions of defendants that are separate and apart from the state-court judgment itself.[5] *See Great W. Mining and Mineral Co.*, 615 F.3d at 167; *see also Coles v. Granville*, 448 F.3d 853, 859 (6th Cir. 2006); *Davani v. Va. Dep't. of Transp.*, 434 F.3d 712, 719 (4th Cir. 2006).

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[5] For example, a claim made by Plaintiff that the state court judgment itself constituted a Fifth Amendment violation is barred. But, a claim that a prosecutor is liable under a theory of malicious prosecution is not barred by *Rooker-Feldman* because in this scenario the Plaintiff was not harmed by the state court judgment itself. Rather, the Plaintiff would be claiming injury due to the actions of the defendants. *See generally, Great W. Mining and Mineral Co.*, 615 F.3d at 166-68 (discussing the injury requirement of the *Rooker-Feldman* doctrine).

Barring such claims would violate the principles of *Rooker-Feldman*. Therefore, Magistrate Judge Carlson's R&R is too broad where it suggests that *any* claim relating to the state criminal prosecution should be dismissed.

4. *The Younger Abstention Doctrine is inapplicable in this case*

Magistrate Judge Carlson recommends that this Court abstain from hearing Plaintiff's case because of the abstention doctrine established in *Younger v. Harris*, 401 U.S. 37 (1971). At bottom, the *Younger* abstention doctrine provides that "a federal district court has the discretion to abstain from exercising jurisdiction over a particular claim where resolution of that claim in federal court would offend principles of comity by interfering with an ongoing state proceeding." *Addiction Specialists, Inc. v. Twp. of Hampton*, 411 F.3d 399, 408 (3d Cir. 2005). As Magistrate Judge Carlson properly notes in his R&R, there are three factors that must be present for a district court to abstain under the *Younger* doctrine. *Kendall v. Russell*, 572 F.3d 126, 131 (3d Cir. 2009). One such requirement is that there be an ongoing state proceeding that is judicial in nature. *Id.* When Magistrate Judge Carlson issued his R&R on July 21, 2017, Plaintiff's appeal related to his state criminal conviction and sentence were still pending. But, on September 19, 2017, the Pennsylvania Supreme Court ended Plaintiff's appeal when the Court denied his Petition for Allowance of Appeal. Thus, Plaintiff's case is no longer "ongoing" in state court.

For this reason, Magistrate Judge Carlson's recommendation will not be adopted as it relates to the application of the *Younger* abstention doctrine.

5. *Prosecutors named in the Complaint are entitled to immunity*

Finally, Magistrate Judge Carlson recommends dismissing Plaintiff's claims against the prosecutors named in the Complaint because they are entitled to immunity. Magistrate Judge Carlson reasoned that it is well-settled that a prosecutor is provided absolute immunity for their acts as advocates. *See, e.g.*, *Burns v. Reed*, 500 U.S. 478, 485-86 (1991) (noting that prosecutors are provided absolute immunity for claims related to initiating or

conducting prosecutions.); *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993) (explaining that "acts undertaken by a prosecutor in preparing for initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the state, are entitled to the protections of absolute immunity.") In fact, the Supreme Court has made clear that prosecutors are absolutely immune from liability for "acts that are intimately associated with the judicial phase of the criminal process, such as initiating a prosecution and . . . presenting the State's case." *Yarris v. County of Delaware*, 465 F.3d 129, 135 (3d Cir. 2006) (citing *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976)). For this reason, it is Magistrate Judge Carlson's recommendation that this Court dismiss Plaintiff's claims against the prosecutors named in the Complaint.

Plaintiff has objected to this recommendation contending that the prosecutors named in the Complaint are not owed immunity. While unclear, it appears that Plaintiff claims that a prosecutor is not owed immunity when he prosecutes a criminal defendant or when he amends the charges against a criminal defendant during or prior to trial. Plaintiff is incorrect. Magistrate Judge Carlson was correct in his finding that it is well-settled that prosecutors acting as advocates are entitled to absolute immunity. Because the named prosecutors are owed absolute immunity related to the filing of charges and the prosecution of a criminal case, Magistrate Judge Carlson's recommendation will be adopted and Plaintiff's claims against the named prosecutors will be dismissed.

C. Leave to Amend

The precedent in the Third Circuit is clear: "in civil right cases, district courts must offer amendment–irrespective of whether it is requested–when dismissing a case for failure to state a claim unless doing so would be inequitable or futile." *Fletcher-Harlee Corp. v. Pote Concrete Contractors*, 482 F.3d 247, 251 (3d Cir. 2007); *see, e.g.*, *Darr v. Wolfe*, 767 F.2d 79, 80-81 (3d Cir. 1985); *Kauffman v. Moss*, 420 F.2d 1270, 1276 (3d Cir. 1970)

(specifically noting the leniency provided to pro se filers). In this case, the Complaint fails to state a single viable civil rights claim due to profound defects in both form and substance. Further, the proposed amendment to Plaintiff's Complaint (Doc. 9) would not cure any of its fundamental defects. For these reasons, leave to amend would be futile. Therefore, Plaintiff's Motion for Leave to Amend will be dismissed. *See Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004).

IV. Conclusion

For the above stated reasons, Plaintiff's Motion for Leave to Proceed *in forma pauperis* will be granted, but Plaintiff's Complaint will be dismissed in its entirety. Further, because amendment would be futile, Plaintiff's Motion for Leave to Amend will be denied.

An appropriate order follows.

September 29, 2017
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

015

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN TEDESCO and TINA TEDESCO, Plaintiffs, v. MONROE COUNTY, et. al., Defendants.	CIVIL ACTION NO. 3:17-CV-01282 (JUDGE CAPUTO) (MAGISTRATE JUDGE CARLSON)

ORDER

NOW, this 29th day of September, 2017, **IT IS HEREBY ORDERED** that Magistrate Judge Carlson's Report and Recommendation (Doc. 6) is **ADOPTED** as modified in the accompanying memorandum:

(1) Plaintiff's Motion to Proceed *in forma pauperis* (Doc. 3) is **GRANTED**.

(2) Plaintiff's Complaint (Doc. 1), in its entirety, is **DISMISSED with prejudice**.

(3) Plaintiff's Motion for Leave to Amend (Docs. 8-9) is **DENIED**.

(4) The Clerk of Court is directed to mark this case as **CLOSED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

EXHIBITS

E

E1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN TEDESCO and TINA TEDESCO,	:	**Civil No. 3:17-CV-1282**
Plaintiff	:	
v.	:	**(Judge Caputo)**
MONROE COUNTY, et al.,	:	**(Magistrate Judge Carlson)**
Defendants	:	

REPORT AND RECOMMENDATION

I. Factual Background

This *pro se* prisoner complaint comes before us for a legally-required screening review. In this case the plaintiffs, two convicted killers,[1] seek to sue the

[1] We note that while John and Tina Tedesco are both named as plaintiffs in this lawsuit, it is evident that the complaint was solely prepared by John Tedesco. This fact raises yet another threshold legal obstacle in this case. **Error! Main Document Only.** As a non-lawyer, Mr. Tedesco is only authorized to represent his own interests in this case and is not empowered to "represent" the interests of other unrepresented parties. This rule is, first, prescribed by statute: "In all courts of the United States the ***parties may plead and conduct their own cases personally or by counsel*** as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654 (emphasis added). In keeping with this statutory language, the Third Circuit Court of Appeals has instructed that "a nonlawyer appearing pro se [is] not entitled to play the role of attorney for other pro se parties in federal court." Osei-Afriyie by Osei-Afriyie v. Med. Coll. of Pennsylvania, 937 F.2d 876, 882 (3d Cir. 1991) (holding father not authorized to represent the legal interests of his children in federal court, and vacating judgment that had been entered against unrepresented children); see also Lutz v. Lavelle, 809 F. Supp. 323, 325 (M.D. Pa. 1991) ("It is a well established principle that while a

prosecutors who convicted them of the neglect and murder of a disabled elderly woman, and the county which employed these prosecutors.

The background of the tragic death of the Tedescos' victim is outlined in the recent opinion of the Pennsylvania Superior Court affirming the conviction of Tina Tedesco. As the court observed:

> [Tedesco] and her husband had a relationship with their victim, Barbara Rabins, for approximately twelve years preceding Ms. Rabins' August 18, 2011 death at the age of 70. Ms. Rabins was a mentally and physically disabled individual who was estranged from her out-of-state family and whose father established a trust fund for her before his death. [Tedesco] and her husband received $2,000 per month from the trust for rent and incidental expenses as well as money from the trust to pay for their utility bills. In addition, [Tedesco], as payee, received Ms. Rabins' $1,300 monthly social security checks. Also, [Tedesco] and her husband were designated beneficiaries of $100,000 life insurance policy insuring Ms. Rabins and identifying her as their aunt. In 2010, Ms. Rabins suffered a stroke and was admitted to a rehabilitation facility. The Tedescos insisted that she be released to their care shortly thereafter and Ms. Rabins was discharged against medical advice. At the time of her discharge on July 14, 2010, Ms. Rabins weighed 219 pounds. At the time of her August 2011 death, which was caused by "hypernatremic dehydration with aspiration of food bolus," *i.e.*, dehydration with high sodium levels and choking (on a piece of cheese), Ms. Rabins weighed 116 pounds. An autopsy revealed that, at the time of her death, Ms. Rabins was wearing an adult disposable diaper that was wet with urine, feces and blood. She suffered from pressure ulcers on her chest, thighs, legs, feet, right elbow and forearm, back, lower back, buttocks and hand. Photographs taken at the autopsy showed

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layman may represent himself with respect to his individual claims, he is not entitled to act as an attorney for others in a federal court."); cf. Fed. R. Civ. P. 11(a) (requiring that all pleadings, motions, and submissions to federal courts be signed by an attorney of record, or by the unrepresented party himself or herself).

> that her arms and hands were dirty and covered in feces, with feces under her overgrown fingernails that were an inch to an inch and a half long on one hand. Ultimately, the doctor who conducted the autopsy announced that the manner of death was neglect of a care dependent person, fitting the medical definition of homicide. As a result, the Pennsylvania State Police initiated an investigation into her death, including a search of the Tedescos' home. [Tedesco] and her husband both voluntarily gave statements to the police. The Tedescos contended that they cared for Ms. Rabins in their home but evidence suggested that she was actually living in an apartment with a roommate, Tom Miller, who was hospitalized in a V.A. hospital beginning in March of 2011 and beyond Ms. Rabins' death. A search of the apartment revealed an apartment in a filthy condition that contained wheelchairs, walkers, and a blanket and couch that were soiled.
>
> Commonwealth v. Tedesco, No. 1053 EDA 2016, 2017 WL 1181226, at *1–2 (Pa. Super. Ct. Mar. 20, 2017).

Despite their convictions for third degree murder, neglect of care-dependent person, theft by unlawful taking, theft by failing to make required disposition of funds received, and tampering with/fabricating physical evidence, see Commonwealth v. Tedesco, No. 1053 EDA 2016, 2017 WL 1181226, at *1 (Pa. Super. Ct. Mar. 20, 2017), the Tedescos have now filed from prison this civil complaint against the prosecutors in this case, alleging that their conviction on this array of offenses arising out of the fatal neglect of an elderly person entrusted to their care violated their federal civil rights. As recompense, the Tedescos demand their immediate release from custody and compensation of at least $5,000,000. (Doc. 1.)

E4

John Tedesco has filed a motion seeking leave to proceed *in forma pauperis*. (Doc. 3.) We will GRANT this request to proceed *in forma pauperis*, but for the reasons set forth below, we recommend that the complaint be dismissed.

II. Discussion

A. Screening of *Pro Se* Complaints–Standard of Review

This Court has an on-going statutory obligation to conduct a preliminary review of *pro se* complaints brought by plaintiffs given leave to proceed *in forma pauperis* in cases which seek redress against government officials. See 28 U.S.C. § 1915(e)(2)(B)(ii). Likewise we are legally required to screen and review *pro se* prisoner complaints pursuant to 28 U.S.C. § 1915A which provides, in pertinent part:

> **(a) Screening**. - The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
>
> **(b) Grounds for dismissal**. - On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint-
>
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

E5

Specifically, we are obliged to review the complaint to determine whether any claims are frivolous, malicious, or fail to state a claim upon which relief may be granted. This statutory text mirrors the language of Rule 12(b)(6) of the Federal Rules of Civil Procedure, which provides that a complaint should be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

With respect to this benchmark standard for legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

> Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) continuing with our opinion in Phillips [v. County of Allegheny, 515 F.3d 224, 230 (3d Cir. 2008)]and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal –U.S.–, 129 S.Ct. 1937 (2009) pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the Court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox Rothschild, O'Brien & Frankel,

Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally a court need not "assume that a ... plaintiff can prove facts that the ... plaintiff has not alleged." Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action a plaintiff must provide some factual grounds for relief which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do." Id. at 555. "Factual allegations must be enough to raise a right to relief above the speculative level." Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court held that, when considering a motion to dismiss, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 678. Rather, in conducting a review of the adequacy of complaint, the Supreme Court has advised trial courts that they must:

> [B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id. at 679.

Thus, following Twombly and Iqbal a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a complaint must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

> [A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claim for relief." In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

As the court of appeals has observed: "The Supreme Court in Twombly set forth the 'plausibility' standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege

'enough facts to state a claim to relief that is plausible on its face.' Twombly, 550 U.S. at 570, 127 S.Ct. 1955. A complaint satisfies the plausibility standard when the factual pleadings 'allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' Iqbal, 129 S.Ct. at 1949 (citing Twombly, 550 U.S. at 556, 127 S.Ct. 1955). This standard requires showing 'more than a sheer possibility that a defendant has acted unlawfully.' Id. A complaint which pleads facts 'merely consistent with' a defendant's liability, [ ] 'stops short of the line between possibility and plausibility of "entitlement of relief." ' " Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011) cert. denied, 132 S. Ct. 1861, 182 L. Ed. 2d 644 (U.S. 2012).

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis: "First, the court must 'tak[e] note of the elements a plaintiff must plead to state a claim.' Iqbal, 129 S.Ct. at 1947. Second, the court should identify allegations that, 'because they are no more than conclusions, are not entitled to the assumption of truth.' Id. at 1950. 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.' Id." Santiago v. Warminster Tp., 629 F.3d 121, 130 (3d Cir. 2010).

In addition to these pleading rules, a civil complaint must comply with the requirements of Rule 8(a) of the Federal Rule of Civil Procedure which defines what a complaint should say and provides that:

> (a) A pleading that states a claim for relief must contain (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Thus, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a *pro se* plaintiff's complaint must recite factual allegations which are sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action.

Judged against these legal guideposts, for the reasons set forth below it is recommended that this complaint be dismissed.

B. <u>This Complaint Fails to State A Claim Upon Which Relief Can Be Granted</u>

In this case, dismissal of this complaint is warranted because the Tedescos' pleading fails on multiple scores to meet the substantive standards required by law, in that it does not set forth a "short and plain" statement of a cognizable violation

of some right guaranteed by the Constitution or laws of the United States. Indeed, this complaint is fatally flawed in at least four separate respects. The flaws in the *pro se* complaint lodged by the Tedescos are discussed separately below.

1. **The Plaintiffs May Not Sue State Officials for Their Roles in a Criminal Case Which Resulted in Their Conviction.**

At the outset, this complaint fails because it rests, in part, on a fatally flawed legal premise. At bottom, the Tedescos seek to bring a civil rights action against state officials premised on claims arising out of a state criminal case, a case that resulted in a state conviction which has not otherwise been set aside or overturned.

This they cannot do. Quite the contrary, it is well-settled that an essential element of a civil rights action in this particular setting is that the underlying criminal case must have been terminated in favor of the civil rights claimant. Therefore, where, as here, the civil rights plaintiff brings a claim based upon a state case that resulted in a conviction, the plaintiff's claim fails as a matter of law. The United States Court of Appeals for the Third Circuit has aptly observed in this regard:

> The Supreme Court has "repeatedly noted that 42 U.S.C. § 1983 creates a species of tort liability." Heck v. Humphrey, 512 U.S. 477, 483(1994) (quoting Memphis Community School Dist. v. Stachura, 477 U.S. 299, 305(1986) (internal quotation marks omitted)). Given this close relation between § 1983 and tort liability, the Supreme Court has said that the common law of torts, "defining the elements of

> damages and the prerequisites for their recovery, provide[s] the appropriate starting point for inquiry under § 1983 as well." Heck, 512 U.S. at 483(quoting Carey v. Piphus, 435 U.S. 247, 257-58,(1978)). The Supreme Court applied this rule in Heck to an inmate's § 1983 suit, which alleged that county prosecutors and a state police officer destroyed evidence, used an unlawful voice identification procedure, and engaged in other misconduct. In deciding whether the inmate could state a claim for those alleged violations, the Supreme Court asked what common-law cause of action was the closest to the inmate's claim and concluded that "malicious prosecution provides the closest analogy ... because unlike the related cause of action for false arrest or imprisonment, it permits damages for confinement imposed pursuant to legal process." Heck, 512 U.S. at 484. Looking to the elements of malicious prosecution, the Court held that the inmate's claim could not proceed because one requirement of malicious prosecution is that the prior criminal proceedings must have terminated in the plaintiff's favor, and the inmate in Heck had not successfully challenged his criminal conviction. Id.

Hector v. Watt, 235 F.3d 154, 155-156 (3d Cir. 2000).

In this case it is evident from the Tedescos' complaint that their prior state criminal prosecution did not end favorably since it is reported that they were convicted of third degree murder, neglect of care-dependent person, theft by unlawful taking, theft by failing to make required disposition of funds received, and tampering with/fabricating physical evidence and sentenced to an aggregate term of incarceration of not less than 183 (15.25 years) months and not more than 366 months (30.5 years). Commonwealth v. Tedesco, No. 1053 EDA 2016, 2017 WL 1181226, at *1 (Pa. Super. Ct. Mar. 20, 2017). Since "one requirement of

malicious prosecution is that the prior criminal proceedings must have terminated in the plaintiff's favor", Hector v. Watt, 235 F.3d 154, 155-156 (3d Cir. 2000), the immutable fact of the Tedescos' conviction presently defeats any federal civil rights claims based upon the conduct of this state case, and compels dismissal of these claims. In short, this complaint is based upon the fundamentally flawed legal premise that the Tedescos can sue state federal officials for civil rights violations arising out of this state prosecution even though they stand convicted of the crimes of murderous neglect of a disabled person charged against them. Since this premise is simply incorrect, this complaint fails as a matter of law.

2. The Rooker-Feldman Doctrine Also Bars Consideration of This Case

Moreover, at this juncture, where the Tedescos have filed a civil action which invites this court to reject findings made state courts in their criminal case, the plaintiffs also necessarily urge us to sit as a state appellate court and review, re-examine and reject these state court rulings in this state case. This we cannot do. Indeed, the United States Supreme Court has spoken to this issue and has announced a rule, the Rooker-Feldman doctrine, which compels federal district courts to decline invitations to conduct what amounts to appellate review of state trial court decisions. As described by the Third Circuit:

> That doctrine takes its name from the two Supreme Court cases that gave rise to the doctrine. Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The doctrine is derived from 28 U.S.C. § 1257 which states that "[f]inal judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court....". See also Desi's Pizza, Inc. v. City of Wilkes Barre, 321 F.3d 411, 419 (3d Cir.2003). "Since Congress has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not intend to empower District Courts to review state court decisions." Desi's Pizza, 321 F.3d at 419.

Gary v. Braddock Cemetery, 517 F.3d 195, 200 (3d Cir. 2008).

Because federal district courts are not empowered by law to sit as reviewing courts, reexamining state court decisions, "[t]he Rooker-Feldman doctrine deprives a federal district court of jurisdiction in some circumstances to review a state court adjudication." Turner v. Crawford Square Apartments III, LLP,, 449 F.3d 542, 547 (3d Cir. 2006). Cases construing this jurisdictional limit on the power of federal courts have quite appropriately:

> [E]mphasized the narrow scope of the Rooker-Feldman doctrine, holding that it "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."[Exxon Mobil Corp. v. Saudi Basic Industries Corp.], 544 U.S. at 284, 125 S.Ct. at 1521-22; see also Lance v. Dennis, 546 U.S. 459, ----, 126 S.Ct. 1198, 1201, 163 L.Ed.2d 1059 (2006)

Id.

However, even within these narrowly drawn confines, it has been consistently recognized that the Rooker-Feldman doctrine prevents federal judges from considering lawsuits "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments," particularly where those lawsuits necessarily require us to re-examine the outcome of this state criminal case. As the United States Court of Appeals for the Third Circuit has observed in dismissing a similar lawsuit which sought to make a federal case out of state court rulings made in litigation relating to a prior state criminal case:

> The Rooker-Feldman doctrine divests federal courts of jurisdiction "if the relief requested effectively would reverse a state court decision or void its ruling." Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 192 (3d Cir.2006) (internal citations omitted). The doctrine occupies "narrow ground." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). It applies only where "the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." Id. at 291, 125 S.Ct. 1517. . . . Ordering the relief he seeks, however, would require the District Court to effectively determine that the state courts' jurisdictional determinations were improper. Therefore, [Plaintiff] Sullivan's claims are barred by the Rooker-Feldman doctrine. To the extent Sullivan was not "appealing" to the District Court, but instead was attempting to relitigate issues previously determined by the Pennsylvania courts, review is barred by

> res judicata. See Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc., 571 F.3d 299, 310 (3d Cir.2009) (describing conditions in Pennsylvania under which collateral estoppel will bar a subsequent claim).

Sullivan v. Linebaugh, 362 F. App'x 248, 249-50 (3d Cir. 2010).

This principle applies here. Thus, in this case, as in Sullivan, the Rooker-Feldman and *res judicata* doctrines combine to compel dismissal of this case, to the extent that the Tedescos improperly invite us to act as a Pennsylvania appellate court for matters and claims relating to a state litigation arising out of the plaintiffs' state criminal prosecution.

3. This Court Should Abstain From Ruling Upon Claims for Injunctive Relief in This State Case

Further, this complaint also seemingly invites us to issue wide-ranging injunctions in this pending state criminal case. Indeed, the Tedescos' complaint calls for us to order their immediate and unconditional release on these murder charges. To the extent that this complaint invites this Court to enjoin aspects of this pending state case, and in effect calls upon us to dictate the result of this pending state case, this *pro se* pleading runs afoul of a settled tenet of federal law, the Younger abstention doctrine.

The Younger abstention doctrine is inspired by basic considerations of comity that are fundamental to our federal system of government. As defined by the courts: "Younger abstention is a legal doctrine granting federal courts discretion to abstain from exercising jurisdiction over a claim when resolution of that claim would interfere with an ongoing state proceeding. See Younger v. Harris, 401 U.S. 37, 41 (1971) ('[W]e have concluded that the judgment of the District Court, enjoining appellant Younger from prosecuting under these California statutes, must be reversed as a violation of the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances.')." Kendall v. Russell, 572 F.3d 126, 130 (3d Cir. 2009).

This doctrine, which is informed by principles of comity, is also guided by these same principles in its application. As the United States Court of Appeals for the Third Circuit has observed:

> "A federal district court has discretion to abstain from exercising jurisdiction over a particular claim where resolution of that claim in federal court would offend principles of comity by interfering with an ongoing state proceeding." Addiction Specialists, Inc. v. Twp. of Hampton, 411 F.3d 399, 408 (3d Cir.2005) (citing Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)). As noted earlier, the Younger doctrine allows a district court to abstain, but that discretion can properly be exercised only when (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims. Matusow v. Trans-

County Title Agency, LLC, 545 F.3d 241, 248 (3d Cir.2008). Kendall v. Russell, 572 F.3d at 131.

Once these three legal requirements for Younger abstention are met, the decision to abstain rests in the sound discretion of the district court and will not be disturbed absent an abuse of that discretion. Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319, 325 (3d Cir. 2004). Moreover, applying these standards, federal courts frequently abstain from hearing matters which necessarily interfere with on-going state criminal cases. Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319 (3d Cir. 2004); Zahl v. Harper, 282 F.3d 204 (3d Cir. 2002).

In this case, the plaintiffs' *pro se* complaint reveals that all of the legal prerequisites for Younger abstention are present here with respect to those claims that seek to enjoin an on-going state criminal case and order the verdict in that case set aside. First, it is evident that there are state proceedings in this case. Second, it is also apparent that those proceedings afford the Tedescos a full and fair opportunity to litigate the issues raised in this lawsuit in this state case. See Sullivan v. Linebaugh, 362 F. App'x 248, 249-50 (3d Cir. 2010). Finally, it is clear that the state proceedings implicate important state interests, since these matters involve state criminal law enforcement, an issue of paramount importance to the

state. See, e.g., Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319 (3d Cir. 2004); Zahl v. Harper, 282 F.3d 204 (3d Cir. 2002).

Since the legal requirements for Younger abstention are fully met here, the decision to abstain rests in the sound discretion of this Court. Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319, 325 (3d Cir. 2004). However, given the important state interest in enforcement of its criminal laws, and recognizing that the state courts are prepared to fully address the merits of these matters, we believe that the proper exercise of this discretion weighs in favor of abstention and dismissal of this federal case at the present time. Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319 (3d Cir. 2004); Zahl v. Harper, 282 F.3d 204 (3d Cir. 2002).

4. The Prosecutors Named in This Complaint Are Also Entitled to Immunity From Liability

This complaint also fails with respect to the various state prosecutors named in that complaint. While the nature of his claims against these prosecutors is sometimes difficult to discern, it appears that the plaintiff s are suing the prosecutors, in part, for the very act of prosecuting them. This they may not do. It is well-settled that a criminal defendant may not sue prosecutors for their act of filing charges against him since such conduct is cloaked in immunity from civil

liability. The immunity conferred upon prosecutors for the quasi-judicial act of filing and bringing criminal charges is broad and sweeping:

> [T]he Supreme Court [has] held that state prosecutors are absolutely immune from liability under § 1983 for actions performed in a quasi-judicial role. This immunity extends to acts that are "intimately associated with the judicial phase of the criminal process," such as "initiating a prosecution and ... presenting the State's case." Court has noted numerous public policy considerations underlying its extension of absolute immunity to prosecutors: [S]uits against prosecutors for initiating and conducting prosecutions "could be expected with some frequency, for a defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to the State's advocate"; lawsuits would divert prosecutors' attention and energy away from their important duty of enforcing the criminal law; prosecutors would have more difficulty than other officials in meeting the standards for qualified immunity; and potential liability "would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system." ... [T]here are other checks on prosecutorial misconduct, including the criminal law and professional discipline.

Yarris v. County of Delaware, 465 F.3d 129, 135 (3d Cir. 2006)(citations omitted).

Here, we find that this complaint largely seeks to hold prosecutors personally liable for their act of prosecuting the plaintiffs. Since these officials are immune from personal, individual liability for their actions in bringing this criminal case, the Tedescos' claims against these defendants arising out of their decision to charge and convict them for third degree murder, neglect of care-dependent person, theft by unlawful taking, theft by failing to make required

disposition of funds received, and tampering with/fabricating physical evidence should also be dismissed.

Finally, we recognize that in civil rights cases *pro se* plaintiffs often should be afforded an opportunity to amend a complaint before the complaint is dismissed in its entirety, See Fletcher-Hardee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007), unless granting further leave to amend would be futile or result in undue delay. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). In this case, the plaintiffs' complaint is, on its face, fundamentally flawed in multiple and profound ways which cannot be remedied given the immutable fact that the Tedescos were convicted of third degree murder, neglect of care-dependent person, theft by unlawful taking, theft by failing to make required disposition of funds received, and tampering with/fabricating physical evidence and sentenced to an aggregate term of incarceration of not less than 183 (15.25 years) months and not more than 366 months (30.5 years). Commonwealth v. Tedesco, No. 1053 EDA 2016, 2017 WL 1181226, at *1 (Pa. Super. Ct. Mar. 20, 2017). Since these *pro se* pleadings do not contain sufficient factual recitals to state a claim upon which relief may be granted, these allegations should be dismissed under 28 U.S.C. § 1915, and Rule 12(b)(6) of the Federal Rules of Civil Procedure. Moreover, since the factual and legal grounds proffered in support of the complaint make it clear

that the plaintiffs have no right to relief, granting further leave to amend would be futile or result in undue delay. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). Therefore it is recommended that this action be dismissed without further leave to amend.

III. Recommendation

Accordingly, for the foregoing reasons, the plaintiffs are GRANTED leave to proceed *in forma pauperis*, (Doc. 3) but IT IS RECOMMENDED that the plaintiffs' complaint be dismissed.

The plaintiff is further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

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Submitted this 21st day of July, 2017.

S/Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge