

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

FRANK SCOTT SILVERMAN : CIVIL ACTION  
 :  
 :  
 v. :  
 : No. 01-5226  
 WARDEN LAWRENCE ROTH, *et al.* :  
 :

**ORDER - MEMORANDUM**

AND NOW, this 20<sup>th</sup> day of March, 2002, the motion of defendants Lawrence Roth, Michael Gordon, and Carl Kristenson<sup>1</sup> to dismiss plaintiff Frank Scott Silverman's *pro se* complaint is granted under Fed. R. Civ. P. 12(c).<sup>2</sup>

On November 8, 2001, in settling an unrelated lawsuit,<sup>3</sup> plaintiff signed, upon advice of counsel, a general release<sup>4</sup> giving up all claims "of every nature and description,"

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<sup>1</sup>Defendant Roth is the warden of Montgomery County Correctional Facility. Defendants Gordon and Kristenson are identified in the complaint as a "social service supervisor" and a "social worker" at MCCF.

<sup>2</sup>While defendants moved under Fed. R. Civ. P. 12(b)(6), their motion must be "treated as one for summary judgment . . . as provided in Rule 56," since it is based in part on a general release that lies "outside the pleadings." Fed. R. Civ. P. 12(c). A court may grant summary judgment under Fed. R. Civ. P. 56 only if, after viewing the record and drawing references in a light most favorable to the non-moving party, the record "shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In Re Ikon Office Solutions, Inc., 277 F.3d 658, 665-66 (3d Cir. Jan. 11, 2002) (quoting Fed. R. Civ. P. 56(c)). Plaintiff, having filed a response that does not dispute its validity, has received, as required by Rule 12(c), "reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(c).

<sup>3</sup>That 42 U.S.C. § 1983 action, Silverman v. Roth, et al. (E.D.Pa. No. 00-CV-3008), arose out of an incident in which plaintiff, while awaiting a psychiatric evaluation, cut his throat with a razor given to him by MCCF personnel.

<sup>4</sup>The general release: "I, Frank Scott Silverman . . . intending to be legally bound hereby, do . . . release, quitclaim, and forever discharge defendants [Lawrence Roth, Brian Heiser, and the County of Montgomery], their officers, officials, agents, employees, attorneys, departments, agencies, divisions, successors and/or assigns, and ANY AN ALL OTHER PERSONS, FIRMS, ENTITIES, AGENCIES AND CORPORATIONS which are or might be claimed to be liable to me . . . of and from any and all claims, counterclaims, rights, demands, costs, damages, losses,

including the present 42 U.S.C. § 1983 claims.<sup>5</sup> The construction of this release is governed by Pennsylvania law,<sup>6</sup> under which a “signed release is binding upon the parties unless executed and procured by fraud, duress, accident or mutual mistake.” Bowersox Truck Sales v. Harco National Insurance Co., 209 F.3d 273, 279 (3d Cir. 2000) (quoting Three Rivers Motors Co. v. Ford Motor Co., 522 F.2d 885, 892 (3d Cir. 1975)). “In Pennsylvania, the general rule for construction of releases is that the intention of the parties must govern, but this intention must be gathered from the language of the release.” Three Rivers Motors Co., 522 F.2d at 892.

Here, there are no allegations of fraud, duress, accident or mutual mistake and the general release, as worded, refers to “defendants, their officers, officials, agents, [or] employees.” Defendants’ memorandum, Exhibit B at 1; see Erie Telecommunications, Inc.

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liabilities, actions, and causes of action . . . of every nature and description, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, actual or potential, and whether arising at law or in equity, under the common law, state law, federal law, or any other law or otherwise, including but not limited to claims which have been or which might have been asserted in this action, including but not limited to claims arising from the self-mutilation incident of June, 1998 . . . it being my intention to effect a general release of all such claims.” Defendants’ memorandum, Exhibit B at 1.

Defendants also move to dismiss the complaint as time-barred by the two-year statute of limitations for § 1983 claims in Pennsylvania. Plaintiff contests this – but given the valid general release, whether or not plaintiff’s claims are time-barred need not be decided.

<sup>5</sup>On October 15, 2001, the present complaint was submitted, and a motion to proceed *in forma pauperis* filed. On October 18, 2001, the motion was denied without prejudice, but on November 9, 2001, plaintiff was granted leave to proceed *in forma pauperis* and his complaint was filed. The complaint alleges that, in July, 1998, plaintiff complained to defendants that his sentence at MCCF had been miscalculated, but they took no action. On October 5, 1999, plaintiff was released from his so-called “illegal confinement” at MCCF and is now incarcerated at the State Regional Correctional Facility in Mercer, Pennsylvania. Plaintiff’s “Petition in Opposition to Respondent’s Motion to Dismiss” at 1.

<sup>6</sup>The release: “I understand, covenant and agree that . . . this General Release will be construed and governed by Pennsylvania law.” Defendants’ memorandum, Exhibit B at 2. See Three Rivers Motor Co., 522 F.2d at 892-93 (using Pennsylvania law to construe a general release in a federal law antitrust case because “[t]he applicable Pennsylvania law is not incongruous with federal antitrust objectives”).

v. City of Erie, 853 F.2d 1084, 1097 (3d Cir. 1988) (holding that the “*contractual* effect of . . . [a] clear and unambiguous,” release can “put an end to all disputes . . . including those of constitutional dimension”).<sup>7</sup> Plaintiff argues that paragraphs three<sup>8</sup> and five<sup>9</sup> of the general release apply only to matters relating to the settled case, not to the present claims. Plaintiff’s “Petition in Opposition to Respondent’s Motion to Dismiss” at 2. Even if this is true, paragraph one of the general release, effectuating the waiver here, refers to claims “of every nature and description . . . including but not limited to claims arising from the self-mutilation incident . . . .” Id at 1.

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Edmund V. Ludwig, J.

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<sup>7</sup>General releases have been found not to violate public policy or interfere with federal statutory purposes where, as here, the waived claims had accrued when the release was signed. See, e.g., Wicker v. Consolidated Rail Corp., 142 F.3d 690, 701 (3d Cir. 1998) (holding that a release does not violate § 5 of FELA provided “the scope of the release is limited to those risks which are known to the parties at the time the release is signed”); Leaman v. Ohio Department of Mental Retardation, 825 F.2d 946, 948, 953-54 (6<sup>th</sup> Cir. 1987) (holding that the “broad remedial purpose” of § 1983 is not thwarted by a voluntary waiver of “any cause of action . . . [a plaintiff] has against any state officer or employee”) (citing Town of Newton v. Rumery, 480 U.S. 386, 393-94, 107 S.Ct. 1187, 1192-93, 94 L.Ed.2d 405 (1987) (upholding a waiver of § 1983 claims in exchange for the dismissal of criminal charges as valid despite “the possibility of coercion”)); Three Rivers Motors Co. v. Ford Motor Co., 522 F.2d 885, 896 n.27 (3d Cir. 1975) (holding that “there is nothing in the public policy behind antitrust laws that prohibits general releases . . . provided that the release does not seek to waive damages from future violations of antitrust laws”). Cf. Vaughn v. Didizian, 648 A.2d 38, 39 (Pa.Super. 1994) (construing a waiver as not barring a medical malpractice action “because the parties could not have contemplated the future negligent treatment when the release was executed, and the . . . claim had not accrued at the date of the execution of the release”).

<sup>8</sup>Paragraph three purports to waive present and future claims related to “THE ABOVE-MENTIONED SELF-MUTILATION INCIDENT OF JUNE, 1998, AND SUBJECT MATTER OF THE ABOVE-CAPTIONED CASE....” Defendants’ memorandum, Exhibit B at 2.

<sup>9</sup>Paragraph five purports to waive suits “against the released parties or ANY OTHER PERSONS, FIRMS, ENTITIES, AGENCIES OR CORPORATIONS on the claims mentioned above.” Id.

