No. 25-5881

IN THE

Supreme Court of the United States

JOHN FAKLA,

Petitioner,

v.

MATTHEW GEIST, MIDDLESEX BOROUGH POLICE CHIEF, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

None of the Questions Presented by Petitioner Fakla provide a basis for certiorari. They are based on misrepresentations of the record and applicable law and/or on arguments that have been waived. Question 1 involves only the application of decisions by this Court and a fundamental misunderstanding of the District Court's ruling regarding malicious prosecution. Question 2 involves a mischaracterization of what the District Court did and of applicable accrual law. Questions 3 and 4 involve routine discovery and routine summary judgment determinations reasonably made by the Magistrate Judge and the District Court that are distorted by Fakla. Question 5 involves a total distortion of the record below and relates only to matters that are particular to Fakla which were not raised below.

A more accurate statement of the Questions Presented is (1) whether the District Court's grant of summary judgment was premature albeit filed after material discovery was complete and closed; (2) whether the District Court erred in determining that acts occurring more than two years prior to the filing of Fakla's Complaint are barred by the statute of limitations; (3) whether the District Court erred in dismissing Fakla's malicious prosecution claim on multiple grounds; (4) whether the Magistrate Judge abused his discretion in denying Fakla's motion for sanctions that was never timely appealed to the District Court, and (5) whether Petitioner has waived arguments by not raising them below.

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INTRODUCTION

This Petition grossly fails to meet the criteria for certiorari. Fakla seeks review of an unpublished and non-precedential Third Circuit decision which applied this Court's precedent and which does not conflict with holdings of other Circuit Courts or of this Court. The fact-specific legal analysis of the complex record in this case has no bearing beyond the context of this case. The issue of malicious prosecution which is central to the Petition can be decided on multiple grounds and does not warrant the Court's intervention. Also, Fakla completely disregards or distorts the record below; is seeking certiorari with respect to routine pre-trial hearing determinations reasonably made by the Magistrate Judge and the District Court; misconstrues the District Court's and the Third Circuit's rulings; misstates applicable law; and asserts arguments that have unequivocally been waived. In short, Fakla's rambling and frequently incoherent arguments are fatally flawed, both procedurally and substantively.

Certiorari should be denied.

STATEMENT OF THE CASE

The Petition presents a very selective and incomplete account of the record in this case. Pursuant to Supreme Court Rule 15, the following Statement of the Case identifies and addresses misstatements of fact by providing context and addressing key omitted facts.

The Denial Of Sanctions And Closure Of Discovery

Fakla argues that the Magistrate Judge's denial of sanctions and closure of discovery was "an intentional sabotage of petitioner's ability to litigate." (Pet. at 7).

Quite to the contrary, this was a routine discovery and sanctions motion reasonably determined by the Magistrate Judge that Fakla failed to appeal.

The discovery end date had been extended multiple times; the depositions of Plaintiff Fakla and Defendants Geist and Melchiorre had been taken; 1,153 pages of documents had been produced by Defendants; Fakla had failed to timely challenge the end of discovery Order; and the discovery that plaintiff sought was not at all material. (Pet. App. B at 9).

Not only did Fakla fail to timely appeal the Magistrate Judge's ruling to the District Court (Pet. App. B at 10), but he failed to appeal the ruling to the Third Circuit. As the Third Circuit held, Fakla only offered a two-and-a-half-page block quote from the Federal Rules of Civil Procedure; and did not argue that the Magistrate Judge's decision was in error, notwithstanding the cardinal rule of appellate litigation that the appellant must provide his "contentions and the reasons for them." (Pet. App. A at 4), citing *Fed. R. App. P.* 28(a)(8)(A).

Summary Judgment

Fakla argues that "the district court's decision to convert and grant summary judgment while discovery was still outstanding was not neutral judicial management but a deliberate act of sabotage." (Pet. at 13). Fakla is woefully misguided.

Rule 56(d) does not authorize a plaintiff who has lost a discovery motion and failed to timely appeal therefrom to block a summary judgment motion after fact discovery has closed. *See*, *e.g., Givaudan Fragrances Corp. v. Krivda*, 639 Fed. Appx. 840, 846 (3d Cir. 2016). Yet, that is precisely what Fakla was attempting do. *See also Shelton v. Bledsoe*, 775 F.3d 554, 568 (3d Cir. 2015), where the Third Circuit held

that even if discovery is incomplete, summary judgment can be granted if the discovery request pertains to facts that are not material to the moving party's entitlement to judgment as a matter of law.

Fakla did not attempt to invoke Federal Rule of Civil Procedure 56(d) until more than 24 months after this case was filed and more than five months after discovery was closed by the Magistrate Judge (ECF 85). The District Court correctly held that Fakla's Rule 56(d) motion failed on its face:

> Rule 56(d) permits a litigant who "cannot present facts essential to justify its opposition" to a motion for summary judgment to ask the district court to permit additional discovery. The Third Circuit "ha[s] interpreted this provision to require 'a party seeking further discovery in response to a summary judgment motion [to] submit an affidavit specifying, for example, what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not previously been obtained." *Pa. Dep't of Pub. Welfare v. Sebelius*, 674 F.3d 139, 157 (3d Cir. 2012) (alteration in original) (quoting *Dowling v. City of Phila.*, 855 F.2d 136, 139–40 (3d Cir. 1988)). Here, although Plaintiff identifies what information he seeks—personnel records and files related to internal affairs investigations—he utterly fails to meet his burden of explaining why he had not sooner obtained the discovery or how, if received, it would preclude summary judgment.

(Pet. App. B at 10).

Statute Of Limitations

Fakla argues that the District Court dismissed all claims predating June 17, 2020 with prejudice; never corrected this; and thereby sabotaged Fakla's ability to present his case. (Pet. at 7-8). This is a gross misrepresentation of what happened in the District Court.

As the Third Circuit correctly pointed out in its Opinion (Pet App. A at 5-6):

> Fakla understands the District Court to have said that "any actions of the Defendants, relevant or not, before June 17, 2020, were barred"

> as inadmissible evidence due to its statute-of-limitations ruling. He criticizes the District Court for "pointing to numerous dates before [June 17]" in favor of the Defendants "and not allowing Plaintiff the same courtesy."
>
> Fakla is mistaken. The District Court's order states that certain *"counts"* predating June 17, 2020, were dismissed with prejudice. The Court later clarified, twice, that it was referring to claims "to the extent they accrued prior to" that date. It did not say that certain evidence was inadmissible because it pre-dated 2020. (citation omitted).

See also Text Order (ECF 97) entered on February 28, 2024 granting Fakla's motion for reconsideration and amending the Court's January 10, 2024 Order in part to read: "All counts against Defendants Geist and Melchiorre are DISMISSED WITH PREJUDICE to the extent they accrued prior to June 17, 2020," rather than to read "All counts against Defendants Geist and Melchiorre relating to conduct that allegedly occurred prior to June 17, 2020 are DISMISSED WITH PREJUDICE."

Fakla's dispute of this undeniable fact permeates his Petition and totally undermines his legal analysis. *See*, *e.g.*, Pet. at 7 (the Court consequently was able "to author a one-sided opinion at the end of a prolonged motion phase, purporting to find that petitioner failed to meet his burden, when in fact the court had already eliminated consideration of every fact before June 17, 2020.").

Dismissal Of Middlesex Borough Police Department

Fakla claims belatedly that the District Court dismissed all claims against the Middlesex Borough Police Department without doing an analysis under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) and making factual findings. (Pet. at 13). He is wrong. The District Court dismissed the Middlesex Borough Police Department as a matter of law for two reasons, as argued by Defendants (ECF 53-2, 10-11): First,

"In New Jersey a municipal police department is not a separate legal entity from the governing municipality." *Groark v. Timek*, 989 F.Supp.2d 378, 382 n.2 (D.N.J. 2013). Secondly, "[a] police department is not a 'person' within the meaning of 42 U.S.C. §1983 and, thus, is not a suable entity under that statute." *Britton v. Philadelphia Police Dep't*, 69 F.R.D. 449, 450 (E.D. Pa. 1975).

Weaponization Of Mental Health Systems

Fakla argues that there is "a continuing pattern of government actors using mental health processes as a weapon to silence, intimidate, and retaliate against a civil rights litigant." (Pet. at 16). Besides being incredulous, this argument was never raised before and has been waived. Moreover, the Petition improperly relies on subsequent events totally unrelated to this litigation in a groundless effort to support Fakla's new-found argument *See*, *e.g.*, Pet. at 5.

REASONS FOR DENYING THE PETITION

The Petition should be denied for the following reasons: The Third Circuit decision is unpublished and non-precedential. This is a highly fact-sensitive case that is particular to Fakla. The issue of malicious prosecution which is central to the Petition can be decided in favor of Defendants on multiple alternative grounds and does not warrant this Court's intervention. The Third Circuit's judgment in this case is not in conflict with a final judgment of any other Circuit. The District Court's decision in this case is consistent with precedent and common sense. Fakla has waived arguments he now asserts.

The Third Circuit Decision Is Unpublished And Non-Precedential.

The Third Circuit Opinion expressly notes that "[t]his disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent." (Pet. App. A at 1).

This Is A Highly Fact-Sensitive Case Particular To Fakla.

The reason why the Third Circuit Opinion is unpublished is because of the uniqueness of its facts and their applicability to one person. This case has no broader judicial or national significance.

The Issue Of Malicious Prosecution Which Is Central To The Petition Can Be Decided In Favor Of Defendants On Multiple Alternative Grounds And Does Not Warrant This Court's Intervention.

As found by the District Court, the following incident underlies Fakla's malicious prosecution claim:

> On July 1, 2019, Defendant Melchiorre was directing traffic when he, on several occasions, observed Plaintiff drive by and shout at him. Eventually, Plaintiff parked his vehicle on a nearby side street and stayed there. Defendant Melchiorre, fearing for his safety and focused on conducting traffic, called the Middlesex PD headquarters for back up. Officer Painchaud responded to the call, and immediately thereafter, a pursuit ensued. Officer Painchaud attempted to pull over Plaintiff, but Plaintiff refused to do so. Instead, Plaintiff admits, he called 9-1-1 and informed the 9-1-1 operator that he would not stop. The 9-1-1 operator, in turn, directed Officer Painchaud to "terminate the pursuit," and advised Plaintiff that he should return to his home but that it would not "absolve him of his obligation to stop for a lawful police motor vehicle stop."
>
> On July 2, 2019, Officer Painchaud filed in New Jersey municipal court a criminal complaint against Plaintiff along with an affidavit of probable cause to arrest him. Municipal Court Judge Spero A. Kalambakas found that probable cause to arrest Plaintiff existed, and Plaintiff was arrested shortly thereafter.

> In the months that followed, the Middlesex County Prosecutor's Office pursued charges against Plaintiff, and on October 23, 2019, a grand jury indicted him. ***
>
> *** On January 26, 2021, Judge Joseph Paone of the Superior Court of New Jersey Law Division, Middlesex County-Criminal Part, found that Plaintiff "lack[ed] the fitness to proceed to trial as a result of mental illness," and that "[t]here [wa]s not evidence that it [would be] substantially probable that [Plaintiff] could regain his competence within the foreseeable future." Approximately two months later, Judge Paone entered an order that, among other things, dismissed with prejudice the charges against Plaintiff.

(Pet. App. B at 4-5) (quotations in original).

Fakla's counsel acknowledged at the January 9, 2024 hearing in connection with Defendants' Motion for Judgment on the Pleadings that the malicious prosecution claim arising out of the July 2019 arrest was the only claim that would not be barred by the statute of limitations. *See* Pet. App. B at 6; Pet. App. A at 6, n.1. Fakla also admitted this in his First Amended Complaint. (ECF 90, FAC ¶13).

To prevail on a claim for malicious prosecution, a plaintiff must establish: (1) a criminal proceeding was initiated against him, (2) without probable cause, (3) the criminal proceeding ended in the plaintiff's favor, (4) the defendant's acted maliciously or for a purpose other than bringing the plaintiff to justice, **and** (5) the plaintiff suffered a deprivation of liberty. *Lozano v. New Jersey,* 9 F.4th 239, 247 (3d Cir. 2021). Fakla must establish **all** of these elements. He fails to do so.

a. *Probable Cause*

"Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to

be arrested." *Merkle v. Upper Dublin Sch. Dist.,* 211 F.3d 782, 788 (3d Cir. 2000) (citation omitted). This fact-intensive inquiry "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *District of Columbia v. Wesby,* 583 U.S. 48, 57 (2018) (citations omitted). The District Court determined that the undisputed evidence before the Court indicated that there was probable cause to arrest Fakla for violating New Jersey's anti-stalking statute. N.J.S.A. 2C:12-10(b). *See* Pet. App. B at 12.

b. *Malice*

In the alternative, this Court granted Defendants' Summary Judgment because Fakla had failed to present any evidence of malice. "Actual malice in the context of malicious prosecution is defined as either ill will in the sense of spite, lack of belief by the actor himself in the propriety of the prosecution, or its use for an extraneous improper purpose." *Lee v. Mihalich,* 847 F.2d 66, 70 (3d Cir. 1988). *See* Pet. App. B at 14:

> Here, the undisputed evidence suggests that Officer Painchaud acted independently of either Defendant in initiating the arrest warrant, and Plaintiff has failed to provide any evidence indicating that Defendants Melchiorre or Geist acted with any improper purpose, let alone that they were involved in initiating the prosecution. Plaintiff cannot make such a showing by pointing to the mere fact that Defendants Melchiorre and Geist had previously investigated him and that they admitted that they were concerned about his history of stalking and harassing them.

c. *Favorable Termination*

"The favorable termination requirement serves multiple purposes: (i) it avoids parallel litigation in civil and criminal proceedings over the issues of probable cause and guilt; (ii) it precludes inconsistent civil and criminal judgments where a claimant

could succeed in the tort action after having been convicted in the criminal case; and (iii) it prevents civil suits from being improperly used as collateral attacks on criminal proceedings." *Thompson v. Clark*, 596 U.S. 36, 44 (2022). *See also Gilles v. Davis*, 427 F.3d 197, 209 (3d Cir. 2005). In *Thompson* the Supreme Court held that a plaintiff in a malicious prosecution claim under Section 1983 need not establish that the criminal prosecution ended in a finding or other determination reflective of his or her innocence. 596 U.S. at 49. In *Gilles* the Third Circuit held that Pennsylvania's Accelerated Rehabilitative Disposition Program, which permits expungement of a criminal record upon successful completion of a probationary term, is not a favorable termination under *Heck v. Humphrey*, 512 U.S. 477 (1994), a case relied on by the Court in *Thompson*. 596 U.S. at 39. The Third Circuit also held that acceptance into an ARD program is not intended to constitute a conviction. *Gilles*, 427 F.3d at 211. The termination of plaintiff's criminal proceeding is not materially different.

The Third Circuit took issue with Fakla's interpretation of *Thompson* (Pet. App. A at 6-7):

> Fakla objects to the District Court's analysis of *Thompson v. Clark,* 596 U.S. 36 (2022). In Fakla's view, *Thompson* asserts that the "deprivation of liberty is sufficient" to make out a claim for malicious prosecution. Appellant's Br. 19. That is incorrect. *Thompson* teaches that a malicious prosecution claim requires, *"among other things,"* a showing that the plaintiffs "prosecution ended without a conviction." 596 U.S. at 39 (emphasis added). The District Court correctly considered two of those "other things": the lack of probable cause and the presence of malice. *Fakla*, 2024 WL 3634191, at *6-8. Fakla failed to show a genuine issue of material fact as to either element. *Id.*

While Defendants should prevail on the issue of favorable termination, it is not necessary for this Court to consider this issue in denying the Petition, given the

numerous alternatives for doing so. The District Court **did not** bar Fakla's 1983 malicious prosecution claim by applying *Heck v Humphrey*, 512 U.S. 477 (1994) (Pet. at i, Question Presented #1); **it denied Fakla's malicious prosecution claim because Fakla had failed to show an absence of probable cause and had failed to show malice, rendering it unnecessary for the District Court to address the element of favorable termination, also required to make out a case of malicious prosecution.**

The Third Circuit's Judgment In This Case Is Not In Conflict With A Final Judgment of Any Other Circuit.

Fakla has not suggested any such conflict, and there is none. Nor is this case inconsistent in any way with the law of this Court.

The District Court's Decision In This Case Is Consistent With Precedent And Common Sense.

In contrast to the legal arguments made in the Petition, the District Court and Third Circuit Opinions in this case carefully and accurately track the law with respect to, *inter alia*, the applicable statute of limitations, accrual, and malicious prosecution. The dismissal of Fakla's Amended Complaint was wholly justified.

Fakla Has Waived Arguments He Now Asserts.

As noted herein, many of the arguments made in the Petition have been waived and should be disregarded. *See also* Pet. App. A at 4 ("Fakla seeks to fire a broadside at the District Court, but about half of his claims are unpreserved or forfeited.").

CONCLUSION

Fakla's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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