UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3851

DARYL COOK,
Appellant

v.

CITY OF PHILADELPHIA, et al.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-17-cv-00331)

PETITION FOR REHEARING

BEFORE: SMITH, *Chief Judge*, and MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, *Circuit Judges*, NYGAARD*, *Senior Circuit Judge*

The petition for rehearing filed by appellant Daryl Cook in the above-captioned matter has been submitted to the judges who participated in the decision of this Court and to all other available circuit judges of the Court in regular active service. No judge who concurred in the decision asked for rehearing, and a majority of the circuit judges of the Court in regular active service who are not disqualified did not vote for rehearing by the Court. It is now hereby **ORDERED** that the petition for rehearing is **DENIED**.

---

* The Vote of Senior Circuit Judge Nygaard is limited to Panel Rehearing Only.

APPENDIX C

BY THE COURT,

s/ Paul B. Matey
Circuit Judge

Dated: May 13, 2021
Ab/cc: Daryl Cook
All Counsel of Record

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3851

DARYL COOK,
Appellant

v.

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

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-17-cv-00331)
District Judge: Honorable Eduardo C. Robreno

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 18, 2021
Before: JORDAN, MATEY, and NYGAARD, Circuit Judges

(Opinion filed March 1, 2021)

OPINION*

PER CURIAM

Appellant Daryl Cook appeals from the District Court's dismissal of his complaint against the City of Philadelphia, attorney Amanda Shoffel, Judge Jacqueline Allen, and an

---

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

APPENDIX A

unnamed motions clerk.[1] For the reasons that follow, we will affirm the District Court's judgment.

In 2010, Cook was convicted in the Philadelphia Court of Common Pleas of third-degree murder and sentenced to 20-40 years in prison. He filed a civil complaint in 2012 in that same court against the City of Philadelphia and several officers involved in his arrest and prosecution, alleging that he was arrested without probable cause and was beaten and threatened into making self-incriminating statements. In 2015, Cook agreed to settle all claims in exchange for $2,500. When the defendants mailed him a release form, he refused to sign it. He eventually signed it after the court granted the defendants' motion to enforce the settlement agreement. See Cook v. City of Phila., No. 2304 C.D. 2015, 2016 WL 6938451, at *1-4 (Pa. Commw. Ct. Nov. 28, 2016).

Thereafter, Cook filed a motion to strike the settlement agreement. He asserted that a 2014 order vacating a default judgment against the defendants was void because he did not receive a copy of the petition to open the default judgment and the trial court never issued a rule to show cause why the default judgment should not be opened. He also claimed that he was not served with a copy of the defendants' motion to enforce the settlement agreement. The trial court denied the motion and the Commonwealth Court affirmed. See id. at *3-4.

[1] Because we write primarily for the benefit of the parties, we have stated only those facts which are necessary for the analysis.

In 2017, Cook filed a federal complaint alleging fraud, misrepresentation, conspiracy, and collusion to deny due process under 42 U.S.C. §§ 1983 and 1985 based on the defendants' conduct during the 2012 civil lawsuit. He claimed that Shoffel, an attorney involved in the 2012 civil lawsuit, committed fraud and misrepresentation by failing to properly serve numerous filings and asserting that she had the authority to make a settlement offer when she, according to Cook, did not. Cook also alleged that the defendants conspired against him when the trial judge failed to issue a rule to show cause before vacating the default judgment against the defendants and failed to afford Cook a hearing on his motion to strike the settlement agreement. The District Court granted the City's and Judge Allen's motions to dismiss, reasoning that the claims against the City were res judicata and that the claims against the trial judge were barred on the grounds of judicial immunity. The District Court later granted Shoffel's motion for summary judgment because, among other things, Cook's claims were barred by the Rooker-Feldman doctrine. After Cook's motion to alter or amend the judgment under Rule 59(e) was denied, he timely appealed.

We have jurisdiction under 28 U.S.C. § 1291[2] and exercise plenary review over the District Court's rulings. See Davis v. Samuels, 962 F.3d 105, 111 n.2 (3d Cir. 2020);

[2] We are satisfied that the Rooker Feldman doctrine does not preclude our exercise of jurisdiction over this matter. The doctrine prevents us from exercising jurisdiction over appeals where, among other things, the plaintiff complains of injuries *caused by* a state court judgment. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Cook's claims are based on the defendants' conduct during the court proceeding and are wholly separate from the judgment itself. See Great W. Mining & Min. Co. v.

Tundo v. County of Passaic, 923 F.3d 283, 286 (3d Cir. 2019). To state a claim, a civil complaint must set out "sufficient factual matter" to show that its claims are facially plausible. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We may affirm on any reason supported by the record. Brightwell v. Lehman, 637 F.3d 187, 191 (3d Cir. 2011).

Upon de novo review of the record, Cook's claims fail. We agree with the District Court that any claims arising from the trial court's vacatur of the default judgment—or any procedural defect allegedly committed by the trial court prior to settlement—are barred by the settlement agreement. In open court, Shoffel offered Cook $2,500 to "settle all claims." Cook accepted and agreed to a "total settlement of the civil lawsuit." The agreement, which Cook eventually signed, states that he released the defendants from all liability arising from the incident surrounding his arrest and prosecution.[3] He cannot now, without any credible claims of fraud, duress, or mutual mistake, claim that the trial court erred by vacating the

---

Fox Rothschild LLP, 615 F.3d 159, 165 (3d Cir. 2010) ("[W]hen the source of the injury is the defendant's actions (and not the state court judgments), the federal suit is independent, even if it asks the federal court to deny a legal conclusion reached by the state court.").

[3] Cook asserts that he was not aware of the terms of the settlement agreement and that he thought the defendants were admitting liability. However, he signed an agreement clearly stating that the settlement was "not to be construed in any court whatsoever, or otherwise, as an admission of liability on the part of [the defendants]."

default judgment and allowing the settlement to move forward. See McDonnell v. Ford Motor Co., 643 A.2d 1102, 1106 (Pa. Super. Ct. 1994).

Though Cook claims that Shoffel "misrepresented" that she had the authority to enter a settlement agreement, he has provided no reason to doubt that Shoffel, as a representative of the defendants in the case, had the authority to propose a settlement agreement on their behalf. In addition, his claims of fraud upon the Court are meritless. The "fraud" he alleges appears to be that Shoffel did not attach a rule to show cause to her motion to vacate the default judgment and failed to serve certain court filings on him. This apparent error does not satisfy the high showing required for fraud upon the court. See Herring v. United States, 424 F.3d 384, 386-87 (3d Cir. 2005) (noting "[i]n order to meet the necessarily demanding standard for proof of fraud upon the court we conclude that there must be: (1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court" and further concluding that a determination of fraud upon the court may be justified only by "egregious misconduct" (footnote omitted)).

Finally, the District Court properly dismissed the claims against Judge Allen as she acted within her judicial capacity at all relevant times and is protected by absolute judicial immunity. Mireles v. Waco, 502 U.S. 9, 11-12 (1991).

Accordingly, we will affirm the judgment of the District Court.[4] Cook's "Motion to Strike Appellees' Brief and/or Enter Judgment By Default" is denied.

[4] The District Court acted within its discretion in denying Cook's Rule 59(e) motion for reconsideration because he did not raise "(1) an intervening change in the controlling law; (2) the availability of new evidence . . . ; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DARYL COOK,	:	CIVIL ACTION
	:	NO. 17-00331
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
	:	
Defendants.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J. JULY 18, 2019

Plaintiff Daryl Cook is an inmate in the Pennsylvania State Correctional System. He brings claims against the City of Philadelphia and other defendants under § 1983 and § 1985 alleging due process violations and conspiracy, and claims for fraud and misrepresentation, all of which relate to certain prior state court litigation. That litigation was settled and concluded when the Supreme Court of the United States declined to review Cook's allegations of impropriety in the case. Unhappy with the outcome, Cook believes there must have been a conspiracy or other misconduct. However, Cook's federal case cannot proceed: his § 1985 claim is not cognizable on the facts he has alleged; the Court lacks jurisdiction over his § 1983 and

APPENDIX B

misrepresentation claims under Rooker-Feldman; the Settlement Agreement bars all claims, including the fraud claim; and finally, res judicata also precludes all claims. Thus, the § 1985, § 1983, and misrepresentation claims will be dismissed, and summary judgment will be granted in favor of Defendants and against Cook on the fraud claim as a matter of law.

Contents

I. INTRODUCTION

A lengthy recitation of the facts and history of the state and federal litigations is warranted in order to put the legal issues in this case in perspective.

A. State Court Litigation

On July 13, 2010, Cook was convicted of third-degree murder in the Court of Common Pleas of Philadelphia County, Pennsylvania. ECF No. 50 at 3. Cook alleges that during the investigation, he was beaten into making a self-incriminating statement, and he was assaulted while awaiting trial. Id.; ECF No. 50-3 at 12, 15; see also Cook v. City of Phila., No. 2304 C.D. 2015, 2016 WL 6938451, at *1 (Nov. 28, 2016).

In May 2012, after his conviction, Cook filed a state court civil action seeking damages for his alleged injuries from multiple defendants, including Lt. Dean and Det. Rodden. See ECF No. 50-1. On March 14, 2013, Cook sought the entry of default judgments against Dean and Rodden for their failure to file an answer, and default judgment was entered against them. Id. at 20 (entries dated March 14, 2013).

On December 9, 2013, Dean and Rodden filed a Petition to Open Judgment,[1] which was granted on January 7, 2014. Id. at 26-27. On June 19, 2014, Cook moved for extraordinary relief in

[1] See ECF No. 50-2.

the form of reinstating the default judgment,[2] but was denied on October 29, 2014. Id. at 30.

The case proceeded, and over a year later, on January 23, 2015, the remaining parties attended a settlement conference held on the record before Judge Jacqueline Allen in the Philadelphia County Court of Common Pleas. See id. at 33; ECF No. 50-5. Cook stated that he sought money damages, release from prison, and expungement of his murder conviction. ECF No. 50-5 at 8-11. Judge Allen explained to Cook that the court could not grant him relief as to his imprisonment or conviction. Id. at 11-12. Cook stated that he understood "very clearly," he wanted help with the settlement as to the amount of money, and he was "still going to seek [his] relief in the criminal process." Id. at 12-13.

The parties then discussed settlement amounts. Judge Allen stated her view that "if the City offers you $2,500.00 I think you ought to take it and this case should be marked settled, $2,500.00." Id. at 13. Cook replied "I want to do that." Id. at 14. Judge Allen confirmed with the defendants' attorney, Amanda Shoffel, Esq., that she had authority to "settle this civil lawsuit." Id. Judge Allen then asked Cook

---

2 See ECF No. 50-4.

whether he accepted the offer in "total settlement of this civil lawsuit," to which Cook responded yes. Id.

But Cook later refused to sign the Settlement Agreement, believing that Shoffel had failed to send him all of the required paperwork when petitioning to open the judgment, including the Petition and an accompanying proposed Rule to Show Cause Order. See ECF No. 50-3 at 6-7, 21-22. The defendants moved the court to enforce the Settlement Agreement, and the court granted the motion on May 13, 2015. ECF No. 50-1 at 33-34. Cook ultimately signed the Settlement Agreement on May 29, 2015. ECF No. 50-6.

On September 4, 2015, Cook moved to strike the Settlement Agreement, arguing in part that he had not been served with the Petition and the accompanying proposed Rule to Show Cause Order, but his motion was denied by the Court of Common Pleas on October 13, 2015. ECF No. 50-1 at 34-35; Cook, 2016 WL 6938451, at *3.

Cook then timely appealed the denial of his motion to strike the Settlement Agreement to the Commonwealth Court of Pennsylvania. Cook, 2016 WL 6938451, at *4. Amongst the issues presented, Cook contended that "the trial court's January 2014 order opening and vacating the default judgment [was] void because the trial court did not issue a rule to show cause." Id. Cook also contended that "the trial court's order denying

the motion to strike settlement and reinstate default judgment should be vacated and the case remanded to the trial court" because of errors and coercion. Id.

The Commonwealth Court held that Cook had "withdrawn and terminated" any claim that he may have had on any procedural defects because he entered into a "total settlement of the civil law suit," and had "agreed to discontinue those claims." Id. at *5. Furthermore, the Settlement Agreement plainly applied to all defendants, any mistake in its making would not vitiate it, and there was no duress in its making. Id. at *7-8.

Cook petitioned the Supreme Court of Pennsylvania for the allowance of an appeal from the Commonwealth Court, but that was denied on August 17, 2017. Cook v. City of Phila., 170 A.3d 1011 (Pa. 2017).

Following the Supreme Court of Pennsylvania's denial of the allowance of an appeal, Cook petitioned the Supreme Court of the United States for a writ of certiorari. Petition for Writ of Certiorari, Cook v. City of Phila., No. 17-7394 (S. Ct. Nov. 21, 2017). Cook contended that he was "denied his fundamental and substantive right to due process of law, in that he was deprived of his entitlement to default judgments . . . without being afforded notice of the petition to open the default judgments" because he was not served with a copy of the

Petition or the accompanying proposed Rule to Show Cause Order. Id. at 5 (emphasis in original). The Supreme Court of the United States denied certiorari on March 19, 2018. Cook v. City of Phila., 138 S. Ct. 1294 (2018).

B. Federal Litigation

Cook filed the Complaint on January 23, 2017,[3] a few months after the Commonwealth Court had denied Cook's appeal of Judge Allen's decisions. ECF No. 1.; Cook, 2016 WL 6938451.

The Complaint named four defendants: Philadelphia Court of Common Pleas Judge Allen; the City of Philadelphia; former Deputy City Solicitor Shoffel; and an unnamed "Motion Clerk."

Cook brought claims for: 1) violation of due process in state court proceedings under § 1983 (lack of notice of the accompanying proposed Rule to Show Cause); 2) conspiracy to deny equal protection in state court proceedings under § 1985 (concerning the opening of the default judgment); 3) fraud in the Petition to Open Judgment (because he did not receive a copy of the Petition); and 4) misrepresentation in the settlement proceedings (because Shoffel did not have authority to settle

[3] Cook sought leave to proceed in forma pauperis, which the Court denied. ECF No. 2. Cook then paid the filing fee and proceeded pro se.

the case, and he did not receive what he was expecting).[4] See ECF No. 60 (explaining at length across 91 handwritten pages Cook's reason for bringing suit, including the state court background; his averred federal § 1983 and § 1985 causes of action; the myriad forms of relief sought; and allegations of fraud, misrepresentation, collusion, and conspiracy); see also ECF No. 1-1 ¶¶ 1, 20-22, 27, 29, 30; ECF No. 50-3 at 6:2-4 ("fraud, misrepresentation, acting in concert or conspiracy, concerting actual conspiracy of conspired true acts."), 6:9-7:14, 9:15-18 (conspiracy), 9:21-10:5, 10:21-11:8 (misrepresentation in the settlement); ECF Nos. 51, 52, 53, 55, 73.

Cook claims that the default judgment entitled him to $4,875,000 and his immediate liberty.[5] ECF No. 73 at 2. Cook seeks $10,000,000 in compensatory damages from several defendants (presumably from each one listed), expungement of his

---

[4] Pro se litigants are afforded greater leeway with their pleadings and filings, and the Court must construe those materials liberally. Erickson v. Pardus, 551 U.S. 89, 94 (2007); see also Huertas v. Galaxy Asset Mgmt., 641 F.3d 28, 32 (3d Cir. 2011).

[5] At this stage of the proceedings, the Court is not presented with the question of whether Cook's state court case was barred by Heck v. Humphrey, 512 U.S. 477 (1994) and its progeny. The Court notes, however, that to the extent Heck applied, Cook's claim that he was beaten by the authorities into making a confession could not have been brought because it would be a collateral attack on his conviction.

murder conviction, restoration of his appellate rights, and other relief. ECF No. 1-1 ¶¶ 27-30.

Motions to dismiss were filed by Judge Allen, the City, and Shoffel.[6] Shoffel argued inter alia that the Court lacked jurisdiction under Rooker-Feldman; the City of Philadelphia argued res judicata precluded Cook's claims; Judge Allen asserted inter alia Rooker-Feldman, Eleventh Amendment immunity, and judicial immunity. ECF Nos. 13, 14-1. The Court granted the City's motion to dismiss, finding that res judicata applied to bar the claims against the City. ECF No. 35 ¶ 3 n.2. The Court denied Shoffel's motion but did not address Shoffel's argument that the claims were barred by the application of Rooker-Feldman. The Court dismissed the case as to Judge Allen on the grounds of Eleventh Amendment immunity and judicial immunity. ECF No. 35. Shoffel then filed an Answer on November 15, 2017. ECF No. 37.

In accordance with the Court's Scheduling Order, on March 1, 2018, Cook was deposed on the nature and bases for his

---

6 The City and Shoffel filed a joint memorandum of law in support of their motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 14-1. The defendants challenged the complaint as being barred by Rooker-Feldman doctrine, and for failing to state due process and conspiracy claims. Id. The City also alleged res judicata, and Shoffel raised qualified immunity. Id.

claims, and then Shoffel moved for summary judgment. ECF No. 47 ¶¶ 1, 2; ECF No. 50. Numerous filings ensued over many months.[7]

On March 26, 2019, the Court held a conference with the parties to determine what discovery Cook believed he required to respond to the motion for summary judgment. ECF Nos. 61, 62. Cook identified areas of discovery that he believed were necessary to explore;[8] Shoffel responded that Cook's claims were barred and therefore discovery was unnecessary. The Court took the issue of scheduling further discovery under advisement. ECF No. 63.

On April 12, 2019, the Court sua sponte issued a Rule to Show Cause requiring the parties to brief whether Rooker-Feldman, originally asserted by Shoffel in her motion to dismiss but not ruled on by the Court, applied or whether the claims

---

7 Cook filed responses on April 27, May 29, and June 4, 2018, which were incorrectly and misleadingly titled as a "Motion for Appointment of Counsel." ECF Nos. 51, 52, 53. On June 12, 2018, Shoffel filed a response to the motion to appoint counsel/response to motion for summary judgment. ECF No. 54. On June 25, 2018, Cook filed a reply to Shoffel's response. ECF No. 55. On October 18, 2018, the Court denied Cook's motions for appointment of counsel and required Cook to submit all legal arguments and evidence of record in support of his opposition to Shoffel's motion. ECF No. 56. Cook submitted a final response to the motion for summary judgment on December 27, 2018. ECF No. 60.

8 Cook indicated that he wanted to serve interrogatories and requests for admission concerning inter alia the petition to reopen the state court case.

were precluded by res judicata or collateral estoppel. ECF No. 64. Shoffel and Cook timely complied.

The parties having been fully heard, ECF Nos. 66 & 73, the Court will now proceed to assess its jurisdiction and whether the claims are precluded.

II. DISCUSSION

A. Sua Sponte Raising of Subject Matter Jurisdiction and Preclusion

In responding to the Rule to Show Cause on Rooker-Feldman and preclusion, Cook first moved to obtain relief from responding to the Rule on the grounds that Shoffel did not raise Rooker-Feldman in her motion to dismiss. ECF No. 65 ¶ 2. The Court summarily denied Cook's motion. ECF No. 67. In his later briefing, Cook argued that Shoffel "failed to raise res judicata or collateral estoppel in her answer to the Complaint and her Motion to Dismiss." ECF No. 73 at 10 n.2.

A federal court must always have subject matter jurisdiction and may sua sponte raise the issue of whether to apply Rooker-Feldman doctrine. Fed. R. Civ. P. 12(h)(3); see, e.g., Bass v. New Jersey, 649 F. App'x 255 (3d Cir. 2016) (non-precedential).

The preclusion defenses of res judicata and collateral estoppel are affirmative defenses that typically must be made by a defendant in a responsive pleading. Fed. R. Civ. P. 8(c);

Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found., 402 U.S. 313, 350 (1971). However, a court may sua sponte resolve that an action is barred on preclusion grounds when "a court is on notice that it has previously decided the issue presented, the court may dismiss the action sua sponte, even though the defense has not been raised" in order to avoid "unnecessary judicial waste." Arizona v. California, 530 U.S. 392, 412-13 (2000) (internal quotation marks omitted); see also Carbonell v. La. Dep't of Health & Human Res., 772 F.2d 185, 189 (5th Cir. 1985) (explaining that preclusion can be invoked sua sponte when "all relevant data and legal records are before the court and the demands of comity, continuity in the law, and essential justice mandate invocation of the principles of res judicata"); Collazo v. Mount Airy No. 1 LLC, 723 F. App'x 147, 151 (3d Cir. 2018) (non-precedential) (deciding sua sponte that res judicata barred the claims because "the Commonwealth Court previously addressed them in [plaintiff]'s declaratory judgment action against [defendant]").

The Court properly issued the Rule to determine its jurisdictional basis for hearing the case and whether Cook's claims were otherwise precluded. First, as to Rooker-Feldman, Shoffel had raised the defense in her motion to dismiss but the Court did not rule on it. Second, as to the preclusion defense, given that many other courts have expended resources on Cook's

challenges to the opening of the default judgment and the enforcement of the Settlement Agreement, and that this Court has now joined them in an ever-increasing expenditure of time and effort, it is proper to resolve whether the claims and issues have already been previously decided and whether any claims can proceed.

B. Cook's § 1985 claim is not legally cognizable

Cook does not identify under which part of 42 U.S.C. § 1985 he brings a claim of conspiracy. Section 1985 prohibits "five broad classes of conspiratorial activity." Kush v. Rutledge, 460 U.S. 719, 724 (1983). Only two of the classes concern activity involving state officials: "the administration of justice in state courts;" and "the private enjoyment of 'equal protection of the laws' and 'equal privileges and immunities under the laws.'" Id. Both categories require an equal protection component in that the conspirators must have "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind [their] action." Id. at 725-26.

Cook has not alleged an equal protection component to the purported conspiracy. It is clear that the facts he has alleged in his many filings and in his deposition do not comport with a legally cognizable § 1985 claim. Accordingly, Cook's § 1985 claims must be dismissed with prejudice.

C. Rooker-Feldman

1. Legal doctrine

Rooker-Feldman is a jurisdictional doctrine whereby federal courts lack jurisdiction over suits that are essentially appeals from a state-court judgment. Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 165 (3d Cir. 2010).

For Rooker-Feldman doctrine to apply: 1) the federal plaintiff must have lost in state court; 2) the plaintiff must complain of injuries caused by the state-court judgment; 3) the judgment was rendered before the federal suit was filed; and 4) the federal complaint asks a district court to review and reject the judgment. See id. at 166 (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)). In the Third Circuit, the second and fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim. Id.

Rooker-Feldman does not apply when the plaintiff alleges that a state court action was tarnished by due process violations arising from the lack of an impartial forum, i.e., the conduct of the opposing counsel and members of the judiciary violated the plaintiff's constitutional rights, and is separate from the state court decision itself. Id. at 172-173. "If the state-court judgments [are] not themselves the cause of [a plaintiff]'s alleged injuries, the Rooker-Feldman doctrine

[will] not deprive the District Court of jurisdiction." Id. at 173. For example, a claim for fraud that relates to how the state court decisions on admissibility of evidence were reached (because the testimony is alleged to be untrue) does not require rejection of the state court judgments. Johnson v. Draeger Safety Diagnostics, Inc., 594 F. App'x 760, 765-66 (3d Cir. 2014) (non-precedential) ("While a decision that [earlier state court judgments] were tainted by alleged fraud would undermine the force of those judgments, this is not the same as asking that the state judgments be rejected.").

A plaintiff's claim for damages may "require review of state-court judgments and even a conclusion that they were erroneous," but will not be barred if "those judgments would not have to be rejected or overruled for [the plaintiff] to prevail." Great W. Mining, 615 F.3d at 173.

2. The Court lacks jurisdiction over Cook's § 1983 claims and misrepresentation in the Settlement Agreement claims in light of Rooker-Feldman

In response to the Rule to Show Cause, Cook argued that he was "not attacking the state-court judgment" but rather "complaining of the injuries caused by the Defendants." ECF No. 73 at 3 (emphasis in original).

Cook's argument overlooks that he complained to both the Court of Common Pleas and the Commonwealth Court that the

settlement proceedings were procedurally improper. The Commonwealth Court affirmed the propriety of enforcing the Settlement Agreement, stating that Cook agreed to a "total settlement" of the suit and his claims of procedural defects in the litigation "must be considered withdrawn and terminated." Cook, 2016 WL 6938451 at *5 (emphasis in original). Furthermore, the Commonwealth Court found that any mistake in making the Settlement Agreement would not vitiate it, and there was no duress in making the Settlement Agreement.

In order for Cook's claims to proceed here, this Court would have to review and reject the judgment by the state courts that there was no error in the procedures as to how the Settlement Agreement was reached, and that the Settlement Agreement foreclosed future litigation on this matter with regard to the process by which the parties ultimately arrived at a settlement. This review by a federal court of the state court decision is barred under Rooker-Feldman.

3. Cook's claim of fraud in the Petition to Open Judgment is not barred by Rooker-Feldman

Rooker-Feldman does not bar litigation concerning fraud by a party during a state court lawsuit. See, e.g., Williams v. BASF Catalysts LLC, 765 F.3d 306, 315 (3d Cir. 2014); Johnson, 594 F. App'x at 764-66. To the extent Cook is presenting independent claims against the defendants for

unlawful conduct in the course of the Petition to Open Judgment proceedings in state court, his claims are not barred.

D. Preclusion

1. Legal principles

The preclusion doctrine of res judicata[9] applies in federal courts to any causes of action and any issues that were decided by state courts which could exercise jurisdiction over the claims. Kremer v. Chem. Const. Corp., 456 U.S. 461, 466 n.6 (1982); see also Edmundson v. Borough of Kennett Square, 4 F.3d 186, 189 (3d Cir. 1993) ("When a prior case has been adjudicated in a state court, federal courts are required by 28 U.S.C. § 1738 to give full faith and credit to the state judgment and, in section 1983 cases, apply the same preclusion rules as would the courts of that state.").

In federal court litigation in which prior state litigation is implicated, principles of preclusion are informed by state law, in this case, the law of Pennsylvania. Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985). Even if a federal court finds that it has jurisdiction because

---

[9] Res judicata "precludes the parties or their privies from relitigating issues that were or could have been raised" in an action which proceeded to a final judgment on the merits; collateral estoppel "precludes relitigation of the same issue on a different cause of action between the same parties." Kremer v. Chem. Const. Corp., 456 U.S. 461, 466 n.6 (1982) (citations omitted).

Rooker-Feldman does not apply, state law principles of preclusion will apply. Exxon, 544 U.S. at 292.

In Pennsylvania, under res judicata, "[a]ny final, valid judgment on the merits by a court of competent jurisdiction precludes any future suit between the parties or their privies on the same cause of action." Balent v. City of Wilkes-Barre, 669 A.2d 309, 313 (Pa. 1995). "Res judicata applies not only to claims actually litigated, but also to claims which could have been litigated during the first proceeding if they were part of the same cause of action." Id.

Res judicata applies when "the two actions share the following four conditions: (1) the thing sued upon or for; (2) the cause of action; (3) the persons and parties to the action; and (4) the capacity of the parties to sue or be sued." R & J Holding Co. v. Redevelopment Auth. of Cnty. of Montgomery, 670 F.3d 420, 427 (3d Cir. 2011) (citing Bearoff v. Bearoff Bros., Inc., 327 A.2d 72, 74 (Pa. 1974)).

Both suits must have the same identity of parties or privity for res judicata to apply. City of Phila. v. Wells Fargo & Co., No. CV 17-2203, 2018 WL 424451, at *3 (E.D. Pa. Jan. 16, 2018) (applying Pennsylvania law); Day v. Volkswagenwerk Aktiengesellschaft, 464 A.2d 1313, 1317 (Pa. Super. Ct. 1983). But privity "is merely a word used to say

that the relationship between one who is a party on the record and another is close enough to include that other within the res judicata." E.E.O.C. v. U.S. Steel Corp., 921 F.2d 489, 493 (3d Cir. 1990) (quoting Bruszewski v. United States, 181 F.2d 419, 423 (3d Cir. 1950)).

Res judicata "will not be defeated by minor differences of form, parties or allegations where the controlling issues have been resolved in a prior proceeding in which the present parties had an opportunity to appear and assert their rights." Massullo v. Hamburg, Rubin, Mullin, Maxwell & Lupin, P.C., Civ. A. No. 98-116, 1999 WL 313830, at *5 (E.D. Pa. May 17, 1999) (quoting Helmig v. Rockwell Mfg. Co., 131 A.2d 622, 627 (Pa. 1957)) (quotation marks omitted).

A settlement agreement, like any other contract, will bind the parties and have preclusive effect. See, e.g., Porreco v. Maleno Developers, Inc., 761 A.2d 629, 632-33 (Pa. Commw. Ct. 2000); see also Bandai Am. Inc. v. Bally Midway Mfg. Co., 775 F.2d 70, 74-75 (3d Cir. 1985) ("In subsequent litigation between the parties to a settlement agreement resulting in a consent decree, litigation of issues resolved in the agreement is precluded."); Toscano v. Conn. Gen. Life Ins. Co., 288 F. App'x 36, 38 (3d Cir. 2008) ("Judicially approved settlement agreements are considered final judgments on the merits for the purposes of claim preclusion.") (non-precedential). "A

Defendants was not a party to the Settlement Agreement

settlement will not be set aside absent a clear showing of fraud, duress or mutual mistake." McDonnell v. Ford Motor Co., 643 A.2d 1102, 1106 (Pa. Super. Ct. 1994) (quoting Rago v. Nace, 460 A.2d 337, 339 (Pa. Super. Ct. 1983)).

2. Cook's arguments against preclusion

In response to the Rule to Show Cause, Cook argues that the remaining defendants were "not parties to the state-court lawsuit," "nor are the claims the same." ECF No. 73 at 3. Cook also argues that he was not given the opportunity to actually litigate the issues concerning the reopening of the default judgment, as shown by the trial court's memorandum in which the judge stated that Cook "failed to effectuate an appeal . . . in a timely fashion, [therefore] the issue is waived." Id. at 3-4, Ex. B at 1. Cook continues by arguing that "he did not have a hearing on any of his issues or a final judgment on the merits due to the settlement agreement." Id. at 4 (emphasis in original).

Cook also argues that he "did not have knowledge of [a conference between Shoffel and the state-court judge] until 'on appeal' when the attorney for the City-Defendants filed [a] brief" that included the petition to open judgment. Id. at 5; Ex. A ¶ 18.

3. The Settlement Agreement bars Cook's claims

Whether or not Rooker-Feldman applies to only a subset of Cook's claims, the Settlement Agreement forecloses this litigation. The scope of the Settlement Agreement subsumes all of his claims, including the fraud claim.

The Commonwealth Court ruled that Cook could not pursue any claims regarding the conduct of the litigation prior to settlement because he had withdrawn and terminated them by entering into the Settlement Agreement. Cook, 2016 WL 6938451, at *5. Furthermore, the Commonwealth Court ruled that there was no procedural error in the making of the Settlement Agreement. Thus, the effect of the Settlement Agreement is to bar Cook from bringing his federal case as to all claims.

4. Res judicata bars Cook's claims

Even if the application of Rooker-Feldman and the operation of the Settlement Agreement did not conclusively end the inquiry, res judicata operates to preclude all of Cook's claims.

"[I]ssues actually litigated in a state-court proceeding are entitled to the same preclusive effect in a subsequent federal § 1983 suit as they enjoy in the courts of the State where the judgment was rendered." Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 83 (1984) (discussing Allen v. McCurry, 449 U.S. 90 (1980)). Section 1983 "does not

override state preclusion law and guarantee petitioner a right to proceed to judgment in state court on . . . state claims and then turn to federal court for adjudication of . . . federal claims." Id. at 83-85. Where an issue could have been raised but was not, preclusion still applies. Balent, 669 A.2d at 313.

In the state court proceedings, Cook sought to have the Settlement Agreement stricken, the opening of the default judgment reversed, and the default judgment reinstated. Cook, 2016 WL 6938451, at *3. As bases for relief, Cook argued many of the same facts that he argues before this Court: lack of notice regarding the Petition; lack of a Rule to Show Cause Order; and mistake or misrepresentations concerning the Settlement Agreement. Id. After failing to persuade the state courts that he was entitled to relief, Cook argued to the Supreme Court of the United States that there had been a violation of due process in the opening of the default judgment, but Cook did not challenge the ruling that the Settlement Agreement was properly obtained or that its operative effect disposed of the case in its entirety. See Petition for Writ of Certiorari at i, 4-6. The Supreme Court of the United States denied the petition for a writ of certiorari. 138 S. Ct. 1294.

In this case, Cook's is precluded because he either did or could have raised claims of due process violations, fraud, and misrepresentation.

Cook alleges that Shoffel committed fraud as shown by Cook not receiving all of the documents concerning the opening of the default judgment. The material facts, documentation, and witnesses for Cook's due process claims are the same as for his fraud claim on the opening of the default judgment. In other words, it is apparent that now Cook is trying to repackage his original claim under the new label of "fraud." But adding the gild of fraud does not save his claims.

To be sure, Cook seeks a different avenue for recovery (fraud), from different defendants (Shoffel and an unnamed motion clerk), and different relief (additional money), but the underlying dispute remains the same, i.e., claims of a due process violation. Although Shoffel and the unnamed motion clerk were not parties, they are close enough to the allegations of due process violations and other improprieties as to fall within the scope of a privy for claim preclusion purposes.

Even if Cook had not been served with the Petition to Open Judgment or the accompanying proposed Rule to Show Cause Order, he could have reviewed the docket, obtained a copy of the Petition, and brought the matter to the attention of the state court, and if dissatisfied, raised the issue on appeal. All litigants are charged with the responsibility of monitoring the docket and taking appropriate action, see, e.g., Yeschick v. Mineta, 675 F.3d 622, 629 (6th Cir. 2012) ("[P]arties have an

affirmative duty to monitor the dockets to keep apprised of the entry of orders that they may wish to appeal."), and pro se litigants are not immune from this rule, see Adonai-Adoni v. King, Civil Action No. 07-3689 (MLC), 2012 WL 3535962, at *1 (E.D. Pa. Aug. 13, 2012), aff'd, 506 F. App'x 116 (3d Cir. 2012) ("Pro se litigants have an obligation to monitor the docket sheet to inform themselves of the entry of orders and other filings.") (citing United States ex rel. McAllan v. City of N.Y., 248 F.3d 48, 53 (2d Cir. 2001)); Abulkhair v. Liberty Mut. Ins. Co., 405 F. App'x 570, 573 n.1 (3d Cir. 2011).

Cook offered no argument as to why he could not have raised his allegations of fraud during the pendency of the state trial court matters or when he sought appellate review. The state courts have the power to hear and could have heard Cook on his fraud allegations had Cook decided to raise them.

Cook cannot now raise the claims that he could have raised during the earlier state court litigation. Because claim preclusion law applies to Cook's claims of every stripe, Cook's suit cannot proceed.

III. CONCLUSION

No claims can proceed. Cook's § 1985 are not legally cognizable, lacking a factual basis of an equal protection violation. The § 1983 and misrepresentation claims are

jurisdictionally barred under Rooker-Feldman. Even if the Court were to reach the merits of the § 1983 and misrepresentation claims, he is barred from bringing those claims and the fraud claim because Cook entered into the Settlement Agreement. Finally, Cook is precluded by res judicata from bringing any of his claims because he could have been raised the claims in his state court litigation.

The Court will dismiss the § 1985 claim with prejudice; dismiss the § 1983 and misrepresentation claims for lack of jurisdiction; and grant summary judgment on the fraud claim in favor of Defendants and against Cook.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action

Daryl Cook, Plaintiff	No.
v.	
City of Philadelphia, Amanda C. Shoffel, Jacqueline F. Allen, and Motion Clerk, Defendants	

COMPLAINT

I. JURISDICTION & VENUE

1. This is a civil action authorized by 42 U.S.C. Sections 1983 and 1985 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. Sections 1331 and 1343(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Sections 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 and 2284 and Rule 65 of the Federal Rules of Civil Procedure.

2. The Eastern District of Pennsylvania is an appropriate venue

under 28 U.S.C. Section 1391(b)(2) because it is where the events giving rise to this claim occurred.

II. PARTIES

3. Plaintiff, Daryl Cook, #JR8635, is a prisoner currently confined in the state Correctional Institution at Fayette, Box 9999, LaBelle, PA 15450-0999.

4. Defendant, City of Philadelphia, is a municipality represented by the City Solicitor at 1515 Arch Street, 17th Floor, Philadelphia, PA 19102-1595.

5. Defendant, Amanda C. Shoffel, is a Deputy Solicitor at 1515 Arch Street, 14th Floor, Philadelphia, PA 19102-1595.

6. Defendant, Jacqueline F. Allen, is a Judge at the Court of Common Pleas of Philadelphia County, 360 City Hall, Philadelphia, PA 19107.

7. Defendant, Motion Clerk, is responsible for issuing a rule to show cause as of course on behalf of the Court of Common Pleas of Philadelphia County upon the filing of a petition to open judgment and located at Civil Division, Room 296, City Hall, Philadelphia, PA 19107.

III. FACTS

8. Despite the fact that Plaintiff had obtained a default

judgment against two(2) City employees of Defendant City of Philadelphia in Cook v. City of Philadelphia, et al., Court of Common Pleas of Philadelphia County, Civil Division at No. 120-404474, Defendant Amanda C. Shoffel had filed a petition to open the default judgments without serving Plaintiff with a copy of said petition and without attaching a rule to show cause order to said petition.

9. However, on January 6, 2014, Defendant Jacqueline F. Allen had entered an order granting the petition to open judgment and thus vacated and opened the default judgments entered against Detective Gregory Rodden and Lieutenant Dean, without issuing a rule to show cause why the petition to open judgment should not be granted.

10. Plaintiff did not receive a copy of the order opening and vacating the default judgments.

11. As a result of Plaintiff not be served with a copy of the petition to open judgment filed by Defendant Shoffel, he filed motions for extraordinary relief based on him not being served with a copy of the petition to open judgment and not being served with a copy of the answer to the complaint with new matter, and he attempted to file a

petition to strike the order vacating and opening the default judgments, which was not docketed.

12. As a result of Defendant Motion Clerk not docketing some of Plaintiff's motions/petitions, and Defendant Jacqueline F. Allen ignoring Plaintiff's allegations regarding Plaintiff's motions/petitions not being docketed and also denying all of Plaintiff's motions/petitions and application which was docketed even though Defendant Shoffel never responded to any of Plaintiff's motions, petitions and nor his application to have the sheriff personally serve his complaint upon the unserved City defendants, Plaintiff felt compelled to accept a settlement offer in open court, with the understanding and belief that he was only settling his claims of assault and battery against Defendant City of Philadelphia employee Detective Gregory Rodden and employee Lieutenant Dean, and that the settlement constituted both Rodden and Dean admitting liability.

13. As a result of Defendant Shoffel sending Plaintiff a "General Release" to sign, releasing the City and all its employees

from liability, Plaintiff advised Defendant Shoffel via correspondence that he would only release Detective Rodden and Lieutenant Dean from further liability, and Defendant Shoffel responded and advised Plaintiff that she would only withdraw the City from the release form.

14. As a result of Defendant Shoffel only agreeing to withdraw the City of Philadelphia from the General Release form and not agreeing to indicate on the release form that Detective Rodden and Lieutenant Dean admit liability even though Plaintiff clearly advised Defendant Shoffel that he was under the understanding and belief that Detective Rodden and Dean were the only defendants who remained for purposes of settling and that they were admitting liability by agreeing to settle, Plaintiff attempted to file a motion to enforce settlement or invalidate settlement because he had only intended to settle his assault and battery claims against Detective Rodden and Lieutenant Dean and believed that the settlement was based on them admitting liability, however, the Plaintiff's motion to enforce settlement was not docketed.

15. Despite the fact that Plaintiff's motion to enforce settlement was not docketed, he had sent a copy of his correspondence(s) to Defendant Jacqueline F. Allen which he sent to Defendant Shoffel regarding his motion to enforce settlement, and Defendant Shoffel had filed a motion to enforce settlement which Plaintiff was not served with and Defendant Allen granted the motion to enforce settlement filed by Defendant Shoffel.

16. While Plaintiff was waiting to see his motion to enforce settlement appear on the docket, it came to his attention that the settlement of January 23, 2015 was invalid/void because there is "a fatal defect" on the face of the record (i.e. the record clearly show that no rule to show cause was issued by the Motion Clerk on behalf of the court or by the court itself as of course as required by Philadelphia Local Rules of Civil Procedure No. 206.4(c)), and therefore, amongst the fact that Plaintiff was not served with a copy of the petition to open judgment, the answer to his complaint and the motion to enforce settlement filed by Defendant Shoffel, and the motion to enforce settlement was filed on behalf of Officer Fennell who was never served with the

complaint, Plaintiff filed a motion to strike settlement and reinstate default judgment, which was denied by Defendant Jacqueline F. Allen without affording Plaintiff a hearing and without requiring Defendant Amanda C. Shoffel to respond to Plaintiff's motion before denying it.

17. Despite the fact that Plaintiff is a prisoner and was a pro se litigant and prisoner at the time he pursued his claims in state court against the parties involved in his lawsuit and the assault and battery committed against him by Detective Gregory Rodden caused Plaintiff to be unconstitutionally convicted and sentenced, thus Plaintiff had a liberty interest at stake, Defendant Jacqueline F. Allen arbitrarily denied Plaintiff the equity relief he sought in his complaint and at the settlement conference on January 23, 2015, and the appellate court (i.e. Commonwealth Court of Pennsylvania) affirmed Defendant Allen's order denying Plaintiff the relief he sought in his motion to strike settlement and reinstate default judgment based on Plaintiff agreeing to settle in open court although the record show that the purported settlement agreement was/is "ambiguous" and

"arbitrary", in that it was not explained to Plaintiff that he was agreeing to settle all claims against all the defendants who were dismissed and unserved and was giving up his right to file an appeal regarding the dismissed and unserved defendants, and despite 42 Pa.C.S. § 912 clearly showing that the state court had the power to grant Plaintiff the equitable relief he sought, Plaintiff was still arbitrarily denied the equitable relief by the state courts at the time he filed his motion to strike settlement and re-instate default judgment and his appeal to the Commonwealth Court of Pennsylvania thus the purported settlement agreement was unconstitutional, void as violative of due process.

18. As a result of Plaintiff filing an appeal to the Commonwealth Court of Pennsylvania and thus filing his "Brief for Appellant," Plaintiff discovered from the petition to open judgment filed by Defendant Amanda C. Shaffel attached to the [redacted] "Supplemental Reproduced Record" filed on July 1, 2016 in the Commonwealth Court of Pennsylvania by Daniel J. Auerbach, Esquire at No. 2304 C.D. 2015, that Defendant Shaffel attended a conference with [redacted]

Defendant Jacqueline F. Allen on November 4, 2013 and was advised that the default judgments was entered against Detective Gregory Rodden and Lieutenant Dean without Plaintiff being allowed to participate in the conference.

19. Despite Defendant Shotfel asserting that she was advised on November 4, 2013 that default judgment was entered, she did not file the petition to open judgment until on December 9, 2013 and Defendant Allen granted said petition on January 6, 2014 without a rule to show cause being issued and without Defendant Shotfel filing an answer to the complaint at the time she filed the petition to open and without the petition being filed within the ten day period which allows the court to open the judgment as a matter of law.

20. Plaintiff believes and thus avers that the Defendants acted in collusion and/or conspired together to deny Plaintiff access to the courts and due process of law (i.e. a meaningful opportunity to be heard by agreeing not to answer Plaintiff's complaint and not providing Plaintiff with discovery and not serving him and not issuing a

rule to show cause why the petition to open judgment should not be granted and not docketing Plaintiff's motion to enforce settlement and not affording Plaintiff a hearing on his motion to strike settlement and reinstate default judgment.

21. As a result of the Defendant City of Philadelphia and Defendant Amanda C. Shoffel misrepresenting to Defendant Jacqueline F. Allen at the settlement conference on January 23, 2015 that they had the authority to settle all claims for all defendants and Defendant Allen is the one who suggested that Defendant Shoffel agree to a "total settlement of the lawsuit" even though Defendant Shoffel was not the attorney for all defendants and thus did not have authority to enter into an agreement to settle all claims against all defendants, Defendants City of Philadelphia, Amanda C. Shoffel and Jacqueline F. Allen acted in collusion and thus caused Plaintiff to be denied his right to appeal and deprived of his liberty without due process of law and also denied access to the Courts because although he had a motion to amend the complaint pending the case was marked closed arbitrari

ly, in violation of the First and Fourteenth Amendments to the Constitution of the United States, and 42 U.S.C. §1983.

22. As a result of the ambiguous, arbitrary settlement agreement and the Defendants acting in collusion and/or conspiring to deny Plaintiff access to the courts, a meaningful opportunity to be heard and to defend himself in court, and to thus deny Plaintiff due process of law and cause him to be deprived of his liberty in violation of his right to be protected from compelled self-incrimination and to also be deprived of his right to appeal and his property (i.e. the $4,875.000 that he was entitled to from the default judgments) without due process of law, in violation of the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. §§1983 and 1985, the Defendants' actions described herein caused and is continuing to cause Plaintiff to be denied his right to access to the courts, unnecessary and undue delay in obtaining a remedy at law, meaningful access to the courts and the damages he was entitled to from the default judgments and against the rest of the

defendants who he had sued besides Detective Rodden and Lieutenant Dean, the only two (2) remaining defendants at the time of the settlement conference held on January 23, 2015.

23. All of the Defendants herein were acting under the color of state law at the time of the acts complained of.

24. Plaintiff have no other adequate remedy at law available to him.

25. All of the Defendants are sued in their official and individual capacities.

III RELIEF

26. A declaratory judgment declaring that the Defendants' actions described herein was unconstitutional, and the settlement agreement is void as violative of due process because no rule to show cause was issued to give Defendant Jacqueline F. Allen the authority, power to open and vacate the default judgments.

27. An injunction enjoining enforcement of the state proceedings and requiring that the default judgments be reinstated and also Plaintiff's appellate rights be reinstated and the murder conviction be expunged from Plaintiff's records.

28. Compensatory damages from Defendant City of Philadelphia in the amount of $10,000.000 (ten million dollars) for delayed damages and to compensate Plaintiff for his pain and suffering and to deter the same or similar acts in the future, and thus enforce his due process rights.

29. Compensatory damages from Defendant Amanda C. Shoffel in her official and individual capacity in the amount of $10,000.000 (ten million dollars) for her failing to comply with the Pa. rules of civil procedure and thus causing Plaintiff to be deprived of his right to due process and thus punished without due process.

30. Compensatory damages from Defendant Motion Clerk in her or his official and individual capacity for causing Plaintiff to be denied his right to access to the courts and a meaningful opportunity to be heard and to defend himself, in the amount of $10,000.000 (ten million dollars).

31. Trial by jury on all issues triable by jury.

32. Costs to be paid by Defendants.

33. Pendent jurisdiction invoked, and such other relief deemed just, equitable, and proper.

I declare under the penalty of perjury that the foregoing is true and correct.

Date: January 17, 2017

s/ Daryl Cook

DARYL COOK
Pro se Plaintiff

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

DARYL COOK,	:	MARCH TERM, 2012
Plaintiff	:	
	:	APRIL 2012
VS.	:	
CITY OF PHILADELPHIA	:	
OFFICER FENNELL	:	
LIEUTENANT DEAN	:	
MAJOR MAY	:	
DETECTIVE GREGORY RODDEN	:	
JUDGE JEFFREY P. MINEHART OF	:	
COURT OF COMMON PLEAS AT CP-	:	
51-CR-0010093-2008	:	
MICHAEL BARRY, Esquire	:	
LEE MANDELL, Esquire,	:	
Defendants.	: NO:	

COMPLAINT

Plaintiff alleges:

1. This Honorable Court has jurisdiction under 42 Pa. C.S. § 931 and Pa. R. Civ. P. 1091-1098; 42 Pa.C.S. § 6501 et seq.

2. Plaintiff was subjected to assault and battery, legal malpractice, official oppression, abuse of process, malicious prosecution, void process, false arrest, false imprisonment, loss of consort, misrepresentation, bad reputation, defamation of character, fraud, conspiracy, torture, wrongful conviction, negligence, willful misconduct, malfeasance, intentional infliction of harm, distress, anxiety, frustration, loss of locomotion, unlawful restraint, unlawful confinement, compelled self-incrimination, double jeopardy, and denial of a fair, impartial, and prompt trial, in violation of the laws and Constitution of the Commonwealth of Pennsylvania, by the defendants' actions/inactions described in the following paragraphs:

3. As a result of the defendants' wrongful acts described in this suit, plaintiff believes and thus avers that he is entitled to money damages, mandamus relief, habeas corpus relief, injunctive relief, and a declaratory judgment against the defendants, and thus seeks same for their actions/inactions, and to compensate plaintiff and enforce his constitutional rights and deter the same or similar action in the future.

PARTIES

4. Plaintiff, Daryl Cook #JR-8635, is an incarcerated individual (i.e a prisoner) currently confined at

the State Correctional Institution at Fayette [= SCI-Fayette], Box 9999, LaBelle, PA 15450-0999.

5. Defendant, City of Philadelphia, is a municipality responsible for the supervision and training of defendants Officer Fennell, Lieutenant Dean, Major May and Detective Gregory Rodden, located and represented by the City Solicitor's Office at 1515 Arch Street, 17th Floor, Philadelphia, PA 19102.

6. Defendant, Officer Fennell, is a public official employed as a correction officer at the Curran-Fromhold Correctional Facility [CFCF], 7901 State Road, Philadelphia, PA 19136.

7. Defendant, Lieutenant Dean, is a public official employed as a lieutenant at CFCF, 7901 State Road, Philadelphia, PA 19136.

8. Defendant, Major May, is a public official employed as major at CFCF, 7901 State Road, Philadelphia, PA 19136.

9. Defendant, Detective Gregory Rodden, is a public official employed as a homicide detective at Philadelphia Police Headquarters, Homicide Division, 8th and Race Streets, Philadelphia, PA 19106.

10. Defendant, Judge Jeffrey P. Minehart of Court Of Common Pleas At CP-51-CR-0010093-2008, is a public official employed as a ~~judge~~ judge at the Criminal Justice Center [CJC], 1301 Filbert Street, Philadelphia, PA 19107.

11. Defendant, Michael Barry, Esquire, is a public official employed as Assistant District Attorney at the

District Attorney's Office, Three South Penn Square, Philadelphia, PA 19107.

12. Defendant, Lee Mandell Esquire, is a private attorney employed at 42 South 15th Street, Suite 1312, Philadelphia, PA 19102.

FACTS

13. On June 6, 2008, plaintiff was arrested without probable cause by Philadelphia police for a criminal homicide, even though the police checked to see if there was a warrant issued for plaintiff's arrest and none was issued for murder. See Philadelphia Police Department Vehicle Or Pedestrian Investigation Report attached hereto.

14. Despite no warrant being issued to arrest plaintiff for murder, the police still arrested him and transported him to the Philadelphia Police Headquarters, Homicide Division, against his will, due to defendant City of Philadelphia failing to properly/adequately train and/or supervise the police regarding arrest procedures.

15. Despite plaintiff denying being involved or having knowledge of the alleged murder at the time he was "first" interrogated by a homicide detective, approximately two(2) days later (i.e. on June 8, 2008), he was again interrogated by a different detective, namely, defendant Gregory Rodden,

who beat and choked and threatened him and thus made him sign a self-incriminating statement after he refused to talk to said defendant and was denied his right to talk to a lawyer although he requested to talk to a lawyer.

16. Based on the compelled self-incriminating statement, which was obtained by defendant Detective Gregory Rodden in violation of plaintiff's right to be protected from being arrested without probable cause and from being compelled to incriminate himself, plaintiff was "falsely" charged with murder, burglary, criminal trespass, and possession of an instrument of crime (PIC) on June 9, 2008, and was subsequently transported to CFCF to be detained without bail.

17. As a result of defendant City of Philadelphia failing to properly/adequately train and/or supervise the police who falsely arrested plaintiff and defendant Detective Gregory Rodden, who beat, choked, threatened and denied plaintiff his right to talk to a lawyer, by failing to prohibit police from arresting persons without probable cause and failing to prohibit homicide detectives from forcing persons to make a statement and denying them their right to counsel and by failing to require surveillance camera and/listening devices recordings during all interviews/interrogations, defendant City of Philadelphia and defendant Detective Gregory Rodden caused plaintiff to be subjected to false arrest,

void process, assault and battery, compelled self-incrimination, and false imprisonment.

18. On April 7, 2010, while being subjected to false imprisonment as a result of defendants City of Philadelphia and Detective Gregory Rodden failing to enforce plaintiff's constitutional rights under Article 1, sections 1, 8, and 9 of the Constitution of the Commonwealth of Pennsylvania as described in the above paragraphs, plaintiff was physically assaulted (i.e. pushed into a table and forced down on his back on top of the table while being choked) and thus subjected to assault and battery by defendant Officer Fennell at CFCF as retaliation against plaintiff for complaining about being denied access to the prison law library.

19. Plaintiff believes, and thus avers that defendant City of Philadelphia caused plaintiff to be subjected to the assault and battery and retaliation committed against him by defendant Officer Fennell, by failing to properly/adequately train and/or supervise defendant Officer Fennell regarding prisoners' rights and by failing to have a surveillance camera in the sally port and on the pod (i.e. housing unit) where plaintiff was pushed and choked at.

20. Despite plaintiff being physically assaulted by defendant Officer Fennell and defendants Lieutenant Dean and Major May had knowledge of the incident, they caused plaintiff to be compelled to live in a state of fear that he may be assaulted again by defendant

Officer Fennell, and thus subjected to anxiety, distress, and frustration, by failing to report and/or record the incident concerning plaintiff and defendant Officer Fennell and keep them separated from each other, even though there were eyewitnesses to the assault and battery and plaintiff had submitted a sick call slip and was seen by a nurse for complaining about being assaulted and his sister, namely, Elaine Washington, had called the prison about the assault and defendant Major May interviewed plaintiff concerning the incident and plaintiff submitted a written grievance form to defendant Major May upon his request.

21. Despite the fact that defendant Gregory Rodden knew that he had tortured plaintiff and threatened him into signing a self-incriminating statement, said defendant falsely testified at plaintiff's preliminary hearing and trial that plaintiff had voluntarily made the statement and did not ask to talk to a lawyer or ask for a phone call.

22. Also, despite plaintiff advising his attorney, defendant Lee Mandell, Esquire, that he was beaten, choked, and threatened by defendant Gregory Rodden into signing the statement and the surveillance camera(s) and listening recordings will show that said defendant had in fact assaulted him and that the phone records will show that plaintiff was allowed to call two (2) different persons and one of them, namely, Mrs. Bertha Knight Me-

Moore was willing to testify that when plaintiff called her from where he was being interrogated at, he told her that the detectives was trying to make him give a statement confessing to committing a murder, defendant Lee Mandell, Esquire, failed and/or refused to request the surveillance camera and listening devices recordings and the telephone records and to obtain an affidavit from Mrs. McMoore or produce her as a witness at the preliminary hearing, suppression hearing, and/or trial, and his actions constituted legal malpractice.

23. Defendant Lee Mandell's actions described in the above paragraph and defendant Detective Gregory Rodden's actions described in paragraphs 21 thru 22 caused defendant Judge Jeffrey P. Minehart of Court of Common Pleas at CP-51-CR-0010093-2008 to allow plaintiff's compelled self-incriminating statement to be used against plaintiff at his trial.

24. At the time of plaintiff's trial on July 13, 2010, despite the jury being deadlocked and then the foreperson announced that plaintiff was found not guilty of all charges and defendant Judge Jeffrey P. Minehart of Court of Common Pleas at CP-51-CR-0010093-2008 stated "you can't do that," among other things, and sent the jury back to deliberate over, and then when the jury asked that the PIC charge be explained again defendant Michael Barry, Esquire, had defendant Judge

Jeffrey P. Minehart of Court of Common Pleas at CP-51-CR-0010093-2008 send word to the jury that the PIC charge will be explained after they give their verdict on the other charge and then defendant Michael Barry, Esquire, asked could the PIC charge be withdrawn and he was allowed to withdraw the PIC charge while the jury was still out deliberating and had no knowledge of the said charge being withdrawn, defendant Lee Mandell, Esquire, did not make an objection or request a mistrial, and at the time of sentencing on August 26, 2010, despite defendant Jeffrey P. Minehart of Court of Common Pleas at CP-51-CR-0010093-2008 denying that the Foreperson announced that plaintiff was found not guilty of all charges and both defendant Lee Mandell, Esquire, and Michael Barry, Esquire, heard the Foreperson when he announced same and so did the court reporter and everyone in the courtroom, including plaintiff's sister, defendants Lee Mandell, Esquire, and Michael Barry, Esquire, did not speak up and advise defendant Jeffrey P. Minehart of Court of Common Pleas at CP-51-CR-0010093-2008 that the Foreperson did announce that plaintiff was found not guilty of all charges and said defendant stated "you can't do that" and sent the jury back to deliberate again, and consequently, plaintiff was wrongfully convicted of Third Degree Murder and thus sentenced to 20 to 40 years in violation

of his right against being subjected to compelled self-incrimination and double jeopardy.

25. The defendants actions described in the above paragraph constituted legal malpractice, abuse of authority, official oppression, negligence, willful misconduct, and malfeasance, and thus caused plaintiff to be subjected to malicious prosecution, void process, false imprisonment, conspiracy to deny him a fair trial, ~~se~~ compelled self-incrimination, and double jeopardy.

26. Moreover, despite plaintiff's trial being held in violation of his right to a prompt trial under Rule 600 (D), defendant Lee Mandell, Esquire, did not file a motion to dismiss or for nominal bail or house arrest based on same.

27. All of the defendants' actions described in this suit caused plaintiff to be subjected to or suffer the injuries described in paragraph 2.

RELIEF

28. A declaratory judgment declaring defendants' actions unconstitutional and an order compelling defendants Lieutenant Dean and Major May to place or require a separation to be placed on record between plaintiff and defendant officer Fennell and prohibiting enforcement of the conviction and sentence entered

by defendant Jeffrey P. Minehart of Court of Common Pleas at CP-51-CR-0010093-2008 and expunge same from plaintiff's record as void, without effect, and violative of his protection against compelled self-incrimination, and double jeopardy, and his right to due process under the Pennsylvania Constitution.

29. Compensatory damages in the amount of $1.5 million dollars from defendants City of Philadelphia, Officer Fennell, Lieutenant Dean, and Major May collectively and from defendant Detective Gregory Rodden individually, and $3,000.000 (three million dollars) from defendants Jeffrey P. Minehart of Court of Common Pleas at CP-51-CR-0010093-2008, Michael Barry, Esquire, and Lee Mandell, Esquire, collectively.

30. Punitive damages in the amount of $3,000.000 (three million dollars) from Officer Fennell and Detective Gregory Rodden individually, and from defendants Jeffrey P. Minehart of Court of Common Pleas at CP-51-CR-0010093-2008, Michael Barry, Esquire, and Lee Mandell, Esquire, collectively.

31. Trial by jury and costs to be paid by defendants.

32. Any other relief deemed just, equitable, and proper.

I verify under the penalties of 18 Pa.C.S 4904 that the foregoing is true and correct.

Date: March 12, 2012

s/ Daryl Cook
DARYL COOK

VERIFICATION

I, DARYL COOK, Plaintiff/Defendant, verify that the facts set forth in the foregoing are true and correct to the best of my information, knowledge, and belief.

I understand that the statements contained herein are subject to the Penalties of 18 Pa. C.S.A., §4904 relating to unsworn falsification to authorities.

DARYL COOK

(Print Name)

Daryl Cook

(Signature)

Date: April 27, 2012

CITY OF PHILADELPHIA LAW DEPARTMENT
AMANDA C. SHOFFEL
DEPUTY CITY SOLICITOR
IDENTIFICATION NO. 306956
1515 ARCH STREET, 14TH FLOOR
PHILADELPHIA, PA 19102-1595
TEL (215) 683-5443 AND FAX (215) 683-5397
amanda.shoffel@phila.gov

NOTICE TO PLEAD

You are hereby notified to file a written response to the within New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

Amanda C. Shoffel
Deputy City Solicitor

DARYL COOK Plaintiff	COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
v.	April Term 2012
THE CITY OF PHILADELPHIA, et al. Defendants	No. 120404474

ANSWER AND NEW MATTER OF DEFENDANTS DETECTIVE DEAN AND LT. RODDEN

Defendants, Detective Dean and Lt. Rodden, by and through the undersigned counsel, Amanda Shoffel Deputy City Solicitor, hereby file this Answer and New Matter to the Plaintiff's Complaint, and aver as follows:

1. The allegations in this paragraph are conclusions of law to which no response is required. To the extent and response is required, denied.

2. The allegations in this paragraph are conclusions of law to which no response is required. To the extent and response is required, denied.

3. The allegations in this paragraph are conclusions of law to which no response is required. To the extent and response is required, denied.

PARTIES

4. Admitted, under information and belief.

APPENDIX E

5. Denied. By way of further response, The City of Philadelphia has been dismissed from the instant action and is no longer a party.

6. The allegations in this paragraph are directed to persons other than the Answering Defendants, therefore- no response is required.

7. Admitted only that Lt. Dean is employed by the Philadelphia Prison System. All remaining allegations are denied.

8. The allegations in this paragraph are directed to persons other than the Answering Defendants, therefore- no response is required.

9. Admitted only that Det. Rodden is employed by the Philadelphia Police Department. All remaining allegations are denied.

10. The allegations in this paragraph are directed to persons other than the Answering Defendants, therefore- no response is required.

11. The allegations in this paragraph are directed to persons other than the Answering Defendants, therefore- no response is required.

12. The allegations in this paragraph are directed to persons other than the Answering Defendants, therefore- no response is required.

FACTS

13. Denied. Strict proof demanded.

14. Denied. Strict proof demanded.

15. Denied. Strict proof demanded.

16. Denied. Strict proof demanded.

17. Denied. Strict proof demanded.

18. Denied. Strict proof demanded.

19. Denied. Strict proof demanded.

20. Denied. Strict proof demanded.

21. Denied. Strict proof demanded.

22. Denied. Strict proof demanded.

23. Denied. Strict proof demanded.

24. Denied. Strict proof demanded.

25. Denied. Strict proof demanded.

26. Denied. Strict proof demanded.

27. Denied. Strict proof demanded.

RELIEF

28. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

29. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

30. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

31. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

JURY TRIAL DEMAND

32. Defendant demands a trial by jury on all counts of Plaintiff's Complaint.

WHEREFORE, answering Defendants deny they are liable upon all of the causes of action declared upon, and demands judgment in their favor plus interests and costs.

Respectfully Submitted,

Date: January 27, 2014

AMANDA C. SHOFFEL
Deputy City Solicitor
1515 Arch Street,14th Floor
Philadelphia, PA 19102-1595

CITY OF PHILADELPHIA LAW DEPARTMENT
AMANDA C. SHOFFEL
DEPUTY CITY SOLICITOR
IDENTIFICATION NO. 306956
1515 ARCH STREET, 14TH FLOOR
PHILADELPHIA, PA 19102-1595
TEL (215) 683-5443 AND FAX (215) 683-5397
amanda.shoffel@phila.gov

NOTICE TO PLEAD

You are hereby notified to file a written response to the within New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

Amanda C. Shoffel
Deputy City Solicitor

DARYL COOK Plaintiff v. **THE CITY OF PHILADELPHIA, et al.** Defendants	COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY April Term 2012 No. 120404474

NEW MATTER

Defendants, by and through this undersigned counsel, Amanda C. Shoffel, plead the following New Matter:

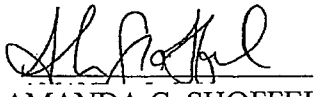
1. Plaintiff's alleged injuries, sufferings, and/or damages, if any, were caused by his own willful and/or malicious misconduct.
2. It is further averred that if Plaintiff sustained injuries and damages as alleged, they were due solely and or primarily to his assumption of the risk of said injuries and damages.
3. Answering Defendants assert all of the defenses, immunities, and limitations of damages available to them under the "Political Subdivision Tort Claims

Act," and aver that the Plaintiff's remedies are limited exclusively thereto. Act of Oct. 5, 1980, No. 142, P.L. 693, 42 Pa. C.S.A. §8541 et seq.

4. Any force used against plaintiff was reasonable and necessary under the circumstances.
5. Law enforcement privilege sanctioned any physical contact the Defendants had with Plaintiff.
6. Defendant's actions were sanctioned by 18 Pa. Cons. Stat. § 508, which expressly authorizes the use of force by law enforcement to prevent another person from committing or consummating the commission of a crime involving or threatening bodily injury.

WHEREFORE, Answering Defendants deny they are liable upon all causes of action declared upon and demand judgment in their favor, plus interest and costs.

Respectfully Submitted,



Date: January 27, 2014

AMANDA C. SHOFFEL
Deputy City Solicitor
1515 Arch Street,14th Floor
Philadelphia, PA 19102-1595

EXHIBIT G

CITY OF PHILADELPHIA LAW DEPARTMENT
AMANDA C. SHOFFEL
DEPUTY CITY SOLICITOR
IDENTIFICATION NO. 306956
1515 ARCH STREET, 14TH FLOOR
PHILADELPHIA, PA 19102-1595
TEL (215) 683-5443 AND FAX (215) 683-5397
amanda.shoffel@phila.gov

DARYL COOK Plaintiff	:	COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
v.	:	April Term 2012
THE CITY OF PHILADELPHIA, et al. Defendants	:	No. 120404474

CERTIFICATE OF SERVICE

I, Amanda C. Shoffel, hereby certify that on this date I caused the foregoing Answer with New Matter to be served upon counsel for Plaintiff via electronic mail.

Date: January 27, 2014

AMANDA C. SHOFFEL
Deputy City Solicitor
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1595

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

DARYL COOK	:	No. 19-3851
Appellant	:	
v.	:	
CITY OF PHILADELPHIA;	:	
AMANDA C. SHOFFEL;	:	
JACQUELINE F. ALLEN;	:	
MOTION CLERK;	:	
Appellees	:	

PETITION FOR REHEARING EN BANC

Appellant, pro se, hereby respectfully request a rehearing before the whole court, in the above-captioned case, and that this Honorable Court reverse the Judgment entered March 23, 2021 (Pursuant to the opinion of thei court filed March 1, 2021, affirming the judgments of the District Court entered July 18, 2019, and December 2, 2019, for the following reasons:

The panel, in its opinion filed March 1, 2021, erred and/or abused its discretion in concluding that Appellant agreed to settle all calims in exchange for $2,500; he asserted in his motion to strike the settlement that a 2014 order vacating a default judgment against the defendants was void because he did not receive a copy of the petition to open the default judgment and the trial court never issued a rule to show cause why the default judgment should not be open, and that he was not served with a copy of the defendant's motion to enforce the settlement agreement.

APPENDIX F

To the contrary, Appellant asserted that he settled under duress and under the understanding that the only Defendants he was settling with was two Defendants (Namely, Defendant Gregory Rodden and Defendant Lieutenant Dean) and that they were admitting liability and he would be able to file an appeal; and not only did Defendant Schoffel fail or refuse to serve Appellant a copy of her petition to open judgment and fail to attach a rule to show cause order form to her petition and fail to serve Appellant with a copy of her motion to enforce the settlement agreement, she also didn't serve Appellant with a copy of the answer to the complaint she filed on behalf of the defendants who were in default. Also, Appellant had asserted in his motion to strike and reinstate the default judgments that he had submitted his own motion to enforce the settlement agreement or to invalidate the settlement agreement and his motion was not docketed, and he had also submitted a petition to strike the order vacating the default judgments that was also not docketed before he had felt compelled to enter into the settlement agreement due to Defendant Allen telling him that he should accept the $2,500 to settle. In any event, the only relevance of what was asserted in Appellant's motion to strike and reinstate the default judgments, is that his assertions, accepted as true, show that Defendant Shoffel's acts was deliberate and collusion and/or conspiracy to deny Appellant due process to deprive him of his right to money owed to him from the default judgments and his right to pursue his amended complaint he filed and his right to appeal from the orders dismissing Defendants from the complaint and opening the default judgments. See Opinion filed in this Court March 1, 2021. See also Federal Complaint at paragraphs 8-12.

Thus, the panel also erred and/or abused its discretion in concluding that the settlement agreement barred any claims arising from the trial court vacating

the default judgments or any procedural defect allegedly committed by the trial court prior to the settlement; in relying on the release from liability (i.e. Appellant signed an agreement after the settlement agreement in open court was made and after Defendant Shoffel had threatened not to enforce the settlement made in open court if he didn't sign the release and after she had agreed to withdraw the City of Philadelphia from the release but when she sent Appellant the release to sign she did not withdraw the City and when Appellant submitted his motion to enforce the settlement or invalidate the settlement it was not docketed but her motion to enforce the settlement was docketed and granted and Appellant's motion to strike the settlement and reinstate the default judgments was denied without a hearing and without Defendant Shoffel filing a response to Appellant's said motion on his previous motions filed or the motion/petition/application that he submitted but was not docketed; and moreover, the panel erred and/or abused its discretion in concluding that Appellant claims that Defendant Shoffel misrepresented that she had the authority to enter a settlement agreement and Appellant has provided no reason to doubt that Shoffel, as a representative of the Defendants in the case, had the authority to propose a settlement agreement on their behalf; in concluding that his claims of fraud upon the Court are meritless, the fraud he alleges appears to be that Shoffel did not attach a rule to show cause to her motion to vacate the default judgment and failed to serve certain court filings on him, this apparent error does not satisfy the high showing required for fraud upon the Court; and in concluding that the District Court properly dismissed the calims against Judge Allen as she acted within her judicial capacity at all relevant times and is protected by absolute immunity. Furthermore, the panel erred and/or abused its discretion in not concluding the Defendant City of

Philadelphia should not have been dismissed by the District Court based on res judicata, and in not addressing the conspiracy, collusion and misrepresentation claims against all Defendants. See Panel Opinion filed March 1, 2021. Contrary to the Panel's opinion, Appellant had clearly set fort facts in his informal brief and cited authorities from this Court and the state courts that demonstrate that he was subjected to "extrinsic" fraud by Appellees Shoffel and Allen, and was thus denied due process by their conspiratory, collusive, fraudulent and misrepresentive acts along with Appellees City of Philadelphia, Motion Clerk and Shoffel acting in the same manner to deny Appellant due process and thus injure his litigation. See Appellant's Informal Brief (Citing cases and citing the Motion to Alter or Amend Order and Judgment of July 18, 2019, Pursuant to Rule 59(e), and thus demonstrating that the settlement agreement is "void ab initio" and Appellee Allen "acted without jurisdiction" when she opened the default judgments without first issuing a rule to show cause as of course, and under state law Appellant could still pursue his independent claims despite judgment in his favor and the District Court could and should have considered the settlement void ab initio because it is tantamount to a judgment and was reached in violation of Appellant's due process rights that Appellant did not knowingly or voluntarily waive at the time of the settlement conference, or at the time he signed the "General Release" after the Settlement Agreement in open court). See also 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, maybe sued separately, and even the recovery of judgment for one such causes of action will not bar subsequent actions upon others."); Kimes v. Stone 84 F.3d 1121 (9th.

Cir. 1996)(Indicating that: "A judgment has been obtained by extrinsic fraud where the aggrieved party has been deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense."); In Re James v. Draper 940 F.2d 46, 1991 U.S. App LEXIS 17171 (Indicating that because a void judgment is null and without effect, the vacating of such a judgment is merely formality and does not intrude upon the notion of mutual respect in federal-state interests.); In Re: Visteon Corp, 579 Fed Appx. 121 2014 U.S. LEXIS 16654 (3rd. Cir. 2014); Carney v. Carey 121 Pa. Super 251, 183 A. 371, 1936 Pa. Super LEXIS 192 (1936); M & P Management, L.P. v. Williams 594 Pa. 489, 937 A.2d 398, 2007 Pa. LEXIS 2434; Philadelphia Rule of Civil Procedure, No. 206.4(c)(Indicating that upon the filing of a Petition to Open Judgment, a Rule to Show Cause why the judgment should not be opened is required to be issued as of course); Pa.R.C.P. No. 206.4(a)(1); Pa.R.C.P. No. 206.6(a); W.B. v. Matula 67 F.3d 484, 1995 U.S. App. LEXIS 28925 (3rd. Cir. 1995)(Indicating that: "In such cases, we will inquire into the totality of the circumstances surrounding execution of the agreement, and we will decline to enforce the agreement unless its execution was knowing and voluntary. Coventry 856 F.2d at 524. See also Salmeron v. United States 724 F.2d 1357, 1361 (9th. Cir. 1983)("[a] release of claims for violations of civil and constitutional rights must be voluntary, deliberate, and informed.")(Citation omitted). Herre, Appellant was not informed that he was agreeing to settle his independent claims brough to the District Court, or that he was agreeing to withdraw his amended complaint against the City of Philadelphia, his right to appeal the adverse decisions of Appellee Allen, his state lawsuit, or terminate same. Contrary to agreeing to settle, knowingly settling, or voluntarily settling his federal claims, his state claims and how the settlement and opening of the default

judgments was reached, the District Court record and the state court record clearly show that Appellant was merely informed by Appellee Allen that he was agreeing to a "total" settlement of all his claims in exchange for $2,500, and that although Appellant was under the understanding that the City of Philadelphia was going to be withdrawn from the release and that he was only settling his claims against the only two (2) remaining defendants (Namely, Defendants Rodden and Dean) who the defaults judgments was properly entered against in the state-court lawsuit, because Appellee City of Philadelphia, and Lee Mandell, Esq. had been dismissed from state complaint and two (2) other Defendants named in the state complaint were never served with the original process, Appellant only signed the release, sent to him "after the "settlement agreement made in open court," under duress due to Appellee Allen opening/vacating the default judgments against Defendants Rodden and Dean without affording Appellant opportunity to be heard, denying all of Appellant's motions without requiring Appellee Shoffel to respond to his motions and without affording him a hearing, telling Appellant that he should accept the $2,500 and that she could not release him from custody even though the homicide detective, Defendant Rodden had assaulted and threatened Appellant until Appellant gave him a self-incriminating statement that was used to convict Appellant of Third Degree Murder and sentenced to 20-40 years despite Appellee Allen having the power under 42 Pa. C.S. §912 to issue the Writ of Habeas Corpus that Appellant had requested as equitable relief in his state complaint, and Appellant was also under duress when he signed the release due to Appellee Shoffel's motion to enforce settlement being filed and granted but Appellant's motion to enforce or invalidate the settlement, and petition to strike was not docketed or filed, and Appellee Shoffel threatened to not pay Appellant the $2,500 and to close her file if Appellant did not sign the release after her motion to enforce the settlement was granted. W.B. v. Matula 67 F.3d 484, 1995 U.S. App. LEXIS 28925

(3rd. Cir. 1995). See also Vichosky v. Boucher 162 Pa. super 598, 60 A.2d 381, 1948 Pa. Super LEXIS 298 (Indicating that: "It is never too late to attack a judgment for want of jurisdiction of either the subject matter or the person for a fatal deficiency appearing on the face of the record. Where there is no jurisdiction, there is no authority to pronounce judgment. Due process of law means in accordance with fundamental principles of justice, and its essence is notice and opportunity to be heard before judgment. The conclusive character of a judgment or decree depends not only upon the statutory grant of jurisdiction to the court pronouncing it, but upon actual jurisdiction over the persons whose rights are the subject of investigation. Unless the court has the parties before it, by appearance or service of process, it is obvious that it cannot bind them by it adjudications."). Here, the only defendants who were before the state court was Defendants Rodden and Dean even though Appellant was denied due process when Appellee Allen opened the default judgments without a Rule to Show Cause Order being issued as a matter of course to give Appellant an opportunity to be heard (i.e. Defendants City of Philadelphia and Lee Mandell, Esq. was dismissed from the state complaint prior to the settlement agreement, and the other Defendants was not served with the original service of process prior to the settlement agreement, and because of the "fatal" deficiency appearing on the face of the state court record, and i.e. no Rule to Show Cause Order being issued as required upon the filing of the petition to open the default judgments, Appellee Allen did not have jurisdiction to open/vacate the default judgments). Id. Thus, the order opening/vacating the default judgments is void ab initio,and consequently, so is the Settlement Agreement, especially in light of Appellees Shoffel and Allen conspiring or acting in collusion at the

conference that Appellant was not allowed to participate in when Appellee Shoffel allegedly was told by Appellee Allen that the default judgments was entered against Defendants Rodden and Dean, and thus cause Appellant to be denied due proceee, and also in light of Appellee Shoffel not having authority to settle claims against the dismissed Defendants and Defendants who were not served with original service of process and those Defendants who she did not represent such as Defendant Lee Mandell, Esq. and Defendant Michael Barry, Esq. yet still Appellee Shoffel misrepresented/fradulently stated to Appellee Allen (i.e. the state court judge) that she had authority to settle for all the defendants Id. See also Jordan v. fox 20 F.3d 1250, 1994 U.S. App. LEXIS 5974 (Declaration that opening default without notice and opportunity to be heard violates due process); Boyanowsky v, Capital Area Intermediate Unit 215 F.3d 396, 407 (3rd. Cir. 2000)(The core of due process is the protection against arbitrary governmental action and has procedural and substantive components. The substantive component of Due Process Clause limits what government may do regardless of the fairness of procedures that it employs, and covers government conduct in both legislative and executive capacities.); Kephart Trucking Co. v. Jackson Fiorentino 2010 Pa. Dist. & Cnty. Dec. LEXIS 220, 13 Pa. D&C 5th. 92 (Indicating that: "[A]n attorney is personally liable to a third party when he is guilty of fraud, collusion, or a malicious or tortious act, and he is liable, as anyone else, when he encourages and induces another to commit a trespass," and that "[T]he Compromise and Release Agreement adopted by WCJ on March 2, 2005, therefore, was only between Cura and Claimant,since Kephart had been dismissed from these proceedings and was no longer a party to the claim at the time of the C & R."). Heren Appellant indicated in his federal complaint, in his response to the motion for summary judgment, his response, to the Rule to Show Cause, and in his motion to alter or amend that Appellee Shoffel, acting as the City-Defendant's attorney in the state court proceedings, conspired and/or

colluded with the Appellees herein and committed fraud and misrepresentation to "thwart" vindication of Appellant's claims in state court and to thus deny Appellant due process and equal protection of the laws See Motion to Alter or Amend Order and Judgment at Page 4-52. See also Great W. Mining & Mineral Co. v. Fox Rothschild LLP 615 F.3d 159, 2010 U.S. App. LEXIS 16210 (3rd. Cir. August 5, 2010)(Indicating that: "Such a conspiracy would itself violate due process, independently of the later state court decisions."); 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 teh 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."). Here, none of the Appellant's independent federal claims was a part of the Settlement Agreement and he did not knowingly or voluntarily agree to settle the claims in his federal complaint. Id.

Accordingly, the District Court and the Panel of this Honorable Court erred and/or abused its discretion in concluding that res judicata barred Appellant claims against Appellee City of Philadelphia and/or that the Settlement Agreement barred all of Appellant's claims, and that Appellee Allen is absolutely immune based on judicial immunity.[1] Motion to Alter or Amend Order and Judgment of July 18, 2019, and Order of July 19, 2019, Pursuant to Rule 59(e) (Citing response to motion for summary judgment, and response to Rule to Show Cause); Appellant's Informal Brief. See also Panel's Opinion filed March 1, 2021 (Indicating that all of Appellant's claims, issues presented in the District Court and in his Informal Brief was not addressed.).

1. As indicated earlier, the City of Pennsylvania was dismissed from the state complaint prior to the Settlement Agreement and Appellee Shoffel had agreed to withdraw the City from the release, the claims against the Appelles are independent of the claims in the state court, and when Appellee Allen opened the default judgments without first issuing a Rule to Show Cause Order as of course, she acted in her individual capacity without jurisdiction. Id.

In addition, the Panel erred and/or abused its discretion in not granting Appellant's motion to strike Appellees' brief and/or enter judgment ~~of~~ by default against Appellees City of Philadelphia and Amanda C. Shoffel for failing to serve Appellant with their responsive brief, and thus erred and/or abused its discretion in concluding that Appellee Shoffel apparently made an error when she did not serve Appellant with her petition to open or attach a Rule to Show Cause Order to said Petition, rather than agree that her actions appear to be deliberate, intentional, collusive, conspiratory and/or based on her committing "extrinsic" fraud and misrepresentation due to her failure and the City's failure to serve Appellant on numerous occasions in the state court, and him not being served in the District Court and this Court, showing a pattern of their attempt to injure his litigation.

WHEREFORE, for the foregoing reasons, and in the interests of justice, Appellant pray this Honorable Court make an independent review of his filings in the District Court, the state court, and this Court, and thus reverse the District Court's and Panel's judgment, and enter an order granting Appellant appropriate relief, and he shall forever pray.

Date: April 4, 2021

Respectfully Submitted,

Daryl Cook

Daryl Cook

Pro se Appellant

CERTIFICATE OF SERVICE [2]

I certify that I caused a true and correct copy of the foregoing "Petition for Rehearing En Banc" to be served on this 4th day of April, 2021, by first class mail, to:

Megan Byrnes, Esq.
Zachary G. Strassburger, Esq.
City of Philadelphia Law Department
1515 Arch Street, 17th. Floor
Philadelphia, PA.
19102-1595

Martha Gale, Esq.
Supreme Court of Pennsylvania
Administrative Office of Pa. Courts
1515 Market Street, Suite 1414
Philadelphia, PA.
19102

By: Daryl Cook

Daryl Cook
JR 8635
S.C.I. Coal Township
1 Kelley Drive
Coal Township, PA.
17866

---

2. It is significant to note that as of this date, Appellant still has not received a copy of the Panel's Opinion filed March 1, 2021. Appellant is filing the instant petition relying on what was sent to his tablet by email that his friend copied or printed from online upon checking the Court's docket as Appellant had requested.