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for the Third Circuit

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3-9-2007

# Lopez v. Howard

Precedential or Non-Precedential: Non-Precedential

Docket No. 06-2361

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**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 06-2361

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JOHNNY LOPEZ,

Appellant

v.

CATHY L. HOWARD; LISA A. SEMANS; STATE OF DELAWARE

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On Appeal From the United States District Court  
For the District of Delaware  
(D.C. Civ. No. 06-cv-00107)  
District Judge: Honorable Gregory M. Sleet

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Submitted Under Third Circuit LAR 34.1(a)  
March 8, 2007

Before: SLOVITER, MCKEE AND AMBRO, CIRCUIT JUDGES

(Filed: March 9, 2007)

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OPINION

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PER CURIAM

Johnny Lopez, a prisoner at the Delaware Correctional Center, appeals an order of the United States District Court for the District of Delaware dismissing his civil rights

complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). For the following reasons, we will affirm.

Lopez instituted this action against the State of Delaware and two state judicial employees alleging that the defendants violated his constitutional right of access to the courts. Lopez alleges that members of the Delaware Supreme Court’s administrative staff deliberately frustrated his efforts to obtain appellate review of his drug convictions. In support of this claim, Lopez points out that the Delaware Supreme Court’s opinion affirming his conviction does not address every argument that he raised in his filings with the Court. He also argues that the lack of a signature on the opinion and the Court’s denial of his motion for a signature is evidence that the opinion is a forgery. He requests monetary and injunctive relief.<sup>1</sup>

We have jurisdiction under 28 U.S.C. § 1291. Our review of the District Court’s dismissal is plenary. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). We must “accept as true all well-pled factual allegations . . . [and] examine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” Delaware Nation v. Pennsylvania, 446 F.3d 410, 415 (3d Cir. 2006) (citations omitted). Because Lopez is proceeding pro se, we must liberally construe his pleadings. See Dluhos v.

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<sup>1</sup> Lopez also attacks the validity of his conviction. We note that such a challenge may be brought in federal court only via a petition for a writ of habeas corpus. See Leamer v. Fauver, 288 F.3d 532, 540-42 (3d Cir. 2002). Lopez has already filed a federal habeas petition, and an appeal of the District Court’s denial of habeas relief is pending before this Court (3d Cir. No. 06-3758).

Strasberg, 321 F.3d 365, 369 (3d Cir. 2003). In evaluating the sufficiency of the complaint, we may take judicial notice of official court records for the purpose of ascertaining whether an allegedly “lost” claim was actually litigated. See In re Indian Palms Associates, Ltd., 61 F.3d 197, 205 (3d Cir. 1995); Kramer v. Time Warner Inc., 937 F.2d 767, 774 (2d Cir. 1991).

First, we take judicial notice of records from the Delaware Supreme Court that contradict Lopez’s perfunctory allegations that members of the Court’s administrative staff deliberately concealed his filings from the judges. We note that the Delaware Supreme Court docket sheet lists all the submissions that Lopez claims to have sent to that Court. Moreover, the Delaware Supreme Court expressly stated in its opinion that it had “reviewed the record carefully” prior to denying Lopez’s appeal. Lopez v. State, 861 A.2d 1245, 1251 (Del. 2004). Even if we disregard these official documents and accept the allegations of official misconduct as true, the complaint still fails to state a denial of access claim because there is no indication that Lopez was precluded from asserting a non-frivolous claim. See Christopher v. Harbury, 536 U.S. 403, 414-16 (2002).

Although Lopez claims that the Delaware Supreme Court never addressed his challenge to the legality of the state’s search and seizure and the sufficiency of the evidence supporting his conviction, the Court’s opinion indicates that these claims were analyzed on the merits. See Lopez, 861 A.2d at 1248-50.

We also reject Lopez’s inference regarding the significance of the Delaware Supreme Court’s issuance of an unsigned opinion. Lopez does not cite, and we are

unable to locate, any provision under Delaware law that entitles an appellant before the Delaware Supreme Court to a signed opinion.

For the foregoing reasons, we conclude that Lopez has failed to state a claim on which relief may be granted. Accordingly, we will affirm the District Court's dismissal of the complaint.