

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 06-4093 / 07-1345

DAVID JOSEPH MUNCHINSKI,

Appellant

v.

GERALD SOLOMON, in his official capacity
as District Attorney of Fayette County, Pennsylvania;
RALPH WARMAN, in his official capacities as
District Attorney and First Assistant District Attorney
of Fayette County, Pennsylvania; JOHN A. KOPAS, III,
in his official capacity as First Assistant District Attorney of
Fayette County, Pennsylvania; HUMPHREY LUKACHIK,
in his official capacity as Chief County Detective,
Fayette County, Pennsylvania;
GEORGE FAYOUCK, in his official capacity as Chief County
Detective, Fayette County, Pennsylvania;
ROBERT MANGIACARNE, in his official capacity as Chief
County Detective, Fayette County, Pennsylvania

Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 05-cv-01125)
District Judge: Honorable David S. Cercone

Submitted Under Third Circuit LAR 34.1(a)
September 28, 2007

Before: AMBRO, JORDAN and ROTH, Circuit Judges

OPINION

AMBRO, Circuit Judge

David Joseph Munchinski appeals the dismissal of his claims brought under 42 U.S.C. § 1983 and state tort law. At issue are the classification of prosecutors for purposes of sovereign immunity, the application of Supreme Court precedent regarding federal courts' respect for state-court decisions, and the application of the statute of limitations for § 1983 and state-tort claims. We affirm the District Court's decision in all respects.

I.

In 1986, Munchinski was convicted (at re-trial) for the 1977 murder of two men in Fayette County, Pennsylvania. In October 2004, in a Post-Conviction Relief Act (PCRA) proceeding, the Commonwealth Court of Common Pleas vacated Munchinski's conviction because of prosecutorial misconduct. While Pennsylvania's appeal of that decision was pending in state court, Munchinski brought an action under 42 U.S.C. § 1983 against appellees Gerald Solomon, Ralph Warman, John A. Kopas III, Humphrey Lukachik, and Robert Mangiacarne in their official and individual capacities, and appellee George Fayouck in his individual capacity. The first three appellees are former District Attorneys and First Assistant District Attorneys. The latter three are retired detectives and police

officers.

Munchinski alleged six violations of his constitutional rights under the Fourth, Sixth, and Fourteenth Amendments to our Constitution: false arrest, false imprisonment, malicious prosecution, abuse of process, deprivation of his right to a fair trial, and conspiracy to violate his civil rights. He also brought state tort claims for false arrest, false imprisonment, malicious prosecution, and abuse of process. Finally, he alleged municipal liability for all the torts involved.

After Munchinski filed his § 1983 claim in the United States District Court for the Western District of Pennsylvania in August 2005, the Superior Court of Pennsylvania reversed the decision of the Court of Common Pleas and reinstated Munchinski's conviction. The Supreme Court of Pennsylvania denied Munchinski's application for appeal. *Commonwealth v. Munchinski*, 918 A.2d 744 (Pa. 2007). In August 2006, the District Court granted appellees' motion to dismiss on all counts. In January 2007, it denied Munchinski's motion to take the deposition of Montgomery Goodwin, a witness in ill health. Munchinski appeals these decisions.

II.

The District Court's opinion rested on three grounds. First, *Heck v. Humphrey*, 512 U.S. 477 (1994), bars § 1983 claims that would challenge the validity of a state-court conviction unless "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such

determination, or called into question by a federal court's issuance of a writ of habeas corpus.” *Id.* at 486-87. Second, the counts not barred by *Heck v. Humphrey* were outside the two-year statute of limitations for personal injury lawsuits in Pennsylvania that our Court applies to § 1983 actions. *Samerica Corp. of Delaware, Inc. v. City of Phila.*, 142 F.3d 582, 599 (3d Cir. 1998). Finally, Munchinski's claim of municipal liability failed to state a claim on which relief can be granted because Warman and Solomon acted in their prosecutorial capacity, not as municipal policymakers.

Munchinski appeals the District Court's decision and alleges that the District Court erred: (1) in its reasoning on the municipal liability claim; (2) in failing to read the PCRA court's decision as barring a new trial and granting his release; (3) by not applying equitable estoppel; and (4) by denying him leave to depose Goodwin. We exercise plenary review over Rule 12(b)(6) dismissals, “accepting all well-pleaded allegations as true and drawing all reasonable inferences in favor of plaintiffs.” *In re Adams Golf, Inc. Secs. Litig.*, 381 F.3d 267, 273 (3d Cir. 2004). We review the District Court's decision not to allow the deposition for abuse of discretion. See *Gallas v. Supreme Court of Pa.*, 211 F.3d 760, 778 (3d Cir. 2000).

The District Court correctly analyzed the role of the prosecutors in this case and properly applied *McMillan v. Monroe County*, 520 U.S. 781 (1997). We agree that the prosecutors' decisions were not Fayette County policy but rather were undertaken in the course of their prosecutorial duties. As a result, the prosecutors have the benefit of

Pennsylvania's sovereign immunity and the District Court properly dismissed Munchinski's claim for municipal liability.

We also agree with the Court's reasoning that *Heck v. Humphrey* bars Munchinski's claims of malicious prosecution and denial of a right to a fair trial, as well as his conspiracy claim, state-tort claims, and municipal liability claim to the extent they rely on the invalidity of his conviction. The Pennsylvania Superior Court decision reversing the PCRA court's decision makes moot Munchinski's second argument to the contrary. Regardless whether the PCRA court barred a new trial, Munchinski no longer has a favorable final result in a state-court proceeding that would allow his claims to survive the bar of *Heck*.

We choose not to apply equitable estoppel in this case because we find Munchinski's reasoning unpersuasive. The District Court concluded that the statute of limitations barred Munchinski's allegations of false arrest, false imprisonment, and abuse of process, as well as his conspiracy, state-tort, and municipal-liability claims to the extent they do not rely on the invalidity of his conviction. Even if the statute of limitations ran from the time Munchinski discovered the evidence that appellees allegedly withheld (rather than the time of the withholding), arguably as late as 2001, Munchinski failed to file his § 1983 claims within two years of that discovery, waiting until August 2005. Munchinski protests that prosecutorial misconduct is the very source of his delay in filing these claims. But the reason for the delay in discovering the alleged misconduct

has nothing to do with the timing of his legal actions once that discovery had been made.¹

Finally, because Munchinski's claims are barred and because we do not apply equitable estoppel in this case, we do not believe that the District Judge abused his discretion in not allowing Goodwin's deposition. The deposition could not affect the outcome in this case, since it could not overcome the impediments of *Heck v. Humphrey* and the statute of limitations.

* * * * *

For these reasons, we affirm the District Court's decision to dismiss Munchinski's § 1983 claims against all appellees.

¹ This might seem to put Munchinski between a rock and a hard place, requiring him to wait for some of his claims to ripen (conditional on a favorable state-court outcome) and to avoid delay in filing any claims not barred by *Heck v. Humphrey*. But Munchinski's position was far from impossible. One possible legal strategy would have been to file all of his § 1983 and state-tort claims in federal court within two years of the discovery of the alleged prosecutorial misconduct. Once the case was filed and the appellees put on notice, the District Court could have stayed the entire case while the state-court proceedings played out or ruled only on the claims not barred by *Heck* while staying the remaining claims. But the timing of Munchinski's complaint here—waiting for a favorable state-court outcome before filing any of his claims—cannot succeed with respect to the claims not barred by *Heck*. That delay does not satisfy the statute of limitations and does not respect the well-known policies behind it, such as notice and repose.