IN THE SUPREME COURT OF THE UNITED STATES

Sean M. Donahue

v.

Superior Court of Pennsylvania
Supreme Court of Pennsylvania
Commonwealth Of Pennsylvania

Appellate Counsels James Jude Karl & Matthew P. Kelly
Defense Counsel Frank C. Sluzis
Defense Counsel George Matangos
Defense Counsel Ryan Paddick

Pennsylvania Supreme Court Justice Max Baer
Pennsylvania Supreme Court Justice Christine Donohue
Pennsylvania Supreme Court Justice Kevin M. Dougherty
Pennsylvania Supreme Court Justice Sallie Updyke Mundy
Pennsylvania Supreme Court Chief Justice Thomas G. Saylor
Pennsylvania Supreme Court Justice Debra Todd
Pennsylvania Supreme Court Justice David N. Wecht
Unknown Pennsylvania Supreme Court Justices

Pennsylvania Superior Court Judge Mary Jane Bowes
Pennsylvania Superior Court Senior Judge James J. Fitzgerald
Pennsylvania Superior Court Judge H. Geoffrey Moulton, Jr
Pennsylvania Superior Court Judge Mary P. Murray
Pennsylvania Superior Court Senior Judge John L. Musmanno
Pennsylvania Superior Court Judge Jack A. Panella
Pennsylvania Superior Court Judge Jacqueline O. Shogan
Pennsylvania Superior Court Judge Victor P. Stabile
Pennsylvania Superior Court President Judge Correale F. Stevens
Unknown Pennsylvania Superior Court Judges

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Court of Common Pleas of Montgomery County Pennsylvania
Common Pleas Judge Joseph A. Smyth of Montgomery County Pennsylvania

Luzerne County Pennsylvania Court of Common Pleas

Court of Common Pleas of Dauphin County Pennsylvania

Dauphin County Pennsylvania District Attorney Francis T. Chardo
Dauphin County Pennsylvania Assistant/Deputy District Attorney Katie Lynn Adam
Dauphin County Pennsylvania District Attorney's Officer Ryan Hunter Lysaght

PA Attorney General Josh Shapiro
Pennsylvania Deputy Attorney General Bernard Ashley Anderson

US THIRD CIRCUIT DOCKET No.19-CV-1625

US MIDDLE DISTRICT OF PENNSYLVANIA DOCKET No. 3:18-CV-1531

REQUEST FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE US THIRD CIRCUIT

TO THE HONORABLE JUSTICE ALITO:

The *pro se* Petitioner RESPECTFULLY REQUEST an extension of time of 60 days to February 2, 2020 to file a *Petition for a Writ of Certiorari* to the US Court of Appeals for the Third Circuit.

The appeal at US THIRD CIRCUIT DOCKET No.19-CV-1625 was dismissed on September 5, 2019 for failure to prosecute. The Appellant became overwhelmed with *pro se* briefs and other related *pro se* filings due in numerous courts and mistook 8/19/19 (the due date) to be 9/18/19.

The Petitioner had briefings and other filings due in the US Supreme Court at Docket Nos. 19-5808, 19-6628, 19-6605, 19-6487, 19A491, 19A488; the PA Superior Court at Docket Nos. 920 MDA 2019, 1876 MDA 2018, 1179 MDA 2019, 1168 MDA 2018, 364 MDA 2019, ancillary filings due at other dockets in that court; the PA Supreme Court at Docket No. 36 MM 2019; US District Court at Docket Nos. 3:14-cv-01351, 3:19-cv-1859 (Middle District of Pennsylvania); numerous *pro se* filings at PA Luzerne County Docket CP-40-CR-3501-2012; numerous *pro se* filings at PA Dauphin County

Docket CP-22-CR-3716-2015; AND numerous cases in the PA State Civil Service Commission and had to prepare for an interview with the Pennsylvania Board of Pardons.

The matters raised at 3d Cir. Docket No. 19-1625 (the instant case) are merit worthy matters of federal interest that involve Pennsylvania's circumvention of federal preemption in US foreign policy, unauthorized international extraterritorial jurisdiction that was exercised by the Pennsylvania courts and the nonuniformity of the enforcement of US First Amendment rights in both the US Third Circuit and The US Second Circuit.

PREEMPTION IN FOREIGN POLICY & INTERNATIONAL EXTRATERRITORIAL JURISDICTION BY STATE COURTS

The issue of the constitutionality of the courts granting standing to a Hatian foreign national in *Commonwealth v. Descardes, 136 A.3d 493 (Pa. 2016)* continues to arise anew in numerous state proceedings involving the Petitioner. *Descardes* is cited regularly but is inapposite to proceedings involving US citizens simply because Descardes had no

standing in US courts. *(Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857); Hobbs v. Fogg, 6 Watts 553 (PA 1837))*

Descardes was an immigration case in disguise, similar to *U.S. v. Jose Mendoza-lopez and Angel Landeros-Quinones, 481 U.S. 828,107 S.Ct. 2148, 95 L.Ed.2d 772.* The issue at hand in *Descardes* was not a state level issue. It was an issue of foreign policy over which state courts have no jurisdiction whatsoever.

Because Descardes did not stand on US soil when he filed his petition, he could not be heard in a Pennsylvania court. Yet, he was heard. Because Descardes stood on foreign soil, he was was not protected by 42 U.S.C. §1981, which would have granted him standing in court equal to the Petitioner in the instant case if, and only if, Descardes stood on the sands of the US Gulf Coast when he filed his petition. However, because Descardes stood on Hatian sand at the time he filed his petition, because he was without a single legitimate contractual relationship with any party located within the US and because he remained on foreign soil throughout the adjudication of his

case, Descardes should have been considered "out of court" and out of luck.

To find hardened Reconstruction Era precedent as to why Descardes was "out of court", one need only search for Pennsylvania appellate court opinions arising from petitions for emancipation filed by slaves located in Brazil in the years between 1863 and 1888. One cannot find any Pennsylvania appellate court rulings because Pennsylvania courts had no jurisdiction over slave cases in Brazil circa the US Reconstruction Era. Since that era, there have been no changes in jurisdictional authority that have granted the Pennsylvania courts international jurisdiction over non white foreign nationals who reside in foreign lands and who have no contractual relationships with any party located within Pennsylvania or the US.

Pennsylvania courts were legitimately forbidden from allowing Descardes to seek redress on immigration matters through a state court process. Therefore, the state courts were required to not treat Descardes equal to a US Citizen under the law.

"(a)Statement of equal rights

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." (42 U.S.C. §1981)

Under these circumstances, any judicial precedent arising from the Pennsylvania court's ruling in *Descardes* are inapposite to cases involving US citizens and/or foreign nationals who stand on US soil.

What is more, numerous Pennsylvania Supreme Court rulings since *Descardes*, including *Commonwealth v. Delgros, 169 A.3d 538 (Pa. 2017) and Commonwealth v Holmes Commonwealth v. Holmes, 79 A.3d 562 (Pa. 2013)* have undermined the reasoning of both the Supreme Court of Pennsylvania in *Descardes* and the reasoning of Pennsylvania Superior Court Judge Bowes, whose reasoning the state court of last resort adopted in *Descardes*.

The *Descardes* case is flawed from the start simply because Descardes' circumstance, being a previously deported foreign national who stood on foreign soil at the time he filed his petition, meant that Descardes stood no chance at prevailing. The state courts had a secure

safety net in so much that Descardes had no standing to appeal his case to the federal courts. The case simply could not have been heard. This circumstance allowed the Pennsylvania appellate courts to carve out a judicial precedent, without the benefit of adversarial arguments from US citizens who are impacted much differently than are foreigners by the *Descardes* ruling.

The Pennsylvania Supreme Court rulings in *Holmes* and *Delgros* further undermine the reasoning of the US District Court in the instant case. The district court's reliance on *Com. v. Porter, 2018 WL 1404542, *1 n. 5 (Pa. Super. 2018)*[1] sidesteps the fact that *Homes* and *Delgros* essentially overruled *Descardes* in the Petitioner's "short sentence" circumstance. The district court cites the Superior Court of Pennsylvania's reliance on the Pennsylvania Statutory Construction Act of 1972, 1 Pa.C.S.A. §1921(b) in *Porter*. Yet the existence of that very statute is exactly why *Descardes* must be overruled and also why

[1] Appellant does not have access to WestLaw. *Com. v. Porter, Docket No. 1645 MDA 2017, J-S16018-18 (Pa. Super. 2018),* is available online at the Superior Court of Pennsylvania webpage and appears to be the very same case.

constitutionally infirm statutory language in the Pennsylvania Post Conviction Relief Act (PCRA) must be struck.

In *Holmes* and *Delgros* the Supreme Court of Pennaylvania acknowledged that some of the key statutory language within the Pennsylvania PCRA is infim under the US Constitution. When statutory language is infirm, the proper path of remedy is for courts to strike the language, not to carve out a way around it. (*Com. v. Bell, 516 A.2d 1172 (Pa. 1986);* the Pennsylvania Statutory Construction Act of 1972, 1 Pa.C.S.A. §1921(b)*; Scales v. United States, 367 U.S. 203 (1961); People v Golb, 23 N.Y.3d 455, PART III, Court of Appeals of New York 2014; Thornhill v. Alabama, 310 U.S. 88, 95 (1940)), Broadrick v. Oklahoma, 413 U.S. 601 (1973))*

Unlike in *Descardes*, the Petitioner is a US citizen who is entitled to review of all merit worthy matters, not a foreign national residing on forign soil who does not share the same rights as a US citizen. When foreign nationals, like Descardes, lose state level criminal cases, they serve their sentence and then, by way of deportation, enjoy immediate reinstatement of their status *quo ante.* When back in their homelands,

their convictions in the US impose no lasting collateral impact on their lives. The same is not true for a US citizen who loses a similar or lesser criminal case.

Descardes abused a state appellate process in an attempt to beat a federal deportation case. Had Descardes been ordered to appear at a state PCRA hearing, he would have gained reentry back into the US under the guise of an international extradition order demanding his appearance at a local county courthouse for a hearing on collateral matters. In *Descardes*, the state court ruled that there was no point in allowing Descardes back into the US to attend hearings because he could not win his post conviction appeal.

However, in a similar case, a state court may find that a previously deported individual may likely win a state level PCRA appeal and allow the foreign national entry back into the US. This circumstance may arise in a case in which a foreign national with multiple convictions in other states and who is otherwise barred from reentry into the US is granted an extradition order from a Pennsylvania court. Such an order from a state court would allow a previously

deported and federally barred foreign national to reenter the US to attend hearings at a county courthouse.

If such an individual has no outstanding criminal sentence, there would be no legitimate grounds for detaining that person within the custody of a jailhouse warden. Unless the state of Pennsylvania were willing to treat the individual as a prisoner of war, the federally barred individual would be free to travel about while ongoing collateral matters were being adjudicated. The individual could then simply disappear into the US population and assume a new identity. Such an allowance of reentry into the US by state courts would be an overreach of state court jurisdiction that greatly undermines US foreign policy.

If *Descardes* is allowed to stand, then previously deported foreign nationals can file belated appeals from abroad as a means of circumventing US immigration law, show their extradition orders at the gate and then disappear into the US population without ever showing up to the hearings for which an extradition order would be granted. What is more, foreign nationals who cannot gain entry or reentry into the US can commit a cybercrime from abroad that involves

Pennsylvania and then use that circumstance to gain entry or reentry into the US. Even if they are eventually deported by federal authorities, they can later file petitions in their state cases from abroad and then use those petitions as vehicles for gaining reentry into the US to attend hearings about their petitions. Because *Descardes* creates these possibilities, it must be overruled.

THE US FIRST AMENDMENT MUST MEAN THE SAME THING IN EACH CIRCUIT

Identical language in the Pennsylvania and the New York harassment statutes has been found to be violative under the First Amendment of the US Constitution in New York but acceptable under the US Constitution in Pennsylvania. Because neither the Pennsylvania courts nor the US courts will review this matter, it must be resolved by the Supreme Court of the United States, as was done in *Broadrick v. Oklahoma, 413 U.S. 601 (1973); Brandenburg v. Ohio, 395 U.S. 444, 447-8 (1969); Virginia v. Black, 538 U.S. 343, 359-360 (2003); Thornhill v. Alabama, 310 U.S. 88, 95 (1940). (Pennsylvania LABOR ANTI-INJUNCTION ACT of Jun. 2, 1937, P.L. 1198, No. 308; YEAR*

2010- 18 Pa C.S. §2709(e); People v Golb, 23 N.Y.3d 455, NY Slip Op 3426; 2014 WL 1883943)

PETITIONER HAS REPEATEDLY BEEN ABANDONED ON THESE MATTERS BY STATE LEVEL APPOINTED COUNSEL

While state trial courts have repeatedly appointed appellate counsel to represent the Petitioner in state matters, several counsel have repeatedly abandoned the Petitioner on these merit worthy issues and other merit worthy issues that have made it to state panel review despite Anders Briefs and Finely letters being filed by counsel. *(Ross v. David Varano; PA State Attorney General PA State Attorney General, Appellant, No. 12–2083, 712 F.3d 784 (2013); Commonwealth v. Sheehan 446 Pa. 35,*39-*41 (1971); US v. Morgan, 346 U.S. 502, 98 L. Ed. 248, (1954))*

The chronic abandonment of merit worthy arguments has prompted the Luzerne County state trial court to state that the Petitioner is better off representing himself. (*Strickland v. Washington, 466 U.S. 668 (1984); United States v. Cronic, 466 U.S. 648 (1984); Commonwealth v. Pierce, 515 Pa. 153, 527 A.2d 973, 975 (1987)*) In all

of his state cases, the Petitioner has repeatedly had to meet deadlines that appointed counsel have repeatedly intentionally attempted to allow to lapse. At times, counsel have succeeded in such sabotage.

The PETITIONER RESPECTFULLY requests an extension of time to file a Petition for a Writ of Certiorari in the underlying matter.

The Petitioner RESPECTFULLY REQUESTS a *de novo* review of the instant case.

The PETITIONER RESPECTFULLY requests that he be allowed to participate in oral argument for the instant case.

The PETITIONER RESPECTFULLY AVERS that a foreign national convicted of a greater crime should not enjoy a full selection of horses at the livery stable[2] while a US citizen who is convicted of a lesser offense is offered no horse at all.

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[2] The reinstatement of a foreign national's status *quo ante* by way of federal deportation is an easy path that a foreign national can follow through passivity. A comparable path is only available to a US citizen through the arduous, expensive, risky and tiresome path of expatriation, renunciation, foreign naturalization and then nationalization.

The forgoing is true in both fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

Nov 26, 2019
Date

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-1625

Sean Donahue v. Superior Court of Pennsylvania, et al

(U.S. District Court No.: 3-18-cv-01531)

ORDER

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

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

Dated: September 05, 2019
SLC/cc: Sean M. Donahue
Martha Gale, Esq.

CIVIL ACTION NO. 3:18-1531
UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF PENNSYLVANIA

Donahue v. Superior Court

Decided Feb 25, 2019

CIVIL ACTION NO. 3:18-1531

02-25-2019

SEAN M. DONAHUE, Plaintiff v. SUPERIOR COURT OF PENNSYLVANIA, et al., Defendants

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JUDGE MANNION

( ) **MEMORANDUM**

I. BACKGROUND

Pending before the court is the report and recommendation, (Doc. 21), of Judge Karoline Mehalchick recommending that this civil rights action, under 42 U.S.C. §1983, filed by *pro se* plaintiff Sean M. Donahue,[1] be dismissed in its entirety. Specifically, Judge Mehalchick recommends that the court grant plaintiff's motion to proceed *in forma pauperis*, (Doc. 2), for the sole purpose of filing his amended complaint, and thereafter grant the motion to dismiss plaintiff's amended complaint, (Doc. 11), and the State Court Defendants, (Doc. 12), since the claims against these defendants are barred by the Eleventh Amendment. Judge Mehalchick also
2 screened plaintiff's *2 amended complaint under 28 U.S.C. §1915 [2] and found that the remainder of plaintiff's amended complaint, raising various claims related to his criminal proceedings in state court,[3] should also be dismissed.

[1] Donahue repeatedly misidentifies Judge Mehalchick as the "magistrate." The title magistrate no longer exists in the U.S. Courts, having been changed from "magistrate" to "magistrate judge" in 1990. Judicial Improvements Act of 1990, 104 Stat. 5089, Pub. L. No. 101-650, §321 (1990) ("After the enactment of this Act, each United States magistrate . . . shall be known as a United States magistrate judge."). Donahue is reminded to use the correct title, in the future, when referring to Judge Mehalchick.

[2] Section 1915 of the United States Code, 28 U.S.C. §1915, requires the court to dismiss a plaintiff's case if, at any time, the court determines that the action is, "frivolous or malicious" or "fails to state a claim on which relief may be granted." §1915(e)(2)(B). *See* McCain v. Episcopal Hosp., 350 Fed.Appx. 602, 604 (3d Cir. 2009) (Section 1915(e)(2) applies to all *in forma pauperis* complaints, and not just to prisoners); Grayson v. Mayview State Hosp., 293 F3d 103, 110 n. 10 (3d Cir. 2002).

[3] Since Judge Mehalchick notes all of the criminal cases filed against plaintiff in her report, the court will not repeat them. The court also notes that the Criminal Dockets for plaintiff can be found at http://ujsportal.pacourts.us. The court can take judicial notice of the plaintiff's Criminal Dockets for purposes of defendants' instant motion as an official state court record and matters of public record. *See* Sands v. McCormick, 502 F.3d 263, 268 (3d Cir. 2007); Buck v. Hampton Twp. Sch. Dist., 452 F.3d 256, 260 (3d Cir. 2006).

On February 6, 2019, the court granted plaintiff's request for an extension of time to file his objections. The plaintiff filed his 56-page objections to the report and recommendation on February 7, 2019, with a copy of the transcript from his September 2017 sentencing in Luzerne County Court attached as an exhibit. (Doc. 24). The plaintiff then filed supplemental objections to the report on February 13, 2019. (Doc. 25).

After having reviewed the record, the court will **ADOPT** the report and recommendation. The amended complaint will be **DISMISSED IN ITS ENTIRETY** and, plaintiff's objections will be **OVERRULED.**
3 Further, this case will be **CLOSED.** *3

II. STANDARD OF REVIEW

When objections are timely filed to the report and recommendation of a magistrate judge, the district court must review *de novo* those portions of the report to which objections are made. 28 U.S.C. §636(b)(1); Brown v. Astrue, 649 F.3d 193, 195 (3d Cir. 2011). Although the standard is *de novo*, the extent of review is committed to the sound discretion of the district judge, and the court may rely on the recommendations of the magistrate judge to the extent it deems proper. Rieder v. Apfel, 115 F.Supp.2d 496, 499 (M.D.Pa. 2000) (citing United States v. Raddatz, 447 U.S. 667, 676 (1980)).

With respect to the portions of a report and recommendation to which no objections are made, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; *see also* Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.
4 *4 **III. DISCUSSION** [4]

[4] Judge Mehalchick states the correct standards regarding motions to dismiss under Fed.R.Civ.P. 12(b)(1), (6), and the background and procedurally history of this case, so they will not be repeated.

Initially, Judge Mehalchick correctly determines that plaintiff's proposed second amended complaint, (Docs. 14-1 & 14-2), should be **DISMISSED** as improperly filed, and hence the State Court Defendants' motion to dismiss this pleading, (Doc. 15), can be **DENIED AS MOOT.** Judge Mehalchick's report will be **ADOPTED** in this regard for the reasons stated therein. As such, plaintiff will be deemed proceeding on his original amended complaint. (Doc. 11).

Plaintiff names 11 defendants in his amended complaint and he raises claims for injunctive and declaratory relief. After a thorough analysis, Judge Mehalchick properly finds that "[plaintiff's] claims for prospective relief against the State Court Defendants, as well as against the Commonwealth of Pennsylvania, are barred by the doctrine of Eleventh Amendment immunity." In his objections to this finding, plaintiff largely repeats his contentions he raised in his brief in opposition to the State Court Defendants' motion to dismiss which were correctly addressed in the report.

Suffice to say that in Green v. Domestic Relations Section Court of Common Pleas Compliance Unit Montgomery County, 649 Fed.Appx. 178, 180 (3d Cir. 2016), the Third Circuit explained:

> [Plaintiff's] claims are precluded by the Eleventh Amendment, which generally immunizes Pennsylvania, its agencies, and its

5 *5

employees acting in their official capacities, from suits brought pursuant to 42 U.S.C. §1983 in federal court, *see* Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984); Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981). As explained by the District Court, none of the exceptions to Eleventh Amendment immunity applies here because Pennsylvania has not consented to suit in federal court, see 1 Pa. Cons.Stat. Ann. §2310; 42 Pa. Cons.Stat. Ann. §8521(b), and the defendant, [ ], is a sub-unit of Pennsylvania's unified judicial system. All courts in the unified judicial system are part of the Commonwealth and are entitled to Eleventh Amendment immunity. *See* Haybarger v. Lawrence County Adult Probation & Parole, 551 F.3d 193, 198 (3d Cir. 2008). Furthermore, "all components of the judicial branch of the Pennsylvania government are state entities and thus are not persons for section 1983 purposes." Callahan v. City of Philadelphia, 207 F.3d 668, 674 (3d Cir. 2000). *See also* Will v. Michigan Dep't of State Police, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) ("[A] State is not a 'person' within the meaning of §1983."

Therefore, all of plaintiff's claims for injunctive and declaratory relief against the State Court Defendants and the Commonwealth of Pennsylvania should be dismissed pursuant to Eleventh Amendment immunity. *See* Naranjo v. City of Philadelphia, 626 Fed.Appx. 353, 355-56 (3d Cir. 2015) (Third Circuit stated that "judges are generally immune from claims under §1983 for injunctive relief.") (citing Azubuko v. Royal, 443 F.3d 302, 304 (3d Cir. 2006)).

Accordingly, State Court Defendants' motion to dismiss, (Doc. 12), plaintiff's amended complaint, (Doc. 11), will be **GRANTED**, and plaintiff's claims against them for declaratory and injunctive relief will be **DISMISSED WITH PREJUDICE.** Further, all of plaintiff's claims against the Commonwealth of
6 Pennsylvania will be **DISMISSED WITH PREJUDICE** *6 pursuant to 28 U.S.C. §1915(e)(2)(B) (iii).

The court will now address plaintiff's claims for declaratory and injunctive relief against the remaining defendants. Judge Mehalchick has screened plaintiff's amended complaint as to the remaining defendants as required, *see* Naranjo, 626 Fed.Appx. a 355, and she finds that the amended complaint should be dismissed in its entirety as to these defendants.

At the outset, the plaintiff's requests for declaratory relief, regarding the two Pennsylvania criminal statutes under which he was convicted, as well as the Pennsylvania Post Conviction Relief Act ("PCRA"), must be dismissed. Dismissal is warranted regarding plaintiff's requests that his Dauphin County and Luzerne County convictions be declared unconstitutional and overturned based on his contention that the criminal statutes were applied to him in an overly broad manner.

Declaratory judgment is not meant to adjudicate alleged past unlawful activity as plaintiff seeks to do in this case. There is no question that plaintiff can request declaratory relief to remedy alleged ongoing violations of his constitutional rights, but, even though plaintiff was tried under the criminal statutes he challenges in his pleading, "he does not plausibly allege that he might be separately prosecuted under them again." *See* Blakeney v. Marsico, 340 Fed.Appx. 778, 780 (3d Cir. 2009)(Third Circuit held that to satisfy the standing requirement of Article III, a party seeking declaratory relief must allege that there is a substantial likelihood that he will
7 suffer harm in the future)(citations omitted). However, plaintiff is not entitled to declaratory relief *7 for alleged violations of his rights in the past, as he attempts to allege in this case. *Id.* (citing Brown v. Fauver, 819 F.2d 395, 399-400 (3d Cir. 1987)(Third Circuit directed district court to dismiss plaintiff's §1983 claim for prospective relief where he "has done nothing more than allege past exposure to unconstitutional state action").

The plaintiff's amended complaint is mainly an attempt to challenge his state court criminal convictions and " [d]eclaratory relief is not available to attack a criminal conviction." Willaman v. Ferentino, 173 Fed.Appx. 942 (3d Cir. 2006).[5] Therefore, plaintiff's requests for declaratory judgment regarding alleged past constitutional violations related to his state court criminal convictions and proceedings will be **DISMISSED WITH PREJUDICE.**

[5] The plaintiff's claims are likely further barred by the *Rooker-Feldman* doctrine.

Similarly, the *Younger* Abstention doctrine[6] bars plaintiff's requests for declaratory and injunctive relief regarding his ongoing state court appeals, both direct and collateral, including his PCRA proceedings. Under the *Younger* abstention doctrine, this court should not intervene in plaintiff's pending state criminal cases. The United States Supreme Court has recognized "a strong policy against federal intervention in state judicial
8 processes in the absence of great and immediate irreparable harm to a *8 federal plaintiff." Moore v. Sims, 442 U.S. 415, 423 (1979)(discussing the abstention doctrine articulated by the Supreme Court in Younger v. Harris, 401 U.S. 37 (1971), and determining that it applies to civil, as well as criminal, proceedings). Application of the *Younger* doctrine to §1983 civil rights actions in which the plaintiff is challenging the pending state court criminal charges filed against him and is alleging that the initiation and prosecution in the ongoing underlying state court action "violated and continues to violate his constitutional rights" is appropriate. *See* Smithson v. Rizzo, 2015 WL 1636143, *4; Jaffery v. Atlantic County Prosecutor's Office, 695 Fed.Appx. 38 (3d Cir. 2017).

[6] *Younger* abstention "is premised on the notion of comity, a principle of deference and 'proper respect' for state governmental functions in our federal system." Evans v. Court of Common Pleas, Delaware County, Pa., 959 F.2d 1227, 1234 (3d Cir. 1992).

Thus, *Younger* abstention is appropriate with respect to plaintiff's claims for prospective relief regarding his ongoing state proceedings. *See* Mikhail v. Kahn, 991 F. Supp. 2d 596, 632 (E.D.Pa. 2014) ("The *Younger* doctrine is as applicable to suits for declaratory relief as it is to the those for injunctive relief....") (citation omitted). As such, these claims will be **DISMISSED.**

Finally, Judge Mehalchick discusses plaintiff's challenges to the constitutionality of the Descardes decision.[7]
9 She states that "[plaintiff] *9 requests that the decision be reversed, or otherwise prohibited from being applied to his 'appeals, motions, and [PCRA] petitions' that stem from the Dauphin County and Luzerne County Convictions."

[7] *See* Com. v. Descardes, 635 Pa. 395, 136 A.3d 493 (2016). In Com. v. Porter, 2018 WL 1404542, *1 n. 5 (Pa. Super. 2018), the Superior Court noted that in Descardes, the defendant filed a PCRA petition after he completed his sentence and the Supreme Court "held that the petition 'should have been dismissed because, [the defendant] was no longer incarcerated at the time [the PCRA petition] was filed, he was ineligible for PCRA relief, and thus, ... the PCRA court ... lacked jurisdiction to entertain the petition.'" (citing Descardes, 136 A.3d at 497, 503). --------

In Porter, 2018 WL 1404542, *2, the Superior Court indicated that the clear language of the PCRA statute, 42 Pa.C.S.A. §9543(a)(1)(i), provides:

> To be eligible for relief [ ], the petitioner must plead and prove by a preponderance of the evidence all of the following: (1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is, at the time relief is granted: (i) currently serving a sentence of imprisonment, probation or parole for the crime; [or] (ii) awaiting execution of a sentence of death for the crime[.]"

Thus, subsection (i) clearly provides that a PCRA petitioner must prove he is "currently serving a sentence of imprisonment, probation or parole for the crime", and that if the petitioner does not meet this requirement he is not eligible for PCRA relief. *See* 42 Pa.C.S.A. §9543(a)(1)(i). Any other "interpretation would violate [PA's] Statutory Construction Act's mandate to give effect to clear and unambiguous words of a statute." Porter, 2018 WL 1404542, *3 (citing 1 Pa.C.S.A. §1921(a)-(b); Com. v. Williams, 84 A.3d 680, 687 (Pa. 2014) (PA Supreme Court stated "When the words of a statute are clear and unambiguous, we must give effect to those words."). *See also* Com. v. Castellanos, 2017 WL 1655390, *4 (Pa. Super. May 2, 2017) (Supreme Court held in Descardes that "where claim is cognizable under PCRA, PCRA is sole method to obtain collateral review"
10 and since "petitioner *10 was no longer serving probationary sentence when he filed petition, [ ] he was ineligible for PCRA relief", and "both PCRA court and Superior Court lacked jurisdiction to entertain petition").

To the extent that plaintiff is deemed as seeking this court to issue a writ of mandamus, under 28 U.S.C. §1361, to intervene in his state court proceedings by enjoining or prohibiting the application of the Descardes decision, this court has no authority to direct a state court or officer to perform any action or duty. *See* In re Wallace, 405 Fed.Appx. 580 (3d Cir. 2011) (federal court has no mandamus jurisdiction over a state court to compel it to dismiss criminal charges, or to direct it to perform any action or duty). Plaintiff argues in his supplemental objections that he does not seek mandamus, rather he seeks this court to find that the state courts exceeded their jurisdiction with respect to the Descardes decision since it dealt with immigration law which is preempted by the federal government. Thus, plaintiff contends that this court should enjoin the state courts from applying the Descardes decision to his state criminal cases. Regardless, since plaintiff seeks this court to preclude the state courts from applying the Descardes decision to his state criminal cases, this sounds in mandamus relief.

In order to obtain a writ of mandamus under 28 U.S.C. §1361, plaintiff must demonstrate that he "lack[s] adequate alternative means to obtain the relief he seek[s]" and he "carr[ies] the burden of showing that his right to issuance of the writ is 'clear and indisputable.'" Mallard v. United States District Court for the Southern
11 District of Iowa, 490 U.S. 296, 309, 109 S.Ct. *11 1814 (1989). Plaintiff has adequate state remedies available to him and he has failed to show he has a "clear and indisputable" right to the writ. Also, §1361 provides the federal courts with jurisdiction "in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to plaintiff." Id. None of the defendants are officers or employees of the United States or of a federal agency and, plaintiff does not allege any action or omission by a federal officer, employee or agency.

Therefore, to the extent plaintiff seeks this court to reverse and overturn the Descardes decision based on the void-for-vagueness doctrine, to strike the PCRA statute, and to enjoin the state court from applying this decision and this statute to his current and future state court appeals, his request is without merit. Thus, plaintiff's requests for injunctive and declaratory relief regarding the PCRA statute, and the Descardes decision and its progeny, will be **DISMISSED WITH PREJUDICE** as legally frivolous pursuant to 28 U.S.C. §1915(e)(2)(B) (i).

Additionally, insofar as plaintiff requests the court to appoint him counsel in his objections, (Doc. 24 at 1), his request will be **DENIED AS MOOT** since the court is dismissing his amended complaint in its entirety, as discussed above.

Finally, based on the above, it would be futile to grant plaintiff leave to file a second amended complaint. *See* Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc., 482 F.3d 247, 251 (3d Cir. 2007) ("[I]n civil rights
12 *12 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."); Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

IV. CONCLUSION

Based on the foregoing, the report and recommendation of Judge Mehalchick, (Doc. 21), is **ADOPTED IN ITS ENTIRETY**, and plaintiff's amended complaint, (Doc. 11), is **DISMISSED IN ITS ENTIRETY.** The objections filed by plaintiff, (Doc. 24), are **OVERRULED.** A separate order shall issue.

/s/ _____

MALACHY E. MANNION

United States District Judge Date: February 25, 2019
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casetext

IN THE SUPREME COURT OF THE UNITED STATES

Sean M. Donahue

v.

Superior Court of Pennsylvania
Supreme Court of Pennsylvania
Commonwealth Of Pennsylvania

Appellate Counsels James Jude Karl & Matthew P. Kelly
Defense Counsel Frank C. Sluzis
Defense Counsel George Matangos
Defense Counsel Ryan Paddick

Pennsylvania Supreme Court Justice Max Baer
Pennsylvania Supreme Court Justice Christine Donohue
Pennsylvania Supreme Court Justice Kevin M. Dougherty
Pennsylvania Supreme Court Justice Sallie Updyke Mundy
Pennsylvania Supreme Court Chief Justice Thomas G. Saylor
Pennsylvania Supreme Court Justice Debra Todd
Pennsylvania Supreme Court Justice David N. Wecht
Unknown Pennsylvania Supreme Court Justices

Pennsylvania Superior Court Judge Mary Jane Bowes
Pennsylvania Superior Court Senior Judge James J. Fitzgerald
Pennsylvania Superior Court Judge H. Geoffrey Moulton, Jr
Pennsylvania Superior Court Judge Mary P. Murray
Pennsylvania Superior Court Senior Judge John L. Musmanno
Pennsylvania Superior Court Judge Jack A. Panella
Pennsylvania Superior Court Judge Jacqueline O. Shogan
Pennsylvania Superior Court Judge Victor P. Stabile
Pennsylvania Superior Court President Judge Correale F. Stevens
Unknown Pennsylvania Superior Court Judges

Court of Common Pleas of Montgomery County Pennsylvania
Common Pleas Judge Joseph A. Smyth of Montgomery County Pennsylvania

Luzerne County Pennsylvania Court of Common Pleas
Court of Common Pleas of Dauphin County Pennsylvania

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Dauphin County Pennsylvania District Attorney's Officer Ryan Hunter Lysaght

PA Attorney General Josh Shapiro
Pennsylvania Deputy Attorney General Bernard Ashley Anderson

US THIRD CIRCUIT DOCKET No.19-CV-1625

US MIDDLE DISTRICT OF PENNSYLVANIA DOCKET No. 3:18-CV-1531

CERTIFICATE OF SERVICE

I verify that the below number of copies were served to the below indicated parties via USPS on the below indicated date.

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Respectfully Submitted,

Nov 26, 2019
Date

Sean M. Donahue
Sean M. Donahue