

ALD-016

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1863

HASAN SHAREEF,
Appellant

v.

CAPTAIN MOORE; WARDEN DEMORE; ASST. WARDEN FEMALE;
SGT. BLUMMING; CAPTAIN ZENTS; SGT. WAGNER; WARDEN SNEDDON;
MICHAEL SCUILLIO; JEFFREY KENGERSKI; MARK BOWMAN;
MAJOR BATSTER; DA OFFICE; WILLIAM T. FULLERTON, Judge;
OFFICER BRIAN PALKO

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2:18-cv-01494)
Magistrate Judge: Honorable Lisa P. Lenihan (by consent)

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
October 22, 2020

Before: MCKEE, GREENAWAY, JR., and BIBAS, Circuit Judges

(Opinion filed: April 22, 2021)

OPINION*

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

PER CURIAM

In October 2018, Appellant Hasan Shareef, a prisoner proceeding pro se, filed an action under 42 U.S.C. § 1983, naming as defendants several officials from Butler County Prison, the Butler County District Attorney's Office, Officer Palko, and Butler County Judge Fullerton. Shareef filed an amended complaint, which was ultimately deemed to be the operative filing.¹ His complaint and amended complaint are difficult to follow, but he generally alleged that his property and legal papers were destroyed while he was housed in Butler County Prison, that the Butler County District Attorney's Office and Officer Palko were responsible for his false arrest, and that Judge Fullerton acted improperly with regard to a warrant for his arrest. The District Court, acting through a Magistrate Judge on the parties' consent, granted the defendants' motions to dismiss for failure to state a claim, and Shareef timely appealed. For the reasons stated below, we will affirm the District Court's dismissal of the action.

We have jurisdiction under 28 U.S.C. § 1291, and exercise plenary review over the grant of a motion to dismiss pursuant to Rule 12(b)(6). See Newark Cab Ass'n v. City of Newark, 901 F.3d 146, 151 (3d Cir. 2018). To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quotation marks omitted). We accept all factual allegations in the complaint as true and

¹ Shareef was subsequently given several opportunities to amend his complaint but failed to comply with court orders in his attempts to do so. The District Court did not abuse its discretion in denying Shareef's requests to amend his complaint. Lake v. Arnold, 232 F.3d 360, 373 (3d Cir. 2000).

construe those facts in the light most favorable to the plaintiff. Fleisher v. Standard Ins. Co., 679 F.3d 116, 120 (3d Cir. 2012). We also construe Shareef's pro se complaint liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). We may summarily affirm if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

For substantially the reasons given in the District Court's opinion, we will affirm. As explained by the District Court, accepting as true Shareef's allegations that his property and legal papers were destroyed by Butler County Prison officials, Shareef received due process because he had access to and took advantage of an adequate post-deprivation remedy—the Pennsylvania D.O.C.'s grievance procedure. See Monroe v. Beard, 536 F.3d 198, 209-10 (3d Cir. 2008) (per curiam) (holding that prison officials that confiscated inmate legal materials did not violate the Due Process Clause in part because Pennsylvania D.O.C.'s grievance procedure provided an adequate post-deprivation remedy); Tillman v. Lebanon Cnty. Corr. Facility, 221 F.3d 410, 422 (3d Cir. 2000) (holding that the "plaintiff had an adequate postdeprivation remedy in the grievance program"). Furthermore, Shareef availed himself of another postdeprivation remedy by filing a motion in his criminal action seeking the return of his property. See Revell v. Port Auth. of N.Y., N.J., 598 F.3d 128, 139 (3d Cir. 2010) ("[Plaintiff] has failed to explain why New Jersey's state procedures to recover wrongfully seized property, such as the ability to move in the criminal action for return of his property or the ability to file a separate action for a writ of replevin, are insufficient."); cf. Hudson v.

Palmer, 468 U.S. 517, 535 (1984) (recognizing that state tort actions may provide an adequate postdeprivation remedy).

To the extent that Shareef intended to bring an access-to-courts claim based on the alleged destruction of his legal papers, this claim failed as well because he failed to identify a nonfrivolous or arguable legal claim he lost, or what was contained in his destroyed legal documents and how the destroyed documents would have led to a different outcome. See Christopher v. Harbury, 536 U.S. 403, 415-16 (2002); Lewis v. Casey, 518 U.S. 343, 351 (1996) (holding that a prisoner must show an actual injury to state a claim for denial of access to courts).

With regard to Shareef's false arrest claim, the District Court properly concluded that it was time-barred. Section 1983 claims are subject to Pennsylvania's two-year statute of limitations. Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 78-79 (3d Cir. 1989). For a claim of false arrest, the limitations period begins to run when the plaintiff is detained pursuant to legal process. Wallace v. Kato, 549 U.S. 384, 389-90 (2007). Shareef's allegations and other filings demonstrate that he was arrested and appeared for a preliminary hearing in May 2016, over two years before he initiated this action, in October 2018. Therefore, the District Court did not err in dismissing Shareef's false arrest claim as time-barred. Furthermore, Shareef's complaints contain no allegations that the Bucks County District Attorney's Office initiated a plan, policy or custom that violated Shareef's constitutional rights, and the District Attorney's Office was therefore

properly dismissed. See Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978); Reitz v. Cnty. of Bucks, 125 F.3d 139, 145 (3d Cir. 1997).²

Finally, the District Court correctly held that Judge Fullerton was entitled to judicial immunity against Shareef's allegations, which clearly pertained to actions taken in his judicial capacity. See Figueroa v. Blackburn, 208 F.3d 435, 440 (3d Cir. 2000) (citing Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam)).

For the foregoing reasons, we will summarily affirm the District Court's order granting the defendants' motions to dismiss and dismissing this action.

² We note that the Buck County District Attorney's Office was listed as a defendant in the complaint, but not in the amended complaint.

ALD-016

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1863

HASAN SHAREEF,
Appellant

v.

CAPTAIN MOORE; WARDEN DEMORE; ASST. WARDEN FEMALE; SGT.
BLUMMING; CAPTAIN ZENTS; SGT. WAGNER; WARDEN SNEDDON;
MICHAEL SCUILLIO; JEFFREY KENGERSKI; MARK BOWMAN;
MAJOR BATSTER; DA OFFICE; WILLIAM T. FULLERTON, Judge;
OFFICER BRIAN PALKO

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2:18-cv-01494)
Magistrate Judge: Honorable Lisa P. Lenihan (by consent)

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
October 22, 2020

Before: MCKEE, GREENAWAY, JR., and BIBAS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on October 22, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 25, 2020, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: April 22, 2021

ALD-016

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1863

HASAN SHAREEF,
Appellant

v.

CAPTAIN MOORE; WARDEN DEMORE; ASST. WARDEN FEMALE; SGT.
BLUMMING; CAPTAIN ZENTS; SGT. WAGNER; WARDEN SNEDDON;
MICHAEL SCUILLIO; JEFFREY KENGERSKI; MARK BOWMAN;
MAJOR BATSTER; DA OFFICE; WILLIAM T. FULLERTON, Judge;
OFFICER BRIAN PALKO

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2:18-cv-01494)
Magistrate Judge: Honorable Lisa P. Lenihan (by consent)

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
October 22, 2020

Before: MCKEE, GREENAWAY, JR., and BIBAS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on October 22, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 25, 2020, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: April 22, 2021

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMON WEALTH OF PENNSYLVANIA

C.A. NO.: 1714-2016

VS.

HASAN SHAREEF

BUTLER COUNTY
COUNT OF COMMON PLEAS

2018 DEC 27 AM 9:15

LISA WELAND L017
CLERK OF COURTS
ENTERED AND FILED

10 DAY POST SENTENCE MOTIONS

AND NOW COMES the Defendant, Hasan Shareef, by and through his attorneys, CINGOLANI & CINGOLANI, per Armand R. Cingolani, III, files the following: 10 Day Post Sentence Motions

1. Pursuant to Pa. Crim. Pro. Rule 720 a written post sentence motion shall be filed no later than 10 days after imposition of sentence. The Defendant was sentenced on December 20, 2018.

2. The Defendant requests a motion for Judgment of Acquittal or a Motion for a New Trial or a Motion to Modify Sentence.

3. Several Omnibus Motions for the Defendant were filed prior to appointed counsel of Armand R. Cingolani III. His prior counsels at the time filed but they were denied, as untimely filed. This is not the Defendant's fault as he had counsel and counsel knew the rules and Defendant should not be prejudged by the counsel's failure to file. If Defendant had an Omnibus hearing he would have been able to timely object to several issues and probably had the charges dismissed.

4. Defendant intended to object to the fact that District Justice William O'Donnell signed the warrant but the District Justice did not hear the case. The magistrate issuing the warrant or signing the case must hear the case. Under Pa.Crim. Pro.Rule 117, the President Judge must guarantee sufficient issuing authorities to provide services to the Defendant, to ensure service of warrants and preliminary arraignments and bail. The Defendant was denied a hearing before the impartial Magistrate William O'Donnell who set his case, but he was forced to have his case heard before District Judge William Fullerton although the jurisdiction was probably with Kevin O'Donnell. This error violates the rules as William O'Donnell issued the case and the address of the property to be searched was East Jefferson St, which should be in the city of Butler. All of these irregularities violate Pa. Crim. Pro. Rule 130. B.T. Fullerton should have been the issuing Magistrate but he was not.

5. Although Pa. Crim. Pro.Rule 130 seems to say any authority can hear a case it should be heard in the jurisdiction where it occurred by that magistrate. This is confirmed by Pa.Crim. Pro. Rule 131 whereby proceedings should be heard in the jurisdiction where they occurred. Therefore the charges should be thrown out for violating the rules.

6. No warrant was issued to arrest the Defendant in the house where he was arrested. The police broke into the house without knocking and bounded up the stairs to the attic. There was no reason to go up to the attic to search and seize the Defendant as he was just present and not a threat.

7. While it is true that Defendant broke a tiny window in the attic and cut his hand, supposedly in a peculiar claim of escape (although the window appears to be too small to enable a grown man to escape) that is not a probable cause to arrest him as escaping or running away are not grounds to justify an arrest.

8. No warrant was issued to arrest the Defendant in the first place so there is a prima facie violation of Pa.Crim. Pro. Rule 205, contents of a search warrant.

122

9. The police violated Pa. Crim. Pro. Rule 207 manner of entry in premises. They just burst in without giving the Defendant a chance to enter the door. This violated his citizenship rights under the 4th and 5th Amendments so the charges must be dismissed.

10. Pa.Crim. Pro. Rule 513 was violated because there was no arrest with a prior warrant based in probable cause.

11. The Defendant was denied his rights to have an Omnibus Pretrial hearing under Pa.Crim. Pro. Rule 581. The Defendant was denied a hearing because his counsel at the time did not file timely for a hearing, but that is ineffective assistance of counsel and while his counsel may be punished, this denial wrongfully prejudices the Defendant who requested an Omnibus Motion from all counsels. If the evidence has been suppressed, then the charges would have been dismissed and the Defendant could not be convicted at trial. An Omnibus hearing would have shown the Defendant could not be connected to the evidence against him, that the weapons and drugs were not his and that the police improperly searched his closed bags and containers without a warrant in violations of his rights.

12. The Defendant was denied a timely trial having been held in jail in an excess of a year pursuant to Pa.Crim. Pro. Rule 600. The charges should have been dismissed.

13. Under Pa.Crim. Pro. Rule 606 the Defendant challenges the sufficiency of the evidence by to motion for acquittal by this paragraph within 10 days of the trial.

14. The evidence, improperly obtained, was not in any case sufficient to convict the Defendant. The fact that guns and drugs were in the vicinity of Defendant in a home use by many criminals does not prove that the Defendant owned or controlled the drugs and weapons by mere presence with guns and drugs is not sufficient to prove the Defendant owned or controlled the weapons.

15. Under Pa.Crim. Pro. Rule 607 the Defendant challenges the weight of the evidence and requests a new trial. Neither the testimony of the officers nor the lab report

3 conclusively lead the jury to conclude the Defendant had ownership or possession or control of guns and drugs. The lab report did not prove the guns and drugs were his. The testimony of the officers just bolstered the belief that because guns and drugs were present in a room with Defendant that they must be his guns and drugs: This is a Post Hoc Propter Hoc argument, an assumption that the conclusion proves the premises which are not justified or proven true. The officers merely restated their beliefs.

6 16. The Defendant was denied his paperwork to prepare for trial because it was sequestered by the jail. He therefore could not properly prepare for trial because he was denied access to his case notes. As a result his winning plans turned into the defeat.

17. The Defendant was denied a fair trial because the jury discriminated against on the basis of his race. For example a juror declared his fear of Defendant and expressed fear that Defendant would hunt him down.

18. The Defendant was denied the opportunity by the Court to ask questions of the experts and the police.

7 19. The Court and the prosecutor objected to questions the Defendant wished to ask and the Court refused to let the Defendant ask the questions his own way. The Defendant was denied the opportunity to present competent evidence. Competent evidence was excluded.

6 20. The Defendant had prepared questions for the witnesses and the police and the District Attorney but since the papers were locked up the Defendant could not reconstruct his case. And so he was denied the right to participate in his trial.

8 21. The Court did not properly instruct jury on what constitutes constructive possession.

6 22. Evidence was not considered at trial by lawyer or Judge McCune that Captain Moore and Warden Conspired and took the Defendants legal law work needed to defend himself in trial in violation of Defendants Eighth and Fourteenth Amendment Rights.


23. Outside range of professional competence evidence was excluded.
24. Defendant's Counsel, committed misconduct in that evidence was admitted without proper defense or objection.
25. False arrest not going in front of Magistrate District Judge who issue warrant.
26. Admitting incompetent evidence and excluding competence evidence errors in Admission.
27. Defense counsel failed to subpoena Warden and Captain Moore in pretrial hearing and then again at trial to submit to cross examination about why they withheld or destroyed Defendant's evidence and trial preparation notes. Defendant believes they deliberately withheld or destroyed his trial papers.
28. Defendant objects that the court and defense counsel did not properly instruct jury about witness testimony lab reports and admissibility of evidence.
29. Counsel did not put motion as evidence for jury.
30. Need evidentiary hearing see if this true.
31. Prior counsel Cuebas did not put motion suppress the gun.
32. Police Maliciously and without probable cause procured criminal complaint against Defendant in violation of his fourth and fifth Amendment right against illegal search and seizure.
33. Conviction was by fraud or perjury or other undue means

34. Defendant's counsel erred in failing to demur to the charges at trial and therefore demurred in this post-trial motions.

35. The Defendant complains counsel did not argue the error complained of by appellant were prejudicial of his substantial rights to receive a fair and impartial trial because the verdict was palpably against evidence. Further counsel failed in not putting in due process hearing, and untimely filing for motion of suppression evidence and failing to file Motion to Reconsider Denial of Prior Motions.

WHEREFORE, the relief respectfully requested is reversal of the charges and a new trial.

Respectfully Submitted,


Armand R. Cingolani III

In the Courts of Common Pleas
of Butler County, Pennsylvania

Commonwealth of
Pennsylvania

vs
HASAN Shareef

DEC-25-18
LA-NO-CP-10-CR
1714-2016
592-2018

ALMANS
Advt
11-1-18
5-16-18
ca 592-118

Pro SE Supplemental Brief

2018 DEC 28 AM 9:55
BUTLER COUNTY
CLERK OF COURTS
ENTERED AND FILED
USA HELLAND LOTZ

I WAS CHARGE BEING CONTESTED IT TO JAIL CERTAIN
MOORE AND WARDEN DENORE FALSIFYING DOCUMENTS HAVE
MOVING IN Motion Return Property Hearing in Butler
County Nov-1-18 my Lawyer CINCINNATI NEVER CALLED
WARDEN down or Bowman or any other CO who said
this WAS TRUE I LOST my trial BECAUSE CO took
all my law work denied Access to Court violation
the process. Upon entering Jail Aug-20-18 CERTAIN
LYDE MOORE head WARDEN scullo MICHAEL MARK
BOWMAN Jeffery Koberoki took my law work
and Court motion Study notes. legal notes and Research
aid it was contested said while Search Law notes
employees of DOC began experience BARRING and
Irritated skin and BARRING eyes upon this interaction
Shareef Lawyer requested Shareef Law Notes Back
But 10/2/2018 WARDEN refused to give Back and
LYDE MOORE said destroyed property of Shareef
upon Information Shareef Lawyer Put in motion

Return of Property this day was sometime
Between Oct and Nov of 2018 on one of his
months Motion Return Property was heard none
of office of warden came to hearing
Violation Sheriff due process Rights that in
Affidavit that what help lose my trial
Informant in Notes to Assist my Lawyer
Violation of due process denied ~~Admission~~
illegal detentions no hear I need Mandamus Motion
Motion All now trial Bill Exception Motion Quash
Search Warrant Motion due process Hearing
Exclusionary Hearing Motion Recusal Retrial
Confidence hearing Preliminary Hearing Motion
Remanded Motion Sanction to get video
file of MDI of loss John Williams of
MDI whether E had Jurisdiction Fullerton
Not being in front judge who issue
WARRANT Motion demurr

Pick vs US 466 US 688
GWR 168 NW2d 745 Hyending
T9 pa Super 596 Chuff
Mose vs va 202 667
Whitaker vs va 279 66
Spax vs US 435-349
US vs Hudson 468-517
Castillo vs Cook C 990 Fed 304
W/RICK vs Missouri 686 SW2d 56

Morrell to NY2d 297
Frank vs Missouri 745 SW2d 22
Allen 388 Fed 147
Foy NY 882 NY2d 262
Dolores 1986 MISS 398 343

I am hearing but
they still refused give
Back to Evidence
Just hear say

MARKER

IN the Courts of Common Pleas
of BUTLER COUNTY, Pennsylvania

2018 DEC 16 AM 9:15
ENTERED AND FILED

BUTLER COUNTY
COURT OF COMMON PLEAS

Commonwealth of
Pennsylvania
vs

LA-NO-CR-18
CR 1714-2016

CP-10-CR 592-2018

HASAN Shaleef
Aka Red

11-30-18

Motion Bill exception and New trial

ON ground

New discovered Evidence not considered
At trial by lawyer or Judge McWINE
That Captain Moore and warden conspired
and took my legal law work to defend
my self in trial violation 8-14 Amendments
HANES vs KERNER 404 US 519 SPARK 435 US 349
Castillo vs Cook County 990 F.2d 304
Hudson vs US 468 517 Hedding 10w2 Mw2d
WYRICK vs 686 Sw2d 56 Mo 745

Out side RANGE of Professional Competence
Evidence was Exclude

3. Admitting In Competence Evidence and
Exclude Competence Evidence

ERROR in Admission & Rejection of Evidence

Lawyer denied calling witness head warden

and Captain Moore taking my law work

faking official documents saying it -

Conte Band Lie Abouts this

Lok 504 US 158 Commonwealth vs Meredith 148 Ky 106
Moore vs 202 667

3 Iowa 214 Olson Dobbs 47 NEB 353
Whitaker 217 Va 966

Hopkins Commonwealth 210 Ky 378

Commonwealth vs Litteral 3 SW 2d 775
Ky App 1928

US Ogden US 112 Fed 523

unsel misconduct No Evidence should have
been Admitted with out Proper defense

1 Conviction WAS PROCURE by FRAUD or
Perjury or other UNLAWFUL means •

1 Motion DEMURRER dismissing

12 UNLESS the ERRORS complained of by
Counsel Appellant were PREJUDICIAL

3 of his SUBSTANTIAL RIGHTS •

13 NOT Receive a FAIR IMPARTIAL trial

3 BECAUSE the VERDICT PALPABLY AGAINST EVIDENCE

14 NOT Putting due PROCESS HEARING

Untimely motion to SUPPRESSING

Motion RECONSIDER

Motion CROSS EXAMINE

Witness WARDEN Clyde MOORE

1. Officers came in Room I was in for try
Jump out window get on floor Place Handcuffs
on me my person was wade cash no weapons
on me in plain view was Gun on Stair well
I was ~~no~~ where Buy Gun I was out window

2. I was in Attic in tight space No where
go could not get Buy Police No way SAYING
The Court Band is mind that in Room Florida vs
Bostick 501 US 1429

3. I been in jail for 19 months on Drug
Charges on Investigator between Clatsop
County and Butte County Never got out jail
No trial in Butte County yet just motion
1100 in trial Butte County

4. No Evidence in Preliminary Hearing Band
Case over No Court Report or Recording
Hearing Com is Woodruff 502 P2 359
Com vs EARLY 121 A3d 1132

gun in plain view are Defense weapons

UNDER *Com vs McHarris* 371 A2d 941

FIRE LAWYER IN trial Not Answer my Questions

Judge O. Donnell Not Neutral detached

Trooper Palko might forged warrant out on me IN 2016

State vs Hawkins 130 G2 APP 126 1973

for NOT INSTRUCT the JURY properly

Not put motion AS Evidence for JURY

Need evidentiary hearing see if this true
Hernandez

UBERS LAWYER NOT put motion suppress the GUNZ

Maliciously and without Probable Cause
Procured Criminal Complaint Against me

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

HASAN SHAREEF,

Plaintiff,

v.

CAPTAIN MOORE, WARDEN
DEMORE, ASST. WARDEN
FEMALE, SGT. BLUMMING,
CAPTAIN ZENTS, SGT. WAGNER,
WARDEN SNEDDON, MICHAEL
SCULLIO, JEFFREY KENGERSKI,
MARK BOWMAN, MAJOR
BATSTER, DA OFFICE, WILLIAM
FULLERTON, and OFFICER BRIAN
PALKO,

Defendants.

Civil Action No. 18 – 1494

Magistrate Judge Lisa Pupo Lenihan

ECF Nos. 96, 128, 131, 134, 170

MEMORANDUM OPINION AND ORDER

Currently pending before the Court are Motions to Dismiss filed by the following Defendants: (1) Batster, Blumming, Bowman, DeMore, Female, Kengerski, Moore, Scullio, Sneddon, Wagner and Zents (collectively “Butler County Prison Defendants”) (ECF No. 96); (2) DA Office (“Butler County District Attorney’s Office”) (ECF No. 128); (3) Officer Brian Palko (“Officer Palko”) (ECF No. 131); and (4) William Fullerton (“Judge Fullerton”) (ECF No. 134). Additionally, Plaintiff has filed a Motion for Summary Judgment. (ECF No. 170.) For the following reasons, the Motions to Dismiss will be granted only to the extent they seek dismissal

for Plaintiff's failure to state a claim upon which relief may be granted; and Plaintiff's Motion for Summary Judgment will be denied.

A. Standard of Review

The United States Court of Appeals for the Third Circuit summarized the standard to be applied in deciding motions to dismiss filed pursuant to Rule 12(b)(6):

Under the "notice pleading" standard embodied in Rule 8 of the Federal Rules of Civil Procedure, a plaintiff must come forward with "a short and plain statement of the claim showing that the pleader is entitled to relief." As explicated in Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), a claimant must state a "plausible" claim for relief, and "[a] claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Although "[f]actual allegations must be enough to raise a right to relief above the speculative level," Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007), a plaintiff "need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element." Fowler, 578 F.3d at 213 (quotation marks and citations omitted); see also Covington v. Int'l Ass'n of Approved Basketball Officials, 710 F.3d 114, 117-18 (3d Cir. 2013).

Thompson v. Real Estate Mortg. Network, 748 F.3d 142, 147 (3d Cir. 2014).

When considering *pro se* pleadings, a court must employ less stringent standards than when judging the work product of an attorney. Haines v. Kerner, 404 U.S. 519, 520 (1972).

When presented with a *pro se* complaint, the court should construe the complaint liberally and draw fair inferences from what is not alleged as well as from what is alleged. Dluhos v.

Strasberg, 321 F.3d 365, 369 (3d Cir. 2003). In a § 1983 action, the court must "apply the

applicable law, irrespective of whether the *pro se* litigant has mentioned it by name." Higgins v.

Beyer, 293 F.3d 683, 688 (3d Cir. 2002) (quoting Holley v. Dep't of Veteran Affairs, 165 F.3d

244, 247-48 (3d Cir. 1999)). See also Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996) ("Since this

is a § 1983 action, the [*pro se*] plaintiffs are entitled to relief if their complaint sufficiently alleges deprivation of any right secured by the Constitution.”). Notwithstanding this liberality, *pro se* litigants are not relieved of their obligation to allege sufficient facts to support a cognizable legal claim. *See, e.g., Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002); *Riddle v. Mondragon*, 83 F.3d 1197, 1202 (10th Cir. 1996).

B. Discussion

Plaintiff's Amended Complaint is far from a model of clarity. That said, Plaintiff was given multiple opportunities to amend his complaint and provided with instructions on how to draft a proper complaint. *See* ECF Nos. 8, 20, 31, 48. Despite this, Plaintiff's attempts at amending over the course of an entire year were non-compliant, and, on October 3, 2019, the Court entered an order notifying the parties that it would proceed with the Amended Complaint that Plaintiff filed on March 12, 2019. *See* ECF No. 87. Notwithstanding the Amended Complaint's numerous pleading deficiencies, the Court is cognizant of Plaintiff's *pro se* status and the Supreme Court's instructions that *pro se* individuals must be accorded substantial deference and liberality. *See Haines*, 404 U.S. at 520. Therefore, to the extent that his allegations are discernable, the Court will construe them in a way that permits Plaintiff's claims to be considered within the proper legal framework. *See Stone v. Harry*, 364 F.3d 912, 915 (8th Cir. 2004).

1. Butler County Prison Defendants

Although Plaintiff does not identify the specific claims he is bringing against the Butler County Prison Defendants, the only thing that is clear from the Amended Complaint is that his claims (whatever they may be) are based on the Defendants' involvement in the confiscation of his property when he was processed into the Butler County Prison on August 20, 2018. Indeed,

Plaintiff states that they refused to give back his property, falsified official documents by saying that his property was contraband because it had "spice" on it, and then destroyed his property.

As far as the Court can tell, it appears that this property may have consisted of legal work, jewelry and receipts.

Fortunately, in the early stages of this case Plaintiff filed a document that helps to clarify, and provide a bit of context, as to what occurred in the Butler County Prison on August 20, 2018. Said document is a response to Plaintiff's motion for return of property that his attorney, Armand R. Cingolani, III, Esq., filed on his behalf in his criminal cases on September 25, 2018. (ECF No. 5-2); *see also* Commonwealth v. Shareef, CP-10-CR-1714-2016 (Butler Cty. Ct. of Comm. Pleas); Commonwealth v. Shareef, CP-10-CR-592-2018 (Butler Cty. Ct. of Comm. Pleas).

Although Plaintiff did not provide the Court with the actual motion for return of property itself, ^{one} the response to the motion, which is dated November 20, 2018, indicates the following facts with respect to the confiscation of Plaintiff's property:¹

On August 14, 2018, immediately prior to [Plaintiff]'s move from the Allegheny County Jail to the [Butler County] Prison [{"Prison"}] six Prison employees were exposed to an unknown substance, resulting in those six employees being transferred to Butler Memorial Hospital for treatment. The Prison was placed on lockdown status pending an investigation. During the investigation, the unknown substance was discovered to be K2, a synthetic cannabinoid. While the exposure method remains unknown it is believed that this substance was infiltrated into the Prison via inmate mail or personal effects.

On August 20, 2018, [Plaintiff] was transported to the Prison from the Allegheny County Jail. Captain Clyde Moore and Corrections Officer Mark Bowman processed [Plaintiff] into the facility and started to search his property. While searching [Plaintiff]'s property, both employees reported "they began to experience burning and irritated skin and burning eyes." These symptoms were

¹ The factual assertions made in the response to Plaintiff's motion are set forth herein only to the extent they provide context to and help clarify Plaintiff's claims since his allegations with respect to what happened in his Amended Complaint are virtually incomprehensible.

similar to the symptoms the six prior employees experienced on August 14, 2018 when they were transported to Butler Memorial Hospital.

Captain Clyde Moore sealed the property in a secure black garbage bag and placed the sealed property bag in his secure office for when [Plaintiff] would be released from the Prison. Captain Moore's and Correction Officer Bowman's symptoms subsided to where medical treatment was not required. At that time, Captain Moore explained to [Plaintiff] his property was deemed bio-hazard and to contact his attorney to send in any legal work to the facility. . . .

On August 29, 2018 the Pennsylvania Department of Corrections ("DOC") placed the entire state prison system on an extended lockdown to combat the numerous number of DOC employees becoming sick while being exposed to an "unknown substance." Multiple policy changes were enacted for the DOC varying from inmate mail being sent off site and photocopied, legal mail opening practices, etc.

During the week of September 16-20, Warden DeMore spoke with [Plaintiff] about his property. The Warden explained to [Plaintiff] that there were concerns his property was contaminated and was deemed bio-hazard but was stored on-site for when he was released from the Prison custody. Warden, Joe DeMore, reaffirmed that Captain Moore told [Plaintiff] to have his attorney send any pertinent legal mail to the facility. Warden DeMore explained in detail that the jail could have sent his bagged up property out to be tested for K2 which would result in all his property being deemed bio-hazard and consequently could be destroyed by the haz-mat team/testing agency. [Plaintiff] thanked Warden DeMore for not sending his property out to be tested and said he understood.

A letter was sent to the Prison on October 3, 2018 from [Plaintiff]'s attorney, Armand Cingolani, regarding [Plaintiff]'s property. On October 4, 2018 at approximately 1155 hours, Deputy Warden Beau Sneddon ("D.W. Sneddon") spoke to Attorney Cingolani on the telephone about [Plaintiff]'s property. Attorney Cingolani indicated he was "under the impression [Plaintiff]'s property was destroyed or lost." D.W. Sneddon offered Attorney Cingolani the option of having [Plaintiff] sign a release of property form and that Attorney Cingolani could take possession of his client's property. Attorney Cingolani refused this option. . . .

(ECF No. 5-2, pp.1-3.) The docket sheets for Plaintiff's criminal cases indicate that Plaintiff's motion for return of his property was granted by the trial court on November 26, 2018, and while it is unknown what actually happened to Plaintiff's property, Plaintiff complained in his original Complaint (and his Amended Complaint) that his property was destroyed. Interestingly,

Plaintiff's original Complaint is dated prior to the aforementioned response to his motion wherein it was indicated by officials at the Butler County Prison that his property was not destroyed but rather being held pending his release since Plaintiff refused to execute an authorization for release of his property to his attorney or other designee. Notwithstanding this apparent discrepancy, for purposes of deciding the pending Motion to Dismiss for failure to state a claim, this Court must accept as true Plaintiff's allegation that his property was destroyed; but, even assuming that was the case,² Plaintiff has failed to state a claim upon which relief may be granted.

a. Due Process

To the extent Plaintiff asserts liability on the part of the Butler County Prison Defendants for the alleged confiscation/destruction of his property as a result of its alleged contamination with K2, the United States Supreme Court has held that the concept of "due process" requires some kind of hearing before the state can deprive a person of a protected interest. Zinermon v. Burch, 494 U.S. 113, 126 (1990) (collecting cases). However, in cases of random and unauthorized deprivations of property, the State cannot predict when the loss will occur and, therefore, is unable to provide a meaningful hearing before the deprivation takes place. In Parratt v. Taylor, 451 U.S. 527 (1981), the Supreme Court determined that, with respect to negligent, random and unauthorized acts by state actors that result in the loss of a protected interest, a plaintiff does not suffer a violation of procedural due process if he or she has an adequate post-deprivation remedy. In Hudson v. Palmer, 468 U.S. 517 (1984), the Supreme Court extended the rule in Parratt to apply to intentional acts by state actors.

² Notably, Plaintiff does not state that Defendants failed to comply with the trial court's order granting the motion for return of his property.

The Third Circuit Court of Appeals has held that a prison's grievance procedure provides an adequate post-deprivation remedy, *see e.g., Tillman v. Lebanon County Corr. Fac.*, 121 F.3d 410, 422 (3d Cir. 2000), and that the existence of this post-deprivation remedy forecloses any due process claim, *Austin v. Lehman*, 893 F. Supp. 448, 454 (E.D. Pa. 1995), even if an inmate is dissatisfied with the result of the process. *Iseley v. Horn*, 1996 WL 510090, at *6 (E.D. Pa. 1996). In *Monroe v. Beard*, 536 F.3d 198 (3d Cir. 2008), which dealt with the intentional confiscation of inmate property pursuant to official prison policy, inmates objected to a Department of Corrections policy that allowed the confiscation of UCC-related material and forms, which inmates had used to file fraudulent liens and judgments against officials. The Third Circuit held that the failure to give the inmate prior notice of the seizure of these materials did not violate their due process rights. *Id.* at 210. It also found that the Department afforded the inmates a meaningful post-deprivation remedy in the form of the inmate grievance and a special process for objecting to the seizures. *Id.* The Court stated: "Although the plaintiffs allege that the defendants have not adhered to their own procedure, they have not shown that this post-deprivation procedure was not meaningful." *Id.* Likewise, in *Tillman*, the Third Circuit held that the plaintiff inmate had an adequate post-deprivation remedy in the form of the prison grievance program. 221 F.3d at 422.

Similarly, in this case, the Butler County Prison Defendants were not obligated to give Plaintiff prior notice of the seizure of his property. Plaintiff admits that he was notified why his property was confiscated (or destroyed), specifically because it was contaminated with "spice", and while he may disagree with that designation, he had a meaningful post-deprivation remedy with regard to the confiscation/destruction of his property through the Butler County Prison's administrative grievance procedure, and through which he admits he sought the return of his

property. *See* ECF No. 15, p.3. Plaintiff also had another meaningful post-deprivation remedy available to him through a tort action that he could have filed in state court. *See Gilmore v. Jeffes*, 675 F.Supp. 219, 221 (M.D. Pa. 1987) (citing 42 Pa. C.S.A. § 8522(b)(3)). Most importantly, however, Plaintiff was able to move in his criminal action for the return of his property and he fails to explain how this post-deprivation remedy was inadequate given that public records show that he was successful. *See Revell v. Port Authority of New York, New Jersey*, 598 F.3d 128, 139 (3d Cir. 2010) (“[Plaintiff] has failed to explain why New Jersey’s state procedures to recover wrongfully seized property, such as the ability to move in the criminal action for return of his property or the ability to file a separate action for a writ of replevin, are insufficient.”). Consequently, assuming Plaintiff had a protected interest in the items that were allegedly confiscated and/or destroyed, his allegations fail to state a claim for a

938
E28
427

procedural due process violation.

Additionally, Plaintiff’s allegations also fail to state a claim for a substantive due process violation as the confiscation/destruction of his property simply does not shock this Court’s

conscience. *See, e.g., United Artists Theatre Circuit, Inc. v. Township of Warrington, Pa.*, 316 F.3d 392, 399-400 (3d Cir. 2003) (“our cases have repeatedly acknowledged that executive action violates substantive due process only when it shocks the conscience.”). *See also Moore v. Gluckstern*, 548 F. Supp. 165, 167 (D. Md. 1982) (“At worst, plaintiff alleges that the items were stolen by the guards. While such action by prison guards, if proven, would clearly be wrongful, there is nothing about the alleged incidents that could conceivably ‘shock[] the conscience’ of the court. Therefore, the complaint cannot be read as alleging a violation of substantive due process rights.”). Accordingly, Plaintiff’s due process claims against the Butler County Prison Defendants stemming from the confiscation and/or destruction of his property will be dismissed.

Post deprivation

b. Access to Courts

Plaintiff also alleges that he "lost [his] trial" because of the confiscation and subsequent destruction of his legal work after he was processed into the Butler County Prison on August 20, 2018. *See* ECF No. 133, p.1. Plaintiff's legal work apparently consisted of legal research and "notes" to assist his lawyer. *Id.* at pp.1-2.

To establish a cognizable access-to-courts-claim, as it appears Plaintiff is attempting to do here, a prisoner must demonstrate that the denial of access caused him to suffer an actual injury. *Lewis v. Casey*, 518 U.S. 343, 351 (1996). An actual injury occurs when the prisoner is prevented from pursuing or has lost the opportunity to pursue a "nonfrivolous" and "arguable" claim. *Christopher v. Harbury*, 536 U.S. 403, 415 (2002). The prisoner must describe any such lost claims in his complaint. *Id.* *Other legal work and briefs did case law*

As an initial matter, Plaintiff fails to specify two important pieces of information. First, he does not identify the criminal case number for the trial that he "lost," and second, he does not specify what was contained within his legal research and notes that were confiscated and subsequently destroyed and why he believes this information would have lead to a different result for him at trial. Notwithstanding his failure to identify his criminal case number, the Court takes judicial notice of the public dockets of the Pennsylvania state courts, and specifically, the docket sheet for *Commonwealth v. Shareef*, CP-10-CR-1714-2016 (Butler Cty. Ct. of Comm. Pleas), which shows that Plaintiff was found guilty by a jury of one count of Possession of a Firearm Prohibited on October 22, 2018. This appears to be the criminal case which Plaintiff refers to since it was his only active criminal case at the time for which he was later found guilty. *affidavit notes NOT IN MY PERSONAL BRIEF*

Additionally, notwithstanding his failure to specify exactly what was contained in the legal research and/or notes that were allegedly destroyed, and why he believes that being without that information at trial lead to his conviction, Plaintiff cannot state an access-to-courts-claim because in this case his access to courts was satisfied as a matter of law by virtue of him being represented by counsel at his criminal trial. See Lamp v. Iowa, 122 F.3d 1100, 1106 (8th Cir.1997) ("For, once the State has provided a petitioner with an attorney in postconviction proceedings, it has provided him with the 'capability of bringing contemplated challenges to sentences or conditions of confinement before the courts.'") (quoting Lewis v. Casey, 518 U.S. 343, 356 (1996)); Schrier v. Halford, 60 F.3d 1309, 1313-1314 (8th Cir.1995) (having appointed counsel is one way in which state can shoulder its burden of assuring access to the courts); Annis

v. Fayette County Jail, NO. CIV.A. 07-1628, 2008 WL 763735, at *1 (W.D. Pa. Mar 20, 2008); Sanders v. Rockland County Correctional Facility, No. 94 Civ. 3691, 1995 WL 479445, at *2 (S.D.N.Y. Aug.14, 1995) ("By the appointment of counsel, plaintiff was afforded meaningful access to the courts in his trial."); Williams v. Vaughn, No. 90-5617, 1991 WL 34429, at *4 (E.D. Pa. March 12, 1991) ("Thus, [plaintiff-inmate] Williams was not actually injured by any inability to gain access to the law library since he ultimately obtained representation.").

For example, in Rogers v. Thomas, No. 94-4692, 1995 WL 70548, at *2 (E.D. Pa. Feb. 17, 1995), *aff'd*, 65 F.3d 165 (3d Cir. 1995) (Table), the prisoner therein claimed a denial of access to courts as does Plaintiff herein. In Rogers, the prisoner's legal papers relating to the appeal of his criminal conviction were seized by a corrections officer. "The legal materials at issue consisted of 'legal research notes, court orders, affidavits, letters, and pleadings.'" Id. at *1. The plaintiff in Rogers was represented by counsel in his direct appeal, much like Plaintiff herein was represented by counsel in his criminal trial proceedings. The plaintiff in Rogers

Full Law in trial

claimed the confiscation of his legal papers violated his right to access to the court, and in rejecting this claim, the court held that despite the fact that the inmate's legal papers were taken by prison officials, "plaintiff was not denied access to the courts because he was represented by court-appointed counsel, during the entire pendency of the appeal to which the legal papers related. Thus, plaintiff was actually provided with, not denied, legal assistance." *Id.* at *2. This rule of law that providing prisoners with counsel fulfills their right of access to the courts makes eminent sense in light of Bounds v. Smith, 430 U.S. 817 (1977), one of the landmark cases in right of access jurisprudence, which declared that inmates' right of access to the courts may be satisfied by "providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Id.* at 828 (emphasis added). Accordingly, as Plaintiff has not identified

anything in the confiscated papers that would have changed the outcome of his trial, and as he had counsel for the criminal proceedings which he claims his alleged confiscated/destroyed legal research related, he fails to state a claim for denial of access to the courts as a matter of law.³

2. Butler County District Attorney's Office

The Court first notes that it is unclear whether Plaintiff intended the Butler County District Attorney's Office to be a named defendant in this action as it is not identified as a

³ Even if Plaintiff would have refused court appointed counsel and would have chosen to proceed *pro se* in his criminal case, the fact that he had been offered legal assistance and refused such assistance would negate any claim of denial of access to the courts. See, e.g., Degrade v. Godwin, 84 F.3d 768, 769 (5th Cir. 1996) (per curiam) (where pretrial detainee was offered state appointed counsel but he subsequently rejected such counsel in order to proceed *pro se*, state did not violate detainee's right of access to the courts by hindering his access to a law library; "having rejected the assistance of court-appointed counsel, [detainee] Degrade had no constitutional right to access a law library in preparing the *pro se* defense of his criminal trial."); Love v. Summit County, 776 F.2d 908, 914 (10th Cir. 1985), *cert. denied*, 479 U.S. 814 (1986) (state is entitled to choose whether it will meet its obligation to provide access to the courts by providing an adequate law library or by providing legal assistance in the form of an attorney).

defendant in Plaintiff's Amended Complaint. See ECF No. 15. Instead, it appears that Plaintiff named it as a defendant in his initial Complaint, see ECF No. 9, p.1, and for some reason it was not terminated from the docket upon Plaintiff's filing of the Amended Complaint. Indeed, in its Motion to Dismiss the Butler County District Attorney's Office states that it has "no rational connection to anything mentioned in the Amended Complaint" (ECF No. 129, p.3) and this Court agrees. Furthermore, a district attorney's office is not a "person" that can be sued within the meaning of § 1983. See Reitz v. County of Bucks, 125 F.3d 139, 148 (3d Cir. 1997) (affirming district court's grant of summary judgment in favor of defendant district attorney's office because it is not a legal entity for purposes of § 1983 liability). See also Lasko v. Leechburg Police Dep't, No. 12-1421, 2013 WL 2404145, at *4 (W.D. Pa. May 31, 2013)

multiple
discretion

(dismissing with prejudice the claims against the District Attorney's Office because it is not a "person" for purposes of § 1983 liability). Therefore, Plaintiff's claims against the Butler County District Attorney's Office will be dismissed with prejudice.

3. Officer Palko

Although Plaintiff has put forth no coherent allegations against Officer Palko, he does use the term "false arrest" so the Court will assume that he believes that his arrest by Officer Palko on May 27, 2016 was unconstitutional. It appears, however, that such a claim is time-barred.

In determining the length of the limitations period, the court first looks to state law, and, under Pennsylvania law, the applicable limitations period for civil rights actions under 42 U.S.C. § 1983 is two years. See 42 Pa. C.S.A. § 5524. Next, the court looks to federal law to determine the time at which a § 1983 claim accrues, and, in Wallace v. Kato, 549 U.S. 384, 397 (2007), the United States Supreme Court held that "the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by

LAWYER in 19 6/13/20

criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process.”

Here, Plaintiff states, and the docket sheet confirms that Plaintiff was arrested on May 27, 2016, and he appeared for his preliminary arraignment later that same day. See Commonwealth v. Shareef, MJ-50305-CR-338-2016. Since this occurred more than two years before he initiated the instant case, which at the earliest was on October 20, 2018, his claim is time-barred.

Accordingly, Plaintiff's false arrest claim will be dismissed with prejudice.

8B Section

4. Judge Fullerton

Plaintiff's claims against Judge Fullerton are unclear but it appears he complains that Judge Fullerton was not a “neutral” magistrate judge because he either did (or maybe did not) issue the warrant for Plaintiff's arrest. In this regard, the Court takes judicial notice that Judge Fullerton is a judge of Magisterial District Court 32-1-21, which is an entity of the Unified Judicial System of Pennsylvania. See 42 Pa. C.S.A. § 301(9).

As correctly noted by Judge Fullerton in his Motion to Dismiss, the Eleventh Amendment bars suit against him to the extent he is being sued in his official capacity as a magisterial district court judge for the Commonwealth of Pennsylvania. In this regard, “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself.” Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) (internal citation omitted). Here, a claim against Judge Fullerton in his official capacity is really a claim against the Magisterial District Court over which he presides; an entity of the Commonwealth of Pennsylvania that is entitled to Eleventh Amendment immunity. See PA. CONST. Art. V, §§ 1, 7; 42 Pa. C.S. § 1511. See also

Benn v. First Judicial Dist. of Pa., 426 F.3d 233 (3d Cir. 2005) (Holding that Pennsylvania's First Judicial District was "state entity" entitled to Eleventh Amendment immunity).

Eleventh Amendment immunity may be lost only in one of two ways: (1) if the Commonwealth waives its immunity; or (2) if Congress abrogates the States' immunity pursuant to a valid exercise of its power. See College Sav. Bank v. Florida Prepaid Postsecondary Ed. Expense Bd., 527 U.S. 666, 670 (1999); Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 240-4 (1985). Additionally, a person seeking purely prospective relief against state officials for ongoing violations of federal law may sue under the "legal fiction" of Ex parte Young, 209 U.S. 123, 159-60 (1908), despite the text of the Eleventh Amendment. Alden v. Maine, 527 U.S. 706, 757 (1999).

No exceptions to the Eleventh Amendment immunity are applicable here. By statute, the Commonwealth of Pennsylvania has specifically withheld its consent to be sued. See 42 Pa. C.S.A. § 8521(b); 1 Pa. C.S.A. § 2310; see also Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981). Additionally, Congress has not expressly abrogated Pennsylvania's Eleventh Amendment immunity from civil rights suits for damages. See, e.g., Will, 491 U.S. at 66 ("Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties."); Quern v. Jordan, 440 U.S. 332, 341 (1979); Boykin v. Bloomsburg Univ. of Pa., 893 F. Supp. 378 (M.D. Pa. 1995) (holding that States' immunity has not been abrogated for actions brought under §§ 1981, 1983, 1985, and 1986), *aff'd*, 91 F.3d 122 (3d Cir. 1996). Finally, Plaintiff does not seek prospective relief against Judge Fullerton, but compensatory damages instead. As such, Eleventh Amendment immunity bars any claim he may have against Judge Fullerton in his official capacity.

Additionally, Judge Fullerton is entitled to judicial immunity for all acts taken in his judicial capacity, Figueroa v. Blackburn, 208 F.3d 435, 440 (3d Cir. 2000) (citing Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam)), “even if his exercise of authority is flawed by the commission of grave procedural errors,” Stump v. Sparkman, 435 U.S. 349, 359 (1978). Indeed, such immunity can be overcome only where a judge’s acts are nonjudicial in nature,⁴ or where such acts, while judicial in nature, are “taken in the complete absence of all jurisdiction.” Mireles, 502 U.S. at 12.

Here, Plaintiff is seeking compensatory damages against Judge Fullerton and the allegations against him, to the extent they can be discerned, are directly connected to the actions he took as a magistrate judge and do not suggest that he was acting in the “clear absence of all jurisdiction.” Therefore, judicial immunity applies to bar Plaintiff’s claims.⁵

C. Amendment of Complaint

The court must allow amendment by the plaintiff in civil rights cases brought under § 1983 before dismissing pursuant to Rule 12(b)(6), irrespective of whether it is requested; unless doing so would be “inequitable or futile.” Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc., 482 F.3d 247, 251 (3d Cir. 2007); *see also* Alston v. Parker, 363 F.3d 229, 235 (3d Cir.

⁴ “Factors which determine whether an act is a ‘judicial act’ ‘relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectation of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.’” Figueroa, 208 F.3d at 443 (quoting Stump, 435 U.S. at 362).

⁵ Even though Plaintiff clearly states that he seeking compensatory damages against Judge Fullerton, it is worth noting that his claims would also be barred even if he were seeking prospective relief because he has not alleged that a declaratory decree was violated or that declaratory relief is unavailable. *See e.g.*, L.B. v. Town of Chester, 232 F.Supp.2d 227, 238 (S.D.N.Y. 2002); Kampfer v. Scullin, 989 F.Supp. 194, 201-202 (N.D.N.Y. 1997); *see also* Jung v. Pennsylvania, 2018 WL 3717213, at *4 (M.D. Pa. June 27, 2018); Steinberg v. Supreme Court of Pennsylvania, 2009 WL 1684663, at *22 (W.D. Pa. June 10, 2009).

2004) (asserting that where a complaint is vulnerable to dismissal pursuant to 12(b)(6), the district court must offer the opportunity to amend unless it would be inequitable or futile). While the Court is cognizant of these holdings, it finds that allowing for amendment by Plaintiff would be futile. A careful review of the record commands that Plaintiff, even garnering all the liberalities that accompany his *pro se* status, fails to state any claims under § 1983 against the Defendants for which relief may be granted. A separate order will issue.

Dated: March 25, 2020.



Lisa Pupo Lenihan
United States Magistrate Judge

Cc: Hasan Shareef
NU0779
SCI Forest
P.O. Box 945
Marienville, PA 16239

Counsel of record
(Via CM/ECF electronic mail)

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

HASAN SHAREEF,

Plaintiff,

v.

CAPTAIN MOORE, WARDEN
DEMORE, ASST. WARDEN
FEMALE, SGT. BLUMMING,
CAPTAIN ZENTS, SGT. WAGNER,
WARDEN SNEDDON, MICHAEL
SCULLIO, JEFFREY KENGERSKI,
MARK BOWMAN, MAJOR
BATSTER, DA OFFICE, WILLIAM
FULLERTON, and OFFICER BRIAN
PALKO,

Defendants.

Civil Action No. 18 – 1494

Magistrate Judge Lisa Pupo Lenihan

ORDER

AND NOW, this 25th day of March, 2020,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by the Butler County Prison Defendants (ECF No. 96) is granted in part and denied in part. The Motion is granted to the extent that it seeks dismissal for Plaintiff's failure to state a claim upon which relief may be granted and it is denied as moot in all other respects. The claims against these Defendants are dismissed with prejudice.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by the Butler County District Attorney's Office (ECF No. 128) is granted and the claims against this Defendant are dismissed with prejudice for Plaintiff's failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Officer Brian Palko (ECF No. 131) is granted and the false arrest claim against this Defendant is dismissed with prejudice for failure to state a claim upon which relief may be granted because it is time-barred.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Judge Fullerton (ECF No. 134) is granted and Plaintiff's claims against him are dismissed with prejudice for failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (ECF No. 170) is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of Court is directed to mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.



Lisa Pupo Lenihan
United States Magistrate Judge

Cc: Hasan Shareef
NU0779
SCI Forest
P.O. Box 945
Marienville, PA 16239

Counsel of record
(Via CM/ECF electronic mail)

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY,
PENNSYLVANIA

COMMONWEALTH

vs

Hasan Shareef

CRIMINAL DIVISION

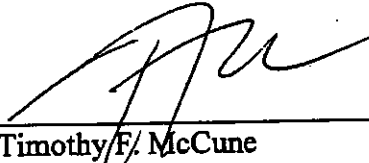
CP-10-CR-0001714-2016

CP-10-CR-0000592-2018

ORDER OF COURT

AND NOW, this 26th day of November, 2018, the Defendant's Motion for Return of Property is granted. The property may be returned to the Defendant's attorney or other designee as long as the inmate executes an authorization provided by the Butler County Prison.

BY THE COURT,


Timothy F. McCune
Judge

11-27-18
MCC

ICC

DA (2) AG

Def Atty

File ()

Other

Rev + 1 cent (3)

Constitution III

Substantive WIL

File

BSP - Warden

(9)

W.

BUTLER COUNTY
COURT OF COMMON PLEAS

2018 NOV 26 PM 3:07

LISA WELAND LOTZ
CLERK OF COURTS
ENTERED AND FILED

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY,
PENNSYLVANIA

COMMONWEALTH

vs

Hasan Shareff

CRIMINAL DIVISION

CP-10-CR-0001714-2016

CP-10-CR-0000592-2018

ORDER OF COURT

AND NOW, this 1st day of November, 2018, the Court held a hearing on Defendant's Motion for Return of Property. The Commonwealth, as per the District Attorney's Office, did not appear as they informed the Court that they had no part of this matter. No one from the Butler County Prison appeared and counsel for the Defendant informed the Court that he had not notified anyone from the prison to appear.

Testimony was taken from the Defendant who indicated that when he was transferred to the Butler County Prison from the Allegheny County Prison on August 20, 2018 his personal belongings including legal pads containing notes, random papers containing notes, copies of orders and motions he had received from his attorneys as well as a receipt from the Allegheny County Prison regarding his jewelry was taken by Captain Moore of the Butler County Prison. The Defendant indicated that in spite of his requests these items were never returned to him. The Butler County Prison is directed to respond to these allegations in writing within 30 days of the date of this order. If the Court feels that an additional hearing is needed, the Court will schedule the same.

BY THE COURT,

Timothy F. McCune
Judge

11-5-18:

MCC

ICC

DA/AG

Def/Atty

File (✓)

Other

Butler Co. Warden @ 308

LISA WEILAND LOTZ
CLERK OF COURTS
ENTERED AND FILED
2018 NOV -2 AM 11:41
BUTLER COUNTY
COURT OF COMMON PLEAS

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMONWEALTH

vs

Hasan Shareef

CRIMINAL DIVISION

CP-10-CR-0001714-2016

CP-10-CR-0000592-2018

LISA WILLIAMS
CLERK OF COURTS
ENTERED AND FILED
2018 NOV 20 AM 10:13
BUTLER COUNTY
COURT OF COMMON PLEAS

RESPONSE TO MOTION FOR RETURN OF PROPERTY

AND NOW comes the County of Butler and Butler County Prison, by and through their counsel, Julie M. Graham, Esquire, Solicitor for the County of Butler, and in support of the within Response to Motion for Return of Property, avers as follows:

1. On September 25, 2018, Attorney Armand R. Cingolani, III, attorney for Inmate Hasan Shareef, filed a Motion for Return of Property.
2. A hearing was held on Defendant's Motion on November 1, 2018. The Movant, Hasan Shareef, did not serve a copy of the Motion for Return of Property on the Butler County Prison (the "Prison"), nor did he notify the Prison of the hearing scheduled on or about November 1, 2018.
3. By Order of Court dated November 1, 2018, the Prison was directed to respond to the allegations made in the Motion for Return of Property within 30 days of the Order of Court.
4. On August 14, 2018, immediately prior to inmate Hasan Shareef's move from the Allegheny County Jail to the Prison six Prison employees were exposed to an unknown substance, resulting in those six employees being transferred to Butler Memorial Hospital for treatment. The Prison was placed on lockdown status pending an investigation. During the investigation, the unknown substance was discovered to be K2, a

synthetic cannabinoid. While the exposure method remains unknown it is believed that this substance was infiltrated into the Prison via inmate mail or personal effects.

5. On August 20, 2018, inmate Hasan Shareef was transported to the Prison from the Allegheny County Jail. Captain Clyde Moore and Corrections Officer Mark Bowman processed inmate Hasan Shareef into the facility and started to search his property. While searching inmate Hasan Shareef's property, both employees reported "they began to experience burning and irritated skin and burning eyes." These symptoms were similar to the symptoms the six prior employees experienced on August 14, 2018 when they were transported to Butler Memorial Hospital.
6. Captain Clyde Moore sealed the property in a secure black garbage bag and placed the sealed property bag in his secure office for when inmate Hasan Shareef would be released from the Prison. Captain Moore's and Correction Officer Bowman's symptoms subsided to where medical treatment was not required. At that time, Captain Moore explained to inmate Hasan Shareef his property was deemed bio-hazard and to contact his attorney to send in any legal work to the facility. The incident reports of Captain Moore and Correction Officer Bowman on this issue are attached hereto, incorporated herein and marked Exhibits A and B, respectively.
7. On August 29, 2018 the Pennsylvania Department of Corrections ("DOC") placed the entire state prison system on an extended lockdown to combat the numerous number of DOC employees becoming sick while being exposed to an "unknown substance." Multiple policy changes were enacted for the DOC varying from inmate mail being sent off site and photocopied, legal mail opening practices, etc.
8. During the week of September 16-20, Warden DeMore spoke with inmate Hasan Shareef about his property. The Warden explained to inmate

Shareef that there were concerns his property was contaminated and was deemed bio-hazard but was stored on-site for when he was released from the Prison custody. Warden, Joe DeMore, reaffirmed that Captain Moore told inmate Hasan Shareef to have his attorney send any pertinent legal mail to the facility. Warden DeMore explained in detail that the jail could have sent his bagged up property out to be tested for K2 which would result in all his property being deemed bio-hazard and consequently could be destroyed by the haz-mat team/testing agency. Inmate Hasan Shareef thanked Warden DeMore for not sending his property out to be tested and said he understood.

9. A letter was sent to the Prison on October 3, 2018 from inmate Hasan Shareef's attorney, Armand Cingolani, regarding inmate Hasan Shareef's property. On October 4, 2018 at approximately 1155 hours, Deputy Warden Beau Sneddon ("D.W. Sneddon") spoke to Attorney Cingolani on the telephone about inmate Hasan Shareef's property. Attorney Cingolani indicated he was "under the impression inmate Hasan Shareef's property was destroyed or lost." D.W. Sneddon offered Attorney Cingolani the option of having inmate Hasan Shareef sign a release of property form and that Attorney Cingolani could take possession of his client's property. Attorney Cingolani refused this option. Copies of the two Prison Incident Reports filed by D.W. Sneddon documenting this issue are attached hereto, incorporated herein and marked Exhibits C and D, respectively.
10. Based on the above information and difficulties of identifying synthetic cannabinoids on property, paperwork, etc. with the naked eye as well as detection tools, the Prison administration made the decision to mark inmate Hasan Shareef's property as bio-hazard and to have it securely stored and returned to the inmate upon his release from Prison custody. The Prison administration has made every effort to communicate with inmate Hasan Shareef and his attorney to get any needed copies of legal material back in his hands through his attorney as well as having inmate

Hasan Shareef sign a property form releasing his property to his attorney Armand Cingolani. Safety is paramount and the Prison Administration's decision was based solely on keeping all the employees and inmates of the Prison safe by not re-opening inmate Hasan Shareef's property risking contamination to any employees or inmates.

11. In light of the safety issues and risks associated with the return of the Inmate's property, the Prison Administration intends to hold his property in a safe and secure location unless or until the time of his release and/or transfer at which point it will be returned to him following appropriate safety protocols.
12. Alternatively, the Prison Administration's previously made proposal that the inmate execute an authorization for release of this property to his attorney or other designee remains open.
13. The Prison has broad discretion in establishing policies and procedures relative to the handling of inmate property to preserve and protect the safety of inmates and correctional officers. The course of action identified herein is within the guidelines established by the Pennsylvania Supreme Court in, O'Toole v. Pennsylvania Department of Corrections, --- A.3d.--- (2018), 2018 W.L. 4998392.

By: _____

Julie M. Graham
Butler County Solicitor
124 West Diamond Street
P.O. Box 1208
Butler, PA 16003-1208
Telephone No. (724) 284-5100
Fax No. (724) 284-5400
PA I.D. No. 36483

2018
P2S27
183A3d1009

Date: November 20, 2018

BUTLER COUNTY PRISON

INCIDENT REPORT

Incident Date/Time: 08/20/2018 17:00

Reporting Officer MOORE, CLYDE

Location Type PROCESSING

Location of the Incident:

Incident Type INFORMATIONAL

Inmates Involved

Employees Involved

Inmate #	Name	Name
031505	SHAREEF JR, HASAN AL	SCUILLO, MICHAEL
		BOWMAN, MARK
		KENGERSKI, JEFFREY

Narrative

On 8/20/2018, Butler County Prison received 5 new commitments from Allegheny County Jail. As we do for all commitments, all property was placed into separate plastic bins, as to not mix up any inmates property. As the Sheriffs Deputies were taking the transport gear off the new commitments, Hasan Shareef began asking about his paperwork, and property. Inmate Shareef has been in our facility in the past, and knows he is to receive his property after it has been properly searched. Inmate Shareef continued to inquire about his property during the duration of his time in processing. As I began looking thru the property belonging to inmate Shareef, my right arm, and both eyes began to burn, and become irritated. I instructed Officer Mike Scuillo to dawn a protective mask, and gloves, and place the property into a garbage bag, and tie the bag shut. I then went to my office, and called Sgt Jeff Kengerski, and asked him to bring the decontamination wipes from medical to my office. I relayed all information to Sgt Kengerski concerning the property. Property was left in my office.

The following day, as I spoke to Officer Mark Bowman, he relayed that he too had a reaction to said property. Due to two Officers having reactions to this property, it was deemed a bio-hazard. Inmate Shareef was informed of this, and was instructed to contact his Attorney, and have all his legal work sent to the facility.

Inmate file
warden

OFFICER NAME PRINT: Clyde Moore DATE: 8-29-18
OFFICER NAME SIGN: [Signature] TIME: 0919
ADMINISTRATION: Center DATE AND TIME: 9/18/18 2300



BUTLER COUNTY PRISON

INCIDENT REPORT

Incident DateTime: 08/20/2018 13:45

Reporting Officer BOWMAN, MARK

Location Type PROCESSING

Location of the Incident: PROCESSING

Incident Type INFORMATIONAL

Inmates Involved

Employees Involved

Inmate #	Name	Name
031505	SHAREEF JR, HASAN AL	

Narrative

On the above date and approximate time Inmate Hasan Ali Shareef was committed to the BCP. This officer had been organizing Inmate Shareef's property to keep it from getting misplaced. Shortly after his property was handled this officer had received small red bumps all over my left hand. This officer had no other symptoms, and after washing my hands the irritation was gone. This officer didn't realize this to be an issue until I spoke with Capt. Clyde Moore on 8/21/2018 and he was commenting on having similar symptoms after handling Inmate Shareef's property. No further incident to report.

Respectfully Submitted,

C/O Mark Bowman

(15)

OFFICER NAME PRINT: Mark Bowman

DATE: 8-23-18

OFFICER NAME SIGN: [Signature]

TIME: 8:15 AM

ADMINISTRATION:

DATE AND TIME:



BUTLER COUNTY PRISON

INCIDENT REPORT

Incident DateTime: 10/04/2018 11:55

Reporting Officer SNEDDON, BEAU

Location Type

Location of the Incident:

Incident Type

Inmates Involved

Employees Involved

Inmate #	Name	Name
031505	SHAREEF Jr, HASAN ALI	

Narrative

On Thursday, October 4, 2018 at approximately 1155hrs., I received a return phone call from Inmate Hasan SHAREEF's attorney, Armand CINGALONI in reference to some of Inmate SHAREEF's property. I explained to CINGALONI that I was calling in reference to some court paperwork that the Warden had recently received in which CINGALONI was petitioning the courts requesting that the prison return property that had been taken from Inmate SHAREEF. I advised CINGALONI that the property in question had been sealed up after two officers who were searching the property began to experience burning and irritated skin and burning eyes. I told CINGALONI that BCP as well as numerous other correctional facilities throughout Pennsylvania have been experiencing similar incidents recently. I advised CINGALONI that BCP staff would not be re-opening the bags of property in question. I advised CINGALONI that if Inmate SHAREEF was willing to sign a release of property form, CINGALONI could respond to the prison and take possession Inmate SHAREEF's property, otherwise the property would be stored as is and returned to SHAREEF upon his release from BCP. CINGALONI responded that he was under the impression that the property had been destroyed or lost and expressed that he had no interest in taking possession of the property.

Beau Sneddon
Deputy Warden of Operations

INMATE
WARDEN
SECURITY

OFFICER NAME PRINT: BEAU SNEDDON

DATE: 10-4-18

OFFICER NAME SIGN: [Signature]

TIME: 1510

ADMINISTRATION: [Signature]

DATE AND TIME: 10-4-18



BUTLER COUNTY PRISON

INCIDENT REPORT

Incident Date/Time: 10/04/2018 09:15

Reporting Officer SNEDDON, BEAU

Location Type BUTLER COUNTY PRISON

Location of the Incident:

Incident Type

Inmates Involved

Employees Involved

Inmate #	Name	Name
031505	SHAREEF JR, HASAN AL	

Narrative

On Thursday, October 4, 2018 at approximately 0915 I attempted to contact Attorney Armand Cingolani in regards to some motions to the court in reference to property belonging to Inmate Hasan SHAREEF. I was advised by the female that answered the phone and did not identify herself that Cingolani was not in the office. The female took my contact information and stated that she would have Cingolani call me back.

Beau Sneddon
Deputy Warden of Operations

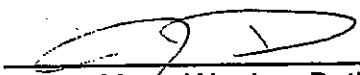
INMATE
WARDEN
SECURITY

OFFICER NAME PRINT: BEAU SNEDDON DATE: 10-4-18
OFFICER NAME SIGN: [Signature] TIME: 0930
ADMINISTRATION: [Signature] DATE AND TIME: 10-4-18



VERIFICATION

I, the undersigned, state that I am the Warden of the Butler County Prison; that the attached Response to Motion for Return of Property is based upon facts which I have personal knowledge of and that the facts set forth in the foregoing are true and correct to best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



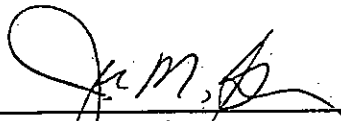
Joe DeMore, Warden, Butler County Prison

CERTIFICATE OF SERVICE

I, Julie M. Graham, hereby certify that I served a true and correct copy of the foregoing Praecipe for Entry of Appearance in the above-captioned matter by First Class, U.S. Mail to the following on this 20th day of November, 2018:

Armand R. Cingolani, III, Esquire
Cingolani & Cingolani
300 North McKean Street
Butler, PA 16001

Richard A. Goldinger, Esquire
Butler County District Attorney
Third Floor, County Government Center
124 West Diamond Street
P.O. Box 1208
Butler, PA 16003



Julie M. Graham,
Butler County Solicitor

ABSENCE

US District Courts
for the 3rd Circuit

Page 1

Nov 18 - 1994

Shoreef
vs
BRAN PATKO
CAPTAIN MOORE

Page 3

opposition response Reply Brief to Attorney
~~Motion for Contempt~~ General Defendant
Lawyer

I would like go trial on these ISSUE ALONE I WAS CHARGE BEING
Contendant in to jail CAPTAIN MOORE and WARDEN DEMORE FALSIFYING documents
NEVER PROVEING it in Motion Return Property Hearing in Butler County Nov 1-18
my Lawyer CINCINNATI NEVER CALLED WARDEN DOWN OR BAUMANN OR ANY OTHER
CO WHO SAID THIS WAS TRUE I LOST MY TRIAL BECAUSE CO TOOK ALL MY LAW
WORK DENIED ME ACCESS TO COURTS VIOLATION DUE PROCESS UPON ENTERING
JAIL Aug 20-18 CAPTAIN CLYDE MOORE Head WARDEN SAVILLIO MICHAEL
MARK BAUMANN Letterley Kengelski took my LAW WORK and COVERT
Motions Study Notes legal Notes and Research said it was contendant
SAID WHILE SEARCH LAW NOTES EMPLOYEES OF DOC BEGAN EXPERIENCE
BURNING AND IRRITATED SKIN AND BURNING EYES UPON INFORMATION
SHOREEF LAWYER REQUESTED SHOREEF LAW NOTES BACK BUT 1 OR
2 OR 3 WARDEN REFUSED TO GIVE BACK AND CLYDE MOORE SAID
DESTROYED MY PROPERTY OF SHOREEF UPON INFORMATION SHOREEF
LAWYER PUT IN MOTION RETURN OF PROPERTY THIS DAY WAS SOMETIME
BETWEEN OCT OR NOV 2018 ON ONE OF THIS MONTHS MOTION RETURN

Properly was heard NONE officers or WARDEN came to hear
violation Shaleef due process rights that in Affidavit
that what help lose my trial information in Notes to ASST
my lawyer violation of due process denied Illegal detainee
me here I need MANDAMUS motion motion for new trial
Bill exception motion quash search warrant motion due process
Hearing Evidentiary Hearing motion reaper pretrial
Conference reaper Preliminary Hearing motion reconsider
Motion sanction to get video tape of MOT of POSS
John FREEMAN of whether if had Jurisdiction
Fullerton Not Bring in front Judge who ISSUE Arrest
WARRANT motion demurr

PAGE 2

Geick vs US 466 US 600
Low 168 NW 2d 745 Huending
79 P2d 896 Chuff
MOORE vs VA 202-667
Whittaker vs VA 217-966
Spark vs US 435-349
US vs Hudson 468-349
LASHILL 990 F2d 304
Wyrick vs Missouri
686 SW 2d 56

Mollell to NY 2d 297
Frank vs Missouri
745 SW 2d 821
Allen 388 F3d 147
Fox vs NY 582 2d 262
US Dist Lewis BAUER
vs 3796 LACKAWANNA
City 19-19
Woss 482 F Supp 256

Wilson 597 Fed 643
Zilich 981 Fed 694
Thomas 362 FSUPP 105
Milton 767 Fed 1443
Fellers 12 Fed 49
Allah 226 Fed 247
Almir 143 Fed 1210
T. 756 FSUPP 335
Lom vs Wain on
Plea bargain
342 Fed Supp 341

Wilson 690 Fed 1267
Lole 504 US 158
63 Iowa 214 Olson
Dobbs 47 Neb 863
Lom vs Hopkins 210 Ky 378
Lom vs Litteral 3 SW 2d 775
US vs Ogden US 112 Fed 523
Greene 414 Fed 645 7th Cir 2005
Pachan 126 Fed 454
398 MASS 343. 1986

Judge O'Donnell NOT Neutral detached MDI Trooper
Palko might Forged Warrant out on me 2016
State vs Hawkins 130 Ga App 126 1973

Of 8 Amendments and USC 1983 28 USC 1331
14 Amendments and Civil Rights Act Cruel Unusually Punishment
Violation 6 Amendments Faretta Self Representation
422 US 806 Faretta 5. Amendments due Process T. 880 Fed 640
Excess Force 354 FSUPP 505 Allean 4. Amendments
Oppression Malice Fraud wanton wicked violation 1871 Civil Right KKK
Rights Collection Officer both DA AND Judges Injury health or
loss time deprivation
Society

Trouble Palko Judge Fullerton William not Neutral detach
NOT malicious prosecution from the false arrest from Brian
Palko conviction was procured by fraud or perjury or others undue
means Appellant was prejudicial of his substantial rights not
receive a fair impartial trial because the verdict palpably
against evidence on grounds new discovered evidence not
considered at trial by lawyer or Judge McKeane outside
range of professional competence evidence was exclude
counsel misconduct no evidence should have been admitted
with out proper defense false arrest not going in front
MOI who issue arrest warrant admitting in competence
evidence and exclude competence evidence

PAGE

Error in Admission Reflection Evidence lawyer denied
calling witness or instruct the jury properly not put motion
as evidence for jury maliciously and without probable
cause procured criminal complaint against me violation Pa crim
Pro Rule 122 130 131 205 117 207 513 581 false warrant my
lawyer witness Cingolani 300 North McKeane St Butler Pa 16001
I sent you all or most evidence that how it induced
me PAGE 4

Objection to m milie Jones Defendants lawyer
Motion to dismiss

I was hearing Retrial property still they Refused
give BACK NOT UNTILL 1 year later DAMAGE WAS done
Injured me by confiscation Important legally
documents

1. Search warrant

2. written notes

Lawyer motion

Case laws

legal notes

These document were crucial to me proving
my INNOCENTS at trial by them being confiscated
I could not defend myself

said drug on paper never come court or proven it
in ~~law~~ of ~~court~~ I got 5-10 year over
LO. ^{Court} ^{Law} lying ABOUT these paper work stuff

and I still need time to send Defendant
Certificate MAIL to give them Notice I dont have
Nuff money

Service all of them ± need more time
Service all of defendants

It is violation of Federal and State
Law

Dismiss my case Motion for Emergency Relief
Violation Federal Law monetary sanction Hearing to Compel
Habeas Corpus Intentional Tort

I'm UNEducated Avery vs Johnson
393 US 493

my Agreement on District Attorney office

is Malicious Prosecution under Forged
Warrant

Search from Hecker Palko who I never

went in front MOT who issue warrant

four my arrest Judge O'Donnell of Sleepy Rock
Pa

Heck vs US 512 US 477

Judge William Fullerton might not had Jurisdiction
for my case there no warrant from him or Affidavit

Malicious Prosecution from DA Terry Schultz and DA
Mark Lore and NO PROBABLE CAUSE what so ever was no warrant

Neek office
US District Court
700 Grant St Rm 3110
Pitts Pa 15219

Hasan Shaleef
vs
Brian Falke
Captain Moore

00/10/14

SUE each collection officer 11,000 Thousand A Piece

SUE Solar State Law

Potential Damage 500,000

Compensatory 300,000

SUE JUDGE MCCANE 50,000

W Fullerton 50,000

Judge DEAR 50,000

Brian Falke and other 3 caps on Police Report
10,000 A Piece totally 40,000

Much vs US state is person or not HQ/US58 law
SUE City 1 million
SUE County 1 million
SUE State 1 million
DE Jerry Schultz 40,000
MARK LOPE 15,000
SPARK vs US 435-349

This not good case, No more

It Inbred me violation of my due process A Judge is
Not free like base cannon to inflict in discriminate damage
Whenever he announces that he is Acting in his Judicial
Capacity

164 Leg 2d 504 Cole US 158 Heard 341 US 651 1951
457 US 496

I Freed my lawyer in trial represent my self
I got Inbred by waeder throw information in Public Newspaper
and Alko might forged warrant I jump out window for my hand
on compass injury Alko called medic but they refused to
Stitch my hand

Finding validating his damages claim would not invalidate
his conviction

Relay brief to Attorney General
where Alko originally Discover from lawyer
Chuck Neitz
Substantive Evidence Appendix Ambush at trial
eered as a matter of law

it spin off to other lawsuit in District
Court 19-01330 Sharief vs AMKO

Courts denied my Amended Complaint
Bad Faith and Harassment

Can not get fair trial

Whether it had Jurisdiction Fullerton Not Being in
Front Judge who ISSUE ARREST WARRANT motion Denure

I think Heck Don't BARER me under this
Case law to think Reno 28 F.3d 26
Sims 200 F.3d 1170

↑
I think this not good case
law no more

How many
Months later
took my DNA
Chuck Metz

My Dad said put all
type chemical on my law
work

Put late suppressing
hearing in

I HASEEN Shareef do hereby verify that the
FACTS set forth in the ABOVE documents ARE
TRUE and correct to the BEST of my knowledge
and that false statements herein ARE made
Subject to 18 P2 CSA 4904 Relating to
UNSWORN Falsification to Authorities

Signature
H. Shareef

Certificate of service

I HS do hereby certify that on the Below listed
date I have served upon the Below listed person
A copy of the ABOVE documents and in the matter
listed below date 1-8-20

Respectfully Submitted

HS

Set forth

PO Box 915

MARIANVILLE MO 6239

mailed First
CLASS
Certified mail
hand delivered
officers —

US District Court
Western District of
Pa

H. Shaleef
vs
Brain Palko
Captain Moore

District Courts
18-1494

US Courts of Appeals
19-2884
19-2671
19-2793

I could not agree
these case law in trial

Motion Failure to
State a claim upon
which relief may be granted

1. Objection to MDJ order Dismiss my case she
might over look issue in my Brief

Objection Page 4 in MDJ order ECF Nos 96 128 131
134 170 is lie I sent Affidavit as Evidence

Objection Page 5 is 2 lie I said Captain Moore he said
destroyed it the warden Skredon said he sent
it to my family members which he said they put
some type of chemicals on it which is partially destroyed
my family member said in my Reply Brief
3

Objection PAGE 6 is I.E 2 notably Plaintiff does not state the Defendant fail to comply with trial Courts order granting the motion for Return of his Property I did in my Reply Brief 3 and Affidavit AS Evidence to district Court

PAGE 9 Objection I sent Evidence AS Evidence in A Brief with my CASE NUMBERS in Brief AS Evidence Com vs Sheriff Return of Property Butler County

1. State trooper Palke New I was in house violation Knock Announcements Search it was not All Person Present Search warrant

2 It was NO PROBABLE CAUSE to ARREST me there NO Investigation on me

3 Search Room with out my consent

4 Search was UNRealized on me and Gun of Property

5 Seized of Property without warrant NO Affidavit or warrant on the 2 GUN

6 took DNA off GUN UNDER FALSE ARREST

7. MY cell phone WAS NOT on my Person

8 Police Dog false single false positive false
Alert to ~~dog~~ Nothing in Police Report About Dog
HANDER Accury Report or Field training

9 Chris Synder First time Informant Not
Reliable Untested

10 it First time Trooper Palko ever saw me

11 Police had me in handcuffs and in Police station
for 10 ~~10~~ 13 hours -9

12 I did NOT commit crime in officer presence
But jump out window flight NOT crime

13 Officer came in room I was in I try jump out
window point Gun at me told get on floor Place
Handcuffs on me on my person was wape cash
No weapons on me in plain view was Gun on stair
Well I WAS NO where Buy Gun I was out window
Window

14 I WAS in attic in tight space NO where
go could NOT get Buy Police NO way saying the
Conteboard is mine that in room Florida vs Bostick
501 US 429

Com vs Collini Not Resident of state cap not
in unformed 6304 Sub Section 264 Pa Super 36 398
A2d 1044 (1979) O'Brien 7th DC 4th 552 Pa Com P1 1990

17 I Been in Jail for 19 months on Drug Charges
ON Investigation Between Clarion County and
Butler County ~~Yet Just motion 1100 in trial Butler County~~
Never got out Jail no trial in Butler County
Yet Just motion 1100 in trial Butler County

18 NO Evidence in Preliminary Hearing Board case
ever no Courts Report or Recording of Hearing

Com vs Wodjacks 502 Pa 359

Com vs Early 121 A2d 1132

19 Gun in plain view ARE Defense Weapon
Under

Com vs Anchors 371 A2d 941

Com vs Vicente 238 Pa Super 177

Com vs Smith 253 Pa Super 279

Penal Law 907 908 Model code

20 Judge O'Donnell Not Neutral detached Trooper
Palco might forged warrant out on me 2016

State vs Hawkins 130 GCAPP 126 1973 overzealous
Trooper Brian Palco D2 overzealous

10 Objection I Filed my Lawyer in trial

11 Objection Bound vs Smith 430 US 817

Degeate vs Godwin 84 Fed 768

This two CASE LAW might be outdated

I DON'T KNOW ABOUT HAVE 776 Fed 908
479 VS 814 (1986)

12 I WAS SUE d^e for MALICIOUS PROSECUTION

I'm NOT SAYING Palke don't get PASS on two
limitation I'm my lawyer keep INJURY

from me in District CASE Number 19-01330 19-320
19-3342 Butler County vs Sharief Walters 424 P2 457
E 86-11 416 P2 89 Ferris 12 P2 49 Costello 60 P2 DC 2d 4

PAGE my Lawyer keep JURISDICTION ISSUE FROM
me and do might know or New that Fullerton
Never sign SEARCH WARRANT wheather he had
JURISDICTION OR NOT

13 Objection Judge Fullerton had NO JURISDICTION
What SO EVER I think

14 Voluntary dismiss I CANT Afford Pay For all
LAWSUIT I want Reopen Newspaper CASE 19-1330
Ineffective Counsel NOT bring those ISSUE in State
ISSUE in trial

IN United States
Western District
of Pennsylvania
filing PC

LV 18-1494

H. Shroff
VS
Brown folks

Warden Marshall Lankiewicz
Supplemental brief

Newspaper page 11-27-18 Violation 1.3.14
Amendments CASE LAW & MISS

I was Notary Property 11-26-18

New Hampshire 9th 3rd Bureau Warden H61 NH 117
Police 48 NH 211 Hill 9th 9 New trial

Warden DAMAGE 50,000

Rich 656 420 000 Pennsylvania

Compensation for relief 50,000

Prayer for relief

Warden 10,000

Actual malice 11th 1st

LANKIEWICZ 100,000

Physical injury 10
years penological oblation

A constitutional
right heard by Congress
himself

do think I was going lead this
Sandra deformatory and bath libel
Section 1983 mental distress. Nominal Relief \$0,000
Spoke talked disfigured face false
USC 78 Defamed Deformation Statute
Pennsylvania Allah 226 Fed 247
Ann 143 Fed 1210
Colles 12 Pz 49
Mich 491 US 88

Enfranchisement. Humiliation. Fed. H 416 Pz 89
Wells 424 Pz 454
Costello 602 DC 21 141

Even stated limitation of Moore Name RAN my
time until 2017 from bond until 2018 until trial 2018 1 year

I call Doc Mechanicsburg Pz 17080 717-728-2873
No answer

Violation USC 31-3723

1871 17 Stat 1342 USC 1983 and 28 due
Process Relief Violation Federal Law Civil Right Act



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

CONSTITUENT SERVICES
16th Floor Strawberry Square
Harrisburg, PA. 17120
717-787-3391

December 28, 2018

Hasan Shareef
Butler County Prison
202 S. Washington Street
Butler, PA 16001

Dear Mr. Shareef,

Thank you for contacting the Office of Attorney General Josh Shapiro. We received your letter regarding your complaint against the ~~Allegheny~~ ^{BUTLER} County Police Department.

Under Pennsylvania law, the Attorney General cannot give you legal advice or represent you in any personal matter. You may want to consider consulting a private lawyer about this issue. If you do not already have a lawyer, you can contact the Pennsylvania Bar Association's Lawyer Referral Service at 717-238-6807 or toll-free at 1-800-692-7375. They can also assist you if you need a lawyer but cannot afford to pay for one. For additional information, you can visit their website at <http://www.pabar.org/site/Public/lrsblurb>.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen St. Vincent".

Stephen St. Vincent
Director of Policy and Planning