

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas Brady Mathis,	:	
Appellant	:	
	:	
v.	:	
	:	
Northampton County Court Of	:	
Common Pleas, Judge Robert A.	:	
Freedberg, Judge Leonard N.	:	
Zito, Northampton County	:	
District Attorney's Office,	:	No. 2160 C.D. 2010
John M. Morganelli, Esq., et al.	:	Submitted: June 10, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: July 18, 2011

Thomas Brady Mathis (Mathis) challenges the order of the Court of Common Pleas of Northampton County (common pleas court) that sustained the preliminary objections of the Northampton County Court of Common Pleas, the Honorable Robert A. Freedberg and the Honorable Leonard N. Zito (collectively, the Judiciary) and sustained the preliminary objections of the Northampton County District Attorney's Office, and John M. Morganelli, Esquire, the District Attorney, (collectively, the District Attorney) and dismissed Mathis's complaint.

Mathis is currently serving a life sentence at the State Correctional Institution at Coal Township. In September 1971, Sebastiano Patiri was robbed and fatally stabbed at his home in Northampton County. Mathis was arrested and charged with murder, burglary, larceny, and robbery with an offensive weapon.

The Commonwealth sought to prove both an intentional killing and felony murder. A jury convicted Mathis of all charges. Mathis was sentenced to life imprisonment on the murder conviction and received concurrent sentences on the other convictions. Our Pennsylvania Supreme Court affirmed the convictions. Commonwealth v. Mathis, 460 Pa. 421, 333 A.2d 846 (1975).

Mathis filed a petition for relief under the Post Conviction Hearing Act.¹ The Court of Common Pleas of Northampton County denied his petition. Our Pennsylvania Supreme Court affirmed. Commonwealth v. Mathis, 484 Pa. 109, 110-11, 398 A.2d 968 (1979). Mathis tried to challenge his conviction in federal court by filing a Habeas Corpus petition. On November 3, 1992, the United States District Court for the Eastern District of Pennsylvania denied his petition. Two additional Habeas Corpus petitions were denied in 2007. Mathis also made subsequent jurisdictional challenges regarding his trial which were dismissed.

On March 19, 2010, Mathis commenced an action in the common pleas court. Mathis alleged:

7. Plaintiff [Mathis] was first indicted under statute/code criminal Act of June 24, 1939 P.L. 872 §701 as Amend: 18 P.S. §4701. Then tryed [sic] and convicted under said information of 18 P.S. §4701 in April 1972. After conviction of plaintiff [Mathis] the United States Supreme Court declared Act of June 24, 1939 P.L. 872 §701 as Amend: 18 P.S. §4701 unconstitutional. Said criminal statute was then repealed in the commonwealth

¹ Act of January 25, 1966, P.L. (1965) 1580, 19 P.S. §1180-3(c)(12) (Supp. 1978). The Post-Conviction Relief Act is now codified at 42 Pa.C.S. §§9541-9546.

of Pennsylvania and replaced with a new murder criminal statute. 18 Pa.C.S.A. 2502. Plaintiff [Mathis] was then just placed under the new criminal statute, without indictment. Without trial, and not afforded the right to defend against the new information set out in 18 Pa. C.S.A. §2502 which is different from 18 P.S. §4701. Plaintiff [Mathis] was placed under first degree murder and life sentence under 18 Pa. C.S.A. §2502. This deprived plaintiff [Mathis] to [sic] protections of the fifth, eight [sic] and fourteenth amendment [sic] of the constitution of the united states [sic]. As well it deprived plaintiff [Mathis] protection of criminal statute 18 Pa. C.S.A. §2502 of the requirement of intent to convict for first degree murder, denying equal protection of the law under the fourteenth amendment of the constitution of the united states [sic]. The defendants have no legal authority to commit this act and deprive plaintiff [Mathis] his civil rights as set forth in the following memorandum of law.

....

B. 3. Count One.

District attorney, John M. Morganelli, (herein know as defendant (4)) has the power but not the legal authority to change the records. To state plaintiff [Mathis] was convicted and tryed [sic] under 18 Pa. C.S.A. §2502 when the fact is plaintiff [Mathis] was tryed [sic], convicted and sentenced, after first being indicted under the defective information of Act of June 24, 1939, 18 P.S. §4701. Defendant (4) also had the power to correct the false records. There is no indictment or trial, conviction and sentence of plaintiff [Mathis] under 18 Pa. C.S.A. making it evident to defendant (4), but with malice and intent to commit an illegal usurpation and deprive plaintiff [Mathis] of his civil rights to the protections of the fifth and fourteenth amendments for due process of law and equal protection of law and the right to be indicted. Defendant (4) let the false record stand

B.4.

With that defendant (4) has no legal authority to transfer the result of the information of indictment of 18 P.S. §4701 to a different criminal statute. . . . Plaintiff

[Mathis] is being held to answer for a capital crime for murder without indictment in violation of the fifth amendment of the United States due process clause. Also violation [of] the double jeopardy clause of the fifth amendment. . . .

B.5.

Defendant (4) Cannot punish and confine plaintiff [Mathis] by mere assertion of it. . . . Without subject matter jurisdiction plaintiff [Mathis] confinement and conviction has resulted in an illegal usurpation. . . . [I]t was brought to the attention of defendant (4) the lack of jurisdiction. But with malice and intent of his own will denied a showing of jurisdiction. In doing so denied plaintiff [Mathis] due process of law and equal protection of law in violation of the fifth and fourteenth amendments of the United States constitution. . . . This constitutes cruel and unusual punishment. Violation of plaintiff's [Mathis] right to the protection of the eight [sic] amendment. . . .

C.1. Count Two

Robert A. Freedberg, president judge, (hereinafter known as defendant 5) plaintiff [Mathis] filed petition for writ of habeas corpus in Northampton County Court of Common Pleas, challenging the subject matter jurisdiction of plaintiff's [Mathis] conviction under Act of June 24, 1939 P.L. 872 §701 as Amend: 18 P.S. §4701 and it being unconstitutional. Defendant (5) in his rationale in his] opinion stated the declaring of Act of June 1939 P.L. 18 P.S. §4701 only invalidated the death penalty. . . . [A]nd that the commonwealth can and did prosecute for murder as was done with plaintiff [Mathis]. Defendant (5) denied Habeas Corpus and never addressed the challenge to subject matter jurisdiction. In doing so violated plaintiff's [Mathis] rights to the protections of the fifth and fourteenth amendments of the constitution of the united states [sic] for the protections of due process of law and equal protection of the law. . . .

....

D.1. Count Three

Leonard N. Zito, Judge, (hereinafter known as defendant (6)) with malice and intent deprived plaintiff [Mathis] of

his civil rights to the protection of the fifth and fourteenth amendments of the constitution of the united states for due process of law and equal protection of law. With intent used in his malice the new 1995 P.C.R.A. time limits and filing limits to deprive plaintiff [Mathis] the right under the fifth amendment due process clause to challenge subject matter jurisdiction. . . .

Mathis, Civil Action, Law, March 19, 2010, Paragraph Nos. 7, B.3.-B.5, C.1, and D.1 at 2, 8-10, and 12.

Mathis requested his immediate release from custody.

On April 7, 2010, the Judiciary preliminarily objected:

9. As set forth more fully in the accompanying Brief, the doctrines of sovereign and judicial immunities preclude this suit against Judges Zito and Freedberg, and Plaintiff [Mathis] has failed to set forth a cognizable claim.

10. Therefore, the Complaint fails to state a cause of action upon which relief may be granted.

Preliminary Objections, April 7, 2010, Paragraph Nos. 9-10 at 2. The Judiciary requested that the preliminary objections be sustained and Mathis's complaint be dismissed.

On April 20, 2010, the District Attorney preliminarily objected to Mathis's complaint:

6. Mathis fails to state a cause of action against the moving Defendants [District Attorney] for reasons which are comprehensively stated in the supporting brief and which include the following:

- a. Mathis' lawsuit is an impermissible collateral attack of a criminal conviction which has been completed and no longer subject to challenge.
- b. Mathis cannot state a claim against any of the defendants without first having challenged his criminal conviction, as required by the U.S. Supreme Court decision in Heck vs. Humphrey.
- c. The Northampton County District Attorney's Office is not an entity subject to suit;
- d. Northampton County District Attorney John M. Morganelli is absolutely immune from suit based on federal causes of action;
- e. To the extent that the plaintiff's [Mathis] claims against DA Morganelli are based on Pennsylvania law, DA Morganelli has high official immunity from suit;
- f. Pennsylvania law does not permit a plaintiff to recover damages for the violation of rights secured by the Pennsylvania Constitution? [sic]
- 7. Mathis cannot amend his complaint to state a cause of action.
- 8. All of Mathis' claims against the moving Defendants and the Co-Defendants are frivolous on their face.

District Attorney's Preliminary Objections, April 20, 2010, Paragraph Nos. 6-8 at 2-3. The District Attorney requested that the preliminary objections be sustained and the complaint be dismissed without the right to file an amended complaint.

On April 21, 2010, Mathis preliminarily objected to the Judiciary's preliminary objections and alleged that the Judiciary was not protected by either sovereign or judicial immunity and that his complaint stated a legal cause of action. He also raised issues relating to the merits of his complaint.

On May 20, 2010, Mathis preliminarily objected to the District Attorney's preliminary objections. Mathis asserted that he was permitted to sue for injunctive relief from "the servitude of bondage of prison." He also asserted that the District Attorney was without immunity in addition to issues relating to the merits of his complaint.

On September 16, 2010, the common pleas court denied Mathis's preliminary objections to the Judiciary's preliminary objections. Also, on September 16, 2010, the common pleas court sustained the District Attorney's preliminary objections and dismissed Mathis's complaint with prejudice against all defendants. Also, on September 16, 2010, the common pleas court sustained the Judiciary's preliminary objections and dismissed Mathis's complaint with prejudice against the Judiciary.

On September 24, 2010, Mathis appealed to our Pennsylvania Superior Court. His appeal was subsequently transferred to this Court.

Mathis contends that the common pleas court erred when it sustained the preliminary objections of the Judiciary and the District Attorney. He also contends that the common pleas court erred when it allowed the Judiciary and the District Attorney to raise affirmative defenses by way of preliminary objections. Mathis further contends that a review of subject matter jurisdiction is required for judicial immunity.

The Honorable John L. Braxton ably disposed of these issues in his comprehensive opinion. Therefore, this Court shall affirm on the basis of that opinion. Thomas Brady Mathis v. Northampton County Court of Common Pleas, et al., No. C-0048-CV-2010-2668, Filed February 14, 2011.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

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Freedberg, Judge Leonard N.	:	
Zito, Northampton County	:	
District Attorney's Office,	:	No. 2160 C.D. 2010
John M. Morganelli, Esq., et al.	:	

ORDER

AND NOW, this 18th day of July, 2011, the order of the Court of Common Pleas of Northampton County in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge