

No. 21 - 6298

ORIGINAL

FILED
OCT - 7 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

DARYL COOK — PETITIONER
(Your Name)

vs.

CITY OF PHILADELPHIA, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daryl Cook, JR 8635
(Your Name)

SCI Coal Township, 1 Kelley Drive
(Address)

Coal Township, PA 17866
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the procedure due process violations described in Petitioner's Federal Complaint caused the **settlement** in the state court to be **VOID AB INITIO** and/or **not a bar** to Petitioner's independent constitutional claims, especially the **collusion** and/or **conspiracy** between Respondents Jacqueline F. Allen and Amanda C. Shoffel at the conference between them without Petitioner present when Respondent Allen purportedly advised Respondent Shoffel that default was entered, and subsequently, Respondent Shoffel filed a "Petition to Open Judgment" without attaching a **Rule to Show Cause** and without serving Petitioner with a copy of the "Petition", and thereafter, Respondent Allen entered an **Order** vacating and opening the default judgments against the "only two remaining Defendants," namely, Defendants Detective Gregory Rodden and Lieutenant Dean, without issuing a **Rule to Show Cause Order** as of course upon the filing of the Petition to Open Judgment as required by the **mandate** set forth in Philadelphia Civil Rule No. 206.4(c) and Pennsylvania Rule of Civil Procedure No. 206.6, and thereby caused the **Order** vacating and opening the default judgments ~~and~~ and the **settlement** to be **VOID AB INITIO**?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

CITY OF PHILADELPHIA; AMANDA C. SHOFFEL;
JACQUELINE F. ALLEN; MOTION CLERK

RELATED CASES

~~United~~ United Student Aid Funds, Inc. v. Espinosa, 559 US 260, 130 S.Ct 1367, 176 L.Ed 2d 158, 2010 US LEXIS 2750; Great Western Mining & Mineral Company v. Fox Rothschild LLP, 615 F.3d 159, 2010 U.S. App. LEXIS 16210; Singer v. Pilton, 282 Pa. 243, 127 A. 611, 1925 Pa. LEXIS 607; Estate of: Edward Winslow Taylor Inter Vivos Trust; Appeal of: Charles Cresson Wood and Unguhart A. Wood, 2017 PA Super 275, 169 A.3d 658, 2017 Pa. Super. LEXIS 647; John Doe v. City of Philadelphia, 2018 Pa. Commw. Unpub. LEXIS 200, 186 A.3d 570; Glen-Gery Corp. v. Zoning Hearing Bd., 589 Pa. 135, 907 A.2d 1033, 2006 Pa. LEXIS 1894; Simon v. Southern R. Co., 59 LEd 492, 236 US 115 (1915); Carey v. Carey, 121 Pa. Super. 251, 183 A. 371, 1936 Pa. Super. LEXIS 192

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RODDEN*

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was March 1, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 13, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States

Amendment XIV, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Daryl Cook, pro se, is an inmate presently confined in the state Correctional Institution at ~~Wayne~~ Coal Township, Pennsylvania. He brought claims in the United States District Court for the Eastern District of Pennsylvania against the City of Philadelphia and other defendants under 42 U.S.C. sections 1983 and 1985 alleging due process and equal protection violations, collusion, conspiracy, fraud and misrepresentation, all of which related to prior state court litigation in which he had won a default judgment against the only two defendants who were remaining in the state lawsuit. However, that litigation was settled after the default judgments was vacated and opened by Respondent Allen, without her issuing a Rule to Show Cause why the Petition to Open Judgment should not be granted and without Respondent Shoffel attaching a Rule to Show Cause to the Petition or serving Petitioner with a copy of the Petition to Open Judgment which she had filed on behalf of the two remaining defendants. See Complaint, Appendix D (alleging independent constitutional claims).

Despite the state court record showing that no Rule to Show Cause was issued before Respondent Allen vacated and opened the default judgments and that Petitioner had complained about same, and not being served with a copy of the Petition to Open Judgment, not being served with other filings, not having some of his documents filed (i.e. docketed), and that Petitioner had filed a motion to strike settlement and reinstate default judgment, he was not afforded a hearing on none of his filings, and both the District Court and Court of Appeals held that the Settlement is a bar to his independent constitutional claims. Id. See also ~~the~~ Court of Appeals Opinion, Appendix A; District Court Opinion, Appendix B.

REASONS FOR GRANTING THE PETITION

This is a matter of grave public interest/policy, in that no ~~ad~~ civilized society would tolerate the injustice done to Petitioner when he was physically assaulted and threatened by a homicide detective and thus forced to give a self-incriminating statement which was the sole evidence used to charge and convict him and sentence him to 20-40 years incarceration, and when he was "conspired against," "colluded" against and subjected to "fraud" and "misrepresentation" during his state court litigation by the respondents and thus denied due process and equal protection of the laws to thwart his litigation and thus cause him to be unconstitutionally denied/deprived of the default judgments he was/is entitled to as a matter of law, and moreover, when the District Court and Court of Appeals ignored the case law and Pennsylvania Rules of Civil Procedure along with Philadelphia Rule of Civil Procedure that show that Petitioner was denied due process when Respondent Allen vacated and opened the default judgments without fulfilling her "ministerial" duty to issue a Rule to Show Cause as of course upon the filing of the Petition to Open Judgment filed by Respondent Shoffel on behalf of the state court defendants, without her attaching a Rule to Show Cause form to the Petition and without serving Petitioner with a copy of the Petition to Open Judgment, and therefore, the **Order** vacating and opening the default judgments was void ab initio and caused the

Settlement to be void ab initio. See Complaint, Appendix D (alleging independent constitutional claims) and Compare With Complaint, Appendix E (indicating that none of the claims set forth in the District Court were litigated in the state court). See also John Doe v. City of Philadelphia, 2018 Pa. Commw. Unpub. LEXIS 200, 186 A.3d 590 (indicating that Philadelphia Civil Rule No. 206.4(c) and Pennsylvania Rule of Civil Procedure No. 206.6 requires that a rule to show cause be issued as of course in connection with any petition); Estate of: Edward Winslow Taylor Inter Vivos Trust; Appeal of: Charles Cresson Wood And Unguhart A. Wood, 2017 PA Super 275, 169 A.3d 658, 2017 Pa. Super. LEXIS 647 (indicating that a trial court cannot decide to refuse to issue a rule to show cause where the local rule provides for issuance as of course); Carey v. Carey, 121 Pa. Super. 251, 183 A.371, 1936 Pa. Super. LEXIS 192 (indicating that in the absence of a statute or rule directing how service of a rule to vacate shall be made, a court can act when it is satisfied that actual notice of the proceeding to vacate has been given). Here, the rule required the issuance of a rule to show cause as of course. Thus, because Petitioner was not afforded notice of the Petition to Open Judgment and an opportunity to be heard on the Petition before

Respondent Allen entered her order vacating and opening the default judgments, Petitioner was denied due process, and therefore, the order vacating and opening the default judgments was void ab initio and caused the Settlement to be void ab initio. See *Glen-Gery Corp. v. Zoning Hearing Bd.*, 589 Pa. 135, 907 A.2d 1033, 2006 Pa. LEXIS 1894 (indicating that: "The void ab initio doctrine only concerns those claims that implicate notice, due process, or other constitutional rights of a party. The doctrine has its roots in due process concerns"); *Great W. Mining + Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 2010 U.S. App. LEXIS 16210 (indicating that a conspiracy would itself violate due process). See also *Simon v. Southern R. Co.*, 59 LEd 492, 236 US 115 (1915); *Singer v. Pilton*, 282 Pa. 243, 127 A. 611, 1925 Pa. LEXIS 607 (indicating that: "Causes of action which are distinct and independent, although growing out of the same contract, transaction, or state of facts, may be sued upon separately, and even the recovery of judgment for one of such causes of action will not bar subsequent actions upon the others"). Accordingly, here, the District Court and the Court of

Appeals erred in concluding that the Settlement is a bar to Petitioner's independent constitutional claims. See Petition for Rehearing En Banc, Appendix F. See also Answer and New Matter of Defendants Dean and Rodden, Appendix E.!!

1. The Certificate of Service indicate that Respondent Shoffel served counsel for Plaintiff via electronic mail. However, Petitioner was pro se and did not get served. See Complaint, Appendix D (indicating that Petitioner was not served with the Petition to Open Judgment and nor was he served with the Answer to his Complaint in the state court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daryl Cook

Date: October 7, 2021