

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000107-24

LAWRENCE DIGIESI,

CIVIL ACTION

Plaintiff-Appellant,

ON APPEAL FROM

v.

SUPERIOR COURT
LAW DIVISION, CIVIL PART
SOMERSET COUNTY

TOWNSHIP OF BRIDGEWATER
POLICE DEPARTMENT;
TOWNSHIP OF BRIDGEWATER;
ALFRED NICARETTA; KENNETH
DOLIDA; THOMAS KOCHANSKI;
PETER OCHS; JOHN MITZAK;
SHAWN O'NEILL AND PAUL
PAYNE

Sat Below:

Defendants-Respondents.

Honorable John E. Bruder, J.S.C.

**BRIEF FOR
PLAINTIFF-APPELLANT, LAWERNCE DIGIESI**

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TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW	6
LEGAL ARGUMENT	
I. THE TRIAL COURT ERRED IN ITS <i>SUA SPONTE</i> CONSIDERATION AND RAISING OF THE DISCOVERY RULE TO DETERMINE WHEN THE APPELLANT’S CAUSE OF ACTION ACCRUED, RATHER THAN CORRECTLY APPLY THE EQUITABLE DOCTRINE TO DETERMINE WHETHER THE STATUTE OF LIMITATIONS SHOULD BE TOLLED.	8
(Not raised below)	
II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN RELYING UPON THE DATE OF THE VERDICT RATHER THAN THE JUDGMENT OF ACQUITTAL TO DETERMINE WHEN THE MALICIOUS PROSECUTION CLAIM ACCRUED.	13
(Raised below: Appellant’s Opposition to Respondents’ Motions to Dismiss)	
A. New Jersey law does not support a distinction between the date of the verdict and the judgment of acquittal to determine the date of the favorable termination of the underlying criminal proceeding.	14
B. Federal law does not support a distinction between the date of the verdict and the judgment of acquittal to determine the date of the favorable termination	

	of the underlying criminal proceeding.	18
III.	THE TRIAL COURT ERRED BY FAILING TO ADDRESS THE POTENTIAL FOR CONFLICTING JUDGMENTS IN STATE AND FEDERAL COURTS.	23
	(Raised below: Appellant's Opposition to Respondents' Motions to Dismiss)	
	CONCLUSION	25

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

Order Granting Township of Bridgewater Motion to Dismiss, filed August 16, 2024	Pa001
Order Granting Individual Defendants Motion to Dismiss, filed August 16, 2024	Pa002

TABLE OF APPENDIX

Complaint, filed April 11, 2024	Pa004
Trial Transcript, <u>State of New Jersey v. Lawrence DiGiesi</u> (SOM-16-000558), filed June 6, 2017	Pa030
Judgment of Acquittal, <u>State of New Jersey v. Lawrence DiGiesi</u> (SOM-16-000558), filed July 31, 2017	Pa105
Order and Judgment, <u>DiGiesi v. Township of Bridgewater, et als</u> (Civil Action No. 19-14557), filed March 27, 2024	Pa108
Opinion, <u>DiGiesi v. Township of Bridgewater, et als</u> (Civil Action No. 19-14557), filed March 27, 2024	Pa110
Notice of Appeal, filed September 13, 2024	Pa123

TABLE OF AUTHORITIES

STATUTES

N.J.S.A. 2A:14-2 *passim*

42 U.S.C. § 1983 *passim*

COURT RULES

Rule 4:6-2(e) 1

Rule 3:21-5 *passim*

CASES

AC Ocean Walk, LLC v. American Guar. & Liab. Ins. Co.,
256 N.J. 294 (2023) 8

Aly v. E.S. Sutton Realty,
360 N.J. Super. 214 (App. Div. 2003) 23

Banco Popular N. Am. v. Gandi,
184 NJ. 161 (2005) 7

Baskin v. P.C. Richard & Son, LLC,
246 N.J. 157 (2021) 6

Binder v. Price Waterhouse & Co., LLP,
393 N.J. Super. 304 (App. Div. 2007) 11

City of Philadelphia v. Austin,
86 N.J. 55 (1981) 24

Coello v. Dileo,
43 F.4th 346 (2022) 19, 20, 22

<u>Continental Ins. Co. v. Honeywell Int’l Inc.,</u> 406 N.J. Super. 156 (App. Div. 2009)	23
<u>DiCristofaro v. Laurel Grove Mem’l Park,</u> 43 N.J. Super. 244 (App. Div. 1957)	7
<u>Do-Wop Corp. v. City of Rahway,</u> 168 N.J. 191 (2001)	17
<u>Frederick v. Smith,</u> 416 N.J. Super. 594 (App. Div. 2010)	7
<u>Galligan v. Westfield Centre Service, Inc.,</u> 82 N.J. 188 (1980)	8
<u>Giannakopoulos v. Mid-State Mall,</u> 438 N.J. Super. 595 (App. Div. 2014)	8
<u>Grunwald v. Bronkesh,</u> 131 N.J. 483 (1993)	9
<u>Hayes v. Delamotte,</u> 231 N.J. 373 (2018)	17
<u>Heck v. Humphrey,</u> 512 U.S. 477 (1994)	19
<u>Helmy v. City of Jersey City,</u> 178 N.J. 183 (2003)	9
<u>Henry v. New Jersey Dept. of Human Services,</u> 204 N.J. 320 (2010)	9
<u>In the Matter of Gauthier,</u> 461 N.J. Super. 507 (App. Div. 2019)	14
<u>Isko v. Planning Bd.,</u> 51 N.J. 162 (1968)	17

<u>Kaczmarek v. New Jersey Turnpike Auth.,</u> 77 N.J. 328 (1978)	8
<u>Kossler v. Crisanti,</u> 564 F.3d 181 (2009)	22
<u>Lopez v. Swyer,</u> 62 N.J. 267 (1973)	<i>passim</i>
<u>McDonough v. Smith,</u> 588 U.S. 109 (2019)	19
<u>Michael Bessasparis & SHT Corp. v. Twp. of Bridgewater,</u> 2021 N.J. Super. Unpub. LEXIS 820 at *19 (App. Div. Feb. 2, 2021)	15
<u>Muller Fuel Oil Co. v. Ins. Co. of N. Am.,</u> 95 N.J. Super. 564 (App. Div. 1967).	9
<u>O’Keefe v. Snyder,</u> 83 N.J. 478 (1980)	9
<u>Price v. N.J. Mfrs. Ins. Co.,</u> 182 N.J. 519 (2005)	11
<u>Printing Mart-Morristown v. Sharp Elec. Corp.,</u> 116 N.J. 739 (1989)	7
<u>Rieder v. Dept. of Transp.,</u> 221 N.J. Super. 547 (App. Div. 1987)	7
<u>Rogers v. Cape May County Office of Public Defender,</u> 208 N.J. 414 (2011)	15
<u>Schmidt v. Celgene Corp.,</u> 425 N.J. Super. 600 (App. Div. 2012)	6
<u>Sensient Colors, Inc. v. Allstate Ins. Co.,</u> 193 N.J. 373 (2008)	23

<u>State v. Cherry Hill Mitsubishi,</u> 439 N.J. Super. 462 (App. Div. 2015)	6
<u>Suburban Dep’t Stores v. City of East Orange,</u> 47 N.J. Super. 472 (App. Div. 1957)	17
<u>Thomas v. DeGraffenreid,</u> 11 S.C.L. 143 (1819)	22
<u>Thomas v. New Jersey Institute of Technology,</u> 178 N.J. Super. 60 (Law Div. 1981)	14
<u>Thompson v. City of Atlantic City,</u> 190 N.J. 359 (2007)	24
<u>Thompson v. Clark,</u> 596 U.S. 36 (2022)	21
<u>Trustees of Princeton Univ. v. Trust Co. of N.J.,</u> 22 N.J. 587 (1956)	23
<u>Velantzas v. Colgate-Palmolive Co.,</u> 109 N.J. 189 (1988)	7
<u>Villalobos v. Fava,</u> 342 N.J. Super. 38 (App. Div. 2001).	11
<u>Wallace v. Kato,</u> 549 U.S. 384 (2007)	25
<u>Yancoskie v. Del. River Port Auth.,</u> 78 N.J. 321 (1978)	23
<u>Young v. Prudential Ins. Co. of Am.,</u> 297 N.J. Super. 605 (App. Div. 1997)	18
<u>Zaccardi v. Becker,</u> 88 N.J. 245 (1982)	11

PRELIMINARY STATEMENT

The trial court erroneously granted the Respondents' Rule 4:6-2(e) motions and dismissed the Appellant's civil rights and related State law torts with prejudice as untimely.

By reaching for and otherwise deciding the statute of limitations issue, absent first determining when the Appellant's claims accrued, the trial court unquestionably placed the proverbial cart before the horse and also denied the Appellant any opportunity to supplement the motion record with facts establishing the relevant factors and considerations applicable to a legitimate discovery rule inquiry under Lopez v. Swyer, 62 N.J. 267 (1973). Instead of engaging in a thorough and specific analysis of the favorable termination of the underlying criminal proceeding in order to determine when the Appellant's cause of action for malicious prosecution accrued, the trial court hastily and without due consideration improvidently launched into a discussion of the discovery rule – an equitable tolling doctrine not raised in the motion submissions of any party.

The trial court's legal reasoning was not only flawed, but its further conclusion was completely devoid whatsoever of any supporting legal authority. Its decision referenced no statute, court rule, or caselaw to support its *sua sponte* "misapplication" of the discovery rule, and again further totally ignored and disregarded the Appellant's cogent arguments specifically addressing the single dispositive issue in

this litigation – whether the favorable termination of the criminal proceeding that formed the basis of the malicious prosecution claim occurred on the date of the oral decision by the trial court or the filed Judgment of Acquittal by the Clerk of the Superior Court.

Quite notoriously, the trial court not only failed to offer any legal authority for its never before recognized distinction between the date of the verdict of acquittal and the date of the Judgment of Acquittal, it proceeded into uncharted New Jersey waters by applying the discovery rule and equitable tolling doctrine to somehow decide the issue of when the Appellant’s causes of action accrued.

The trial court further entirely avoided any legal analysis of the issue of when the favorable termination of the underlying criminal proceeding occurred. The trial court’s hasty and hollow effort was made absent any precedent, and otherwise in direct conflict with the jurisprudence of both the State of New Jersey and the United States Court of Appeals for the Third Circuit.

PROCEDURAL HISTORY

Immediately following the dismissal of his federal claims by the United States District Court for the District of New Jersey (“the District Court”), the Appellant proceeded with the filing of a Complaint on April 11, 2024, including but not limited to his surviving State law claims expressly preserved by the United States District Court (Pa004).

On June 10, 2024, the Respondents, the Township of Bridgewater and the Bridgewater Police Department, filed a motion to dismiss the Complaint, pursuant to Rule 4:6-2(e).

On June 13, 2024, the Respondents, Officers Kochanski, Ochs, Mitzak, and O'Neill similarly filed their own motion to dismiss the Complaint, pursuant to Rule 4:6-2(e).

On July 10, 2024, the Appellant filed opposition to both motions to dismiss.

The Respondents filed replies on July 23, 2024 and July 29, 2024.

At the conclusion of oral argument on August 16, 2024, the trial court entered orders granting both motions and dismissed the Complaint with prejudice as time-barred by the statute of limitations (Pa001-003).

On September 13, 2024, the Appellant filed a Notice of Appeal (Pa123-131).

STATEMENT OF FACTS

While employed as a security guard at a restaurant in Bridgewater, New Jersey, the Plaintiff was arrested and criminally charged with third-degree aggravated assault after seeking to remove a patron, not coincidentally the son of a retired Bridgewater police officer (Pa007-008).

After a trial, the Superior Court of New Jersey, Law Division, Criminal Part, Somerset County acquitted the Appellant of third-degree aggravated assault on June 6, 2017 (Pa103), and following therefrom a judgment of acquittal did finally issue

from the Clerk of the Superior Court on July 31, 2017, pursuant to Rule 3:21-5 (Pa105-107).

On July 1, 2019, the Appellant filed his complaint before the United States District Court against the Township of Bridgewater, the Bridgewater Police Department, and various individual Bridgewater police officers, alleging claims under 42 U.S.C. § 1983 and New Jersey State law torts, including negligence and malicious prosecution (Pa111).

On March 27, 2024, the United States District Court dismissed the Appellant's federal claims with prejudice as time-barred (Pa108-109). Applying N.J.S.A. 2A:14-2, the United States District Court made a finding that the statute of limitations began to run on the date of the not-guilty verdict (June 6, 2017), not when the judgment of acquittal was entered (July 31, 2017). Id. The United States District Court expressly declined to exercise supplemental jurisdiction over the Appellant's State law claims, dismissing them only without prejudice. Id.

On April 25, 2024, the Appellant filed a Notice of Appeal with the United States Court of Appeals for the Third Circuit. Briefing submissions have thus far been made with no decision yet rendered (Pa).

In their scant and respective motions to dismiss the Complaint, the Respondents argued for the trial court to adopt the United States District Court's (federal) date-of-accrual analysis of the dismissed federal claims, and otherwise

merely reapply it in another forum to similarly bar the State law claims on statute-of-limitations grounds. Without almost no legal authority in support, they merely parroted the United States District Court's opinion, which looked to federal law to conclude that the claims accrued on the date of the verdict, not the judgment of acquittal date.

In opposition, the Appellant contended that the United States District Court's opinion offered no foundation for the trial court to dismiss the Appellant's State law claims, as only State, not federal, law could serve as the basis to decide when the State law claims accrued. Making specific reference to the doctrine of substantial compliance, the Appellant pointedly responded that the timely filing of his State law claims in the United States District Court tolled the statute of limitations. With respect to the focal issue in both the federal and State litigations, the Appellant argued that New Jersey's final judgment rule and Rule 3:21-5 directed that the favorable termination of the underlying criminal proceeding – which is when the malicious prosecution claim accrued – occurred on the later date of the entry of the judgment of acquittal.

At oral argument, the trial court inquired as to whether the Appellant was present in court when the verdict of acquittal was announced, and counsel replied that he was. 1T17:23-25. Apropos of nothing, the trial court *sua sponte* seemingly relied on this singular fact to inject the discovery rule and to dismiss the Complaint

as time barred. 1T23:15-25. Applying the discovery rule, an equitable doctrine whose purpose is to *toll* statutes of limitations, the trial court erroneously concluded that the verdict was the operative date because that was the moment when the Appellant knew or should have known of his legal injury. 1T24:1-9.

The trial court was limited in its reference to Schmidt v. Celgene Corp., 425 N.J. Super. 600 (App. Div. 2012), a decision which the Appellant had already cited in support of the substantial compliance doctrine, with the trial court offering no statute, court rule, or decision to support its holding that the Appellant's cause of action accrued when he knew or should have known of his injury, rather than the date of favorable termination of the underlying criminal proceeding. 1T26:5-19. The trial court further undertook no analysis of any of the Appellant's arguments, including Rule 3:21-5, the final judgment rule, Rogers v. Cape May County Office of Public Defender, 208 N.J. 414 (2011), or any other applicable caselaw pertaining to the accrual of a cause of action of an acquitted or wrongfully convicted plaintiff.

STANDARD OF REVIEW

Appellate review of a trial court's decision on a Rule 4:6-2(e) motion to dismiss is reviewed *de novo*. Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021), and no deference is owed to the trial judge's conclusions. State v. Cherry Hill Mitsubishi, 439 N.J. Super. 462, 467 (App. Div. 2015).

“A complaint should be dismissed for failure to state a claim pursuant to Rule 4:6-2(e) only if the factual allegations are palpably insufficient to support a claim upon which relief can be granted.” Frederick v. Smith, 416 N.J. Super. 594, 597 (App. Div. 2010). The primary question in a motion to dismiss is whether the plaintiff, by any reasonable means, can establish a cause of action based on the allegations set forth in the complaint. A motion to dismiss brought under Rule 4:6-2(e) for failure to state a claim is a matter of “determining the adequacy of a pleading: whether a cause of action is ‘suggested’ by the facts.” Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989) (citing Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)).

The court’s inquiry is “limited to examining the legal sufficiency of the facts alleged on the face of the complaint,” Printing Mart-Morristown, *supra*, 116 N.J. at 746 (citing Rieder v. Dept. of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)), and ought not be concerned with the Plaintiff’s ability to prove the allegations contained in the complaint, but rather only whether the allegations suggest a cause of action. Velantzas, *supra*, 109 N.J. at 192. In applying this standard, the court must treat the plaintiff’s version of the facts as set forth in the complaint as uncontradicted and accord it all legitimate inferences.” Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005).

In its inquiry, the court must scrutinize the complaint “in depth and with liberality to ascertain whether the

fundament of a cause of action may be gleaned even from an obscure statement of claim . . .” Printing Mart-Morristown, *supra* at 746 (quoting DiCristofaro v. Laurel Grove Mem’l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).”

AC Ocean Walk, LLC v. American Guar. & Liab. Ins. Co., 256 N.J. 294, 307 (2023).

ARGUMENT

I. THE TRIAL COURT ERRED IN ITS *SUA SPONTE* CONSIDERATION AND RAISING OF THE DISCOVERY RULE TO DETERMINE WHEN THE APPELLANT’S CAUSE OF ACTION ACCRUED, RATHER THAN CORRECTLY APPLY THE EQUITABLE DOCTRINE TO DETERMINE WHETHER THE STATUTE OF LIMITATIONS SHOULD BE TOLLED.

(Not Raised Below)

New Jersey courts have consistently recognized that “unswerving” and “mechanistic” application of statutes of limitations may inflict unnecessary harm upon plaintiffs, by denying them access to the courts and without materially advancing the objectives such laws are designed to serve. Giannakopoulos v. Mid-State Mall, 438 N.J. Super. 595, 611 (App. Div. 2014) (citing Galligan v. Westfield Centre Service, Inc., 82 N.J. 188, 192 (1980)). Indeed, Galligan sensibly explained “the filing of a lawsuit itself shows the proper diligence on the part of the plaintiff

which statutes of limitations were intended to insure.” Galligan, *supra*, 82 N.J. at 194 (quoting Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 328, 341 (1978)).

There is no dispute that the discovery rule has long been part of the New Jersey statute of limitations jurisprudence. Having evolved in the medical malpractice context, and extended to other causes of action, the discovery rule is essentially a rule of equity that remedies the injustice that results when an injured person, unaware that he has a cause of action, is denied his day in court solely because of his ignorance, if he is otherwise blameless. Henry v. New Jersey Dept. of Human Services, 204 N.J. 320, 335-36 (2010) (citing Lopez, 62 N.J. at 273-74; Grunwald v. Bronkesh, 131 N.J. 483, 492 (1993); O’Keefe v. Snyder, 83 N.J. 478, 491 (1980)).

The discovery rule applies in both scenarios where the plaintiff did not discover the injury, and where the plaintiff did discover the injury but did not know that it was attributable to the fault of another. Lopez, 62 N.J. at 274.

In order to establish a claim for malicious prosecution, a plaintiff must establish that the underlying criminal action terminated favorably. Helmy v. City of Jersey City, 178 N.J. 183, 190 (2003). “Since a suit for malicious prosecution must await a favorable termination of the criminal proceeding, the statute of limitations does not begin until such termination.” Muller Fuel Oil Co. v. Ins. Co. of N. Am., 95 N.J. Super. 564, 577 (App. Div. 1967). By its very own legal elements, the

timeliness of the tort of malicious prosecution simply cannot be analyzed in like manner as a personal injury claim. The reason is that the alleged injury occurs after either a wrongful arrest or criminal charge, forcing a plaintiff to wait until the criminal proceeding concludes before a malicious prosecution claim can accrue.

The more precise issue properly before the trial court was not whether the Appellant filed within the statute of limitations, but when his cause of action for malicious prosecution accrued. The discovery rule stands as an equitable tolling doctrine whose purpose is to undisputedly soften — not make even more rigid — the harsh effects frequently resulting from the cold and doctrinaire application of statutes of limitations. Typically, plaintiffs who have admittedly filed claims out of time invoke the discovery rule to toll the statute of limitations — not to determine when their cause of action accrued.

Resolving the accrual issue required analysis of the element of favorable termination, which this trial court simply ignored, and instead proceeded to assume the claims were untimely filed and decided the issue of tolling. Hereinbelow, it was never established whether the Appellant's claims were filed timely or not because the trial court failed to decide the date of favorable termination. To be absolutely certain, at no time during the course of either the federal or State litigation did the Appellant ever reluctantly proceed or in any way question what the trial court simply

took for granted, which was the timely filing of the original complaint before the United States District Court.

The trial court's analytical flaw hereinbelow was as obvious as it was egregious. By skipping the first step of the statute of limitations inquiry, which was determining whether the Appellant's State law claims were filed (in the United States District Court) within the statute of limitations, the trial court improvidently decided an issue that was not before it. Only after first concluding that the claim was indeed filed late was a discussion of the discovery rule even appropriate.

Statutes of limitations are based on the public policy goals of security and stability in human affairs and ensuring cases are not tried on the basis of stale evidence. Zaccardi v. Becker, 88 N.J. 245, 256 (1982). In line with that public purpose, where a tortfeasor was on notice of the claim and no significant prejudice would result, the policy reasons for upholding statutes of limitation recede. Price v. N.J. Mfrs. Ins. Co., 182 N.J. 519, 524 (2005). Accordingly, equitable principles have developed to inform statutes of limitations.

While the doctrine of equitable tolling has been applied sparingly under limited circumstances, such as where the plaintiff has been induced or deceived by the tortfeasor's misconduct into allowing the filing deadline to pass, Binder v. Price Waterhouse & Co., LLP, 393 N.J. Super. 304, 312 (App. Div. 2007), or where a plaintiff has timely asserted his rights mistakenly by either a defective pleading or

in the wrong forum. However, application of the doctrine of equitable tolling may only occur where it is supported by sound legal principles and the interests of justice. Id. at 313. The resultant prejudice to a defendant must be balanced against “the exercise of reasonable insight and diligence by a person seeking its protection . . .” Villalobos v. Fava, 342 N.J. Super. 38, 52 (App. Div. 2001).

As the Appellant never conceded that his claims were filed out of time or argued that the statute of limitations should be tolled, the Appellant was blindsided by the trial court’s decision to nevertheless proceed to apply the discovery rule, an equitable tolling doctrine. However, the dismissal of a complaint pursuant to the discovery rule cannot occur unless and until a Lopez hearing is conducted. A Lopez hearing provides an opportunity for plaintiffs, defendants, and trial courts to identify, evaluate, and weigh all equitable claims before determining the date upon which a plaintiff became aware of the facts giving rise to the cause of action. Lopez, 62 N.J. at 274.

Moreover, even were the discovery rule applicable in deciding the Respondents’ motions to dismiss, the trial court additionally erred by failing to afford the Appellant an opportunity to demonstrate the equitable factors that would establish tolling the statute of limitations. A plaintiff bears the burden of proof to invoke the discovery rule and must do so by establishing the presence of several factors, including the nature of the injury; the availability of witnesses and evidence;

the length of time that has elapsed since the wrongdoing; whether the delay was deliberate; and whether the delay prejudiced the defendant. Lopez.

In the trial court's haste to jump immediately to equitable tolling, without first deciding when the claim accrued, it overlooked the analysis that it was required to conduct before deciding whether the discovery rule applied. Accordingly, even were the trial court correct in applying the discovery rule, there was an undeniable, insufficient and underdeveloped record to decide whether the Appellant was entitled to its protection, thereby causing resultant and intolerable prejudice to the Appellant.

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN RELYING UPON THE DATE OF THE VERDICT RATHER THAN THE JUDGMENT OF ACQUITTAL TO DETERMINE WHEN THE MALICIOUS PROSECUTION CLAIM ACCRUED.

(Raised below: Appellant's Opposition to Respondents' Motions to Dismiss)

The trial court erroneously concluded that the Appellant's malicious prosecution claim accrued two years after the date of the verdict (on June 6, 2019), rather than two years from the entry of the judgment of acquittal (July 31, 2017), and accordingly found that such claims were out of time by twenty-four (24) days.

By mechanistically and erroneously applying an equitable tolling doctrine to bar the Appellant's claims as untimely, the trial court minimized and inappropriately treated this civil rights litigation as if it were a were run-of-the-mill slip-and-fall

case. Rather than appropriately focusing on the essential guiding principle of finality to determine the date when the criminal proceeding ended, the trial court erroneously parted from modern civil rights jurisprudence and regressed to a time when courts analyzed the accrual of such claims based on when plaintiffs first knew, or should have known, of their injury.

After submitting to the conduct of lengthy discovery, untold depositions, and expert reports in the federal litigation did the Respondents finally collectively argue that the Appellant was acquitted more than two years before he filed the federal action, and otherwise chose to ignore the date upon which the judgment of acquittal was filed and entered as the official act of the Clerk of the Superior Court. But most notorious was their failure to cite any legal authority, even to the United States District Court, which ultimately and erroneously relied in holding that the Appellant's claims brought two years and twenty-four days after the Appellant's claims had accrued.

A. New Jersey law does not support a distinction between the date of the verdict and the judgment of acquittal to determine the date of the favorable termination of the underlying criminal proceeding.

In a highly favorable and analogous context, New Jersey has decidedly addressed the meaning of "favorable termination." In the Matter of Gauthier, 461 N.J. Super. 507, 516 (App. Div. 2019) held that pre-trial intervention was

unavailable to a criminal defendant, as such a diversionary program could not be regarded “as the equivalent of a *judgment of acquittal or an otherwise favorable termination* of the criminal proceeding.” Id. (quoting Thomas v. New Jersey Institute of Technology, 178 N.J. Super. 60, 62 (Law Div. 1981)) (emphasis supplied). In denying the defendant’s application, the court pointedly used the term “judgment of acquittal” interchangeably with “favorable termination.” Id.

The trial court utterly ignored this decision, as well as a more recent opinion that specifically held that “favorable termination” occurred on the date when the court issued *orders of dismissal* of the complaint-summonses. Michael Bessasparis & SHT Corp. v. Twp. of Bridgewater, 2021 N.J. Super. Unpub. LEXIS 820 at *19 (App. Div. Feb. 2, 2021).

The trial court again disregarded a case cited by both the Appellants and the Respondents, Rogers v. Cape May County Office of Public Defender, 208 N.J. 414 (2011), which addressed the issue of claim accrual in a highly analogous context. Remaining entirely consistent with the procedural logic as argued hereinabove, Rogers held that a malpractice claim against a criminal defense attorney did not accrue until the plaintiff’s exoneration in the underlying criminal proceeding. Rogers presented the issue of whether the statute of limitations began to run when the plaintiff’s conviction was reversed, or later when the indictment was dismissed. Even though the plaintiff was aware of his attorney’s negligence long before, Rogers

held that the operative date for purposes of determining whether the action was timely was the date on which the court entered an order dismissing the indictment.

By refusing to select the earlier date of the reversal of the conviction, Rogers rejected the “knew or should have known” approach employed in personal injury litigation involving the discovery rule. Moreover, Rogers endorsed the longstanding and high public policy principle of finality by setting the claim-accrual marker at the final disposition of the criminal proceeding. Rogers stands as yet another case that did not indulge the instant and incredibly narrow distinction and backward application of the discovery rule made by the trial court, but instead looked to the date of the final disposition of the underlying criminal case.

As was openly and notoriously raised by the Appellant, both in his opposition submission and at oral argument before the trial court, Rule 3:21-5 likewise supports looking to the judgment of acquittal as the appropriate date of favorable termination of the underlying criminal proceeding. Some exploration into New Jersey criminal procedure would have widened the trial court’s vantage point from which to analyze the claim-accrual issue, and possibly have avoided the trial court’s lack of jurisprudential understanding and consideration for its decision.

It is axiomatic that the official acts of judicial bodies are memorialized in writing. Indeed, court orders may only be carried out if they are written. This fundamental notion pervades the New Jersey Rules of Court, which impose

innumerable requirements on judges and clerks to accept, reject, and issue various documents. This is particularly important at the conclusion of a criminal case, when the rights to appeal or expunge ripen.

New Jersey's final judgment rule embodies this essential and well-settled principle.

“ . . . appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions . . .” (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001)). . . “The written conclusions or opinion of a court do not have the effect of a judgment. From them no appeal will lie. It is only what a court adjudicates, not what it says in an opinion, that has any direct legal effect.” (quoting Isko v. Planning Bd., 51, N.J. 162, 175 (1968) and Suburban Dep't Stores v. City of East Orange, 47 N.J. Super. 472, 479 (App. Div. 1957).

Hayes v. Delamotte, 231 N.J. 373, 387 (2018).

Highly relevant and applicable is Rule 3:21-5, which governs the mandatory procedure following the conclusion of a criminal trial.

“The judgment shall be signed by the judge and entered by the clerk. . . If the defendant is found not guilty or for any other reason is entitled to be discharged judgment shall be entered accordingly. The Criminal Division Manager shall forward a copy of the judgment forthwith to all parties and their counsel.”

Accordingly, not only are trial courts required to enter judgments by Rule, but the State of New Jersey Administrative Office of the Courts clearly directs and mandates standard forms to maintain uniformity across all vicinages (Pa105-107). It

is undisputed that the Somerset County Superior Court followed precisely the correct procedure after the criminal trial concluded in the Appellant's criminal case.

The Superior Court was required to take one more procedural step at the conclusion of the Appellant's criminal trial, which was to memorialize its decision in writing pursuant to Rule 3:21-5. Accordingly, the termination of the criminal proceeding did not occur – under any plain language interpretation of that term – until the judgment of acquittal was entered.

The trial court's glaring failure to consider fundamental New Jersey criminal procedure in deciding the date of the favorable termination of the criminal proceeding occurred was erroneous and constitutes reversible error.

B. Federal law does not support a distinction between the date of the verdict and the judgment of acquittal to determine the date of the favorable termination of the underlying criminal proceeding.

Consideration and interpretation of federal law may be given persuasive weight in an analogous state court case and should be accorded due respect. See Young v. Prudential Ins. Co. of Am., 297 N.J. Super. 605, 622 (App. Div. 1997).

While blindly ratifying the erroneous claim accrual analysis (under federal law), as was previously adopted by the United States District Court to dismiss the Appellant's § 1983 claims as time-barred, the trial court proceeded with a similarly flawed analysis to dismiss the Appellant's State law claims, even though the District Court expressly preserved the State law claims to be decided under State law.

Federal courts undoubtedly address the accrual of § 1983 claims by analogizing them to their most closely related common law torts. McDonough v. Smith, 588 U.S. 109, 116 (2019). Such principles, however, are intended to guide rather than control the definition of § 1983 claims, as comparing constitutional and common law torts is not a “one-to-one matching exercise.” Id. at 117 (citing Heck v. Humphrey, 512 U.S. 477, 479 (1994)).

The United States Court of Appeals for the Third Circuit and others have continually addressed the question of when a cause of action for malicious prosecution accrues, while consistently and necessarily focusing on the date of the favorable termination of the underlying criminal proceeding. “A 1983 claim sounding in malicious prosecution accrues when ‘the prosecution terminate[s] without a conviction.’” Coello v. Dileo, 43 F.4th 346, 354-55 (2022). Rather than distinguish between a verdict and judgment of acquittal in assessing the timeliness of a § 1983 claim, federal jurisprudence instead emphasizes due process and pragmatic concerns in applying the “deferred accrual” rule to determine the date of favorable termination of the underlying criminal proceeding.

Beginning with Heck v. Humphrey, 512 U.S. 477 (1994), the United States Supreme Court carved out an exception to the traditional approach of applying State law jurisprudence on personal injury statutes of limitations to analyze the accrual of § 1983 claims, an argument point that was literally not considered by the trial court.

As with most personal injury claims, that approach focused on the plaintiff's knowledge of his or her injury, rather than the favorable termination of the criminal proceeding. Id. at 352. Heck addressed a § 1983 claim by a plaintiff who was simultaneously serving a sentence for a then still-valid conviction that was on appeal. Recognizing that § 1983 creates a species of tort liability, Heck likened the plaintiff's claim to the most closely related common law tort of malicious prosecution, which requires favorable termination of the criminal proceeding. Heck wisely held that the claim did not accrue until after the conviction had been reversed, basing its rationale on pragmatic concerns with avoiding parallel civil and criminal litigation, and the potential for conflicting civil and criminal judgments. McDonough, 588 U.S. at 118 (citing Heck, 512 U.S. at 484-85).

In the wake of Heck, courts have applied Heck's deferred-accrual rule, and permitted malicious-prosecution analogous § 1983 claims to be timely filed by plaintiffs after their convictions were overturned. McDonough addressed a factual scenario closely identical to this Appellant and clarified the issue of accrual of § 1983 claims by plaintiffs who had been *acquitted* in the underlying criminal proceedings, rather than *convicted* (Heck). McDonough extended the deferred-accrual rule to the latter category, and held that, for plaintiffs who were acquitted in the underlying criminal proceeding, the statute of limitations similarly began to run

at the conclusion of the case, not its inception. Coello applied Heck's deferred-accrual rule to a plaintiff who did not file suit until nine years after her conviction.

The policy in Heck and McDonough was fundamentally guided by practical considerations and reasoning that, since a plaintiff in either scenario was essentially attacking the validity of the criminal proceeding, a malicious prosecution claim begins to accrue after the favorable termination. Id. at 119-120. Until McDonough, § 1983 plaintiffs faced the dilemma of either waiting for the underlying criminal proceeding to conclude or preserving the statute of limitations by filing parallel civil litigation. This reasoning applies with equal weight here; however, it went without consideration by the trial court. As did the Respondents previously, the trial court nevertheless proceeded with an ill-considered, overreaching analysis in order to justify its dismissal based on the statute of limitations.

Thompson v. Clark, 596 U.S. 36 (2022) provides the most in-depth analysis of the favorable-termination element of a claim for malicious prosecution. Thompson was concerned not with the inane distinction between an oral verdict and a written judgment, but rather the real and substantive issue of whether an affirmative indication of innocence was required to establish malicious prosecution. In its historical probe of the common law tort, the Supreme Court determined and saw finality as the touchstone of the favorable-termination component of a malicious prosecution claim.

Upon examination of the state of the law of malicious prosecution in 1871 (when 42 U.S.C. § 1983 was enacted), the Supreme Court discovered that most American courts had quite simply and logically concluded that “favorable termination” meant that a criminal prosecution ended without a conviction. Id. at 45. The Supreme Court’s historied analysis indicated that some courts were not only unconcerned with an acquittal or dismissal accompanied by some indicia of innocence, but one court even explicitly added that a claim for malicious prosecution will lie wherever there was “*a final end of the prosecution*, and the party discharged.” Id. at 46 (quoting Thomas v. DeGraffenreid, 11 S.C.L. 143, 145 (emphasis supplied)). Additionally, “The treatises of that era agreed that a favorable termination occurred so long as the prosecution ended without conviction.” Id. The greatest divergence in malicious prosecution jurisprudence arose in cases where criminal defendants were acquitted of the most serious charges but convicted on minor offenses. See Kossler v. Crisanti, 564 F.3d 181 (2009).

As Thompson established, all federal and State courts throughout the country over the course of more than one century had logically concluded that “termination” of a criminal proceeding occurred when the case ended, and none had indulged the fantastical notion that a judge’s oral finding of not guilty triggered the statute of limitations on a malicious prosecution claim.

Thompson further clarified that, as far back as 1871, finality again was the lynchpin in defining favorable termination. The essence of Thompson – that finality of the criminal case reinforces the accrual of a malicious prosecution claim – not only affirmed Heck’s and Coello’s pragmatic concerns against the potential for conflicting criminal and civil judgments but left no equivocation as to a critical element of the tort, which is the favorable termination of the criminal prosecution.

III. THE TRIAL COURT ERRED BY FAILING TO ADDRESS THE POTENTIAL FOR CONFLICTING JUDGMENTS IN STATE AND FEDERAL COURTS.

(Raised below: Appellant’s Opposition to Respondents’ Motions to Dismiss)

When the same claims are pending in multiple jurisdictions, principles of comity require careful consideration, and particularly when the parallel proceedings generate the potential for conflicting judgments. See Sensient Colors, Inc. v. Allstate Ins. Co., 193 N.J. 373, 387 (2008); Continental Ins. Co. v. Honeywell Int’l Inc., 406 N.J. Super. 156, 174-75 (App. Div. 2009); Trustees of Princeton Univ. v. Trust Co. of N.J., 22 N.J. 587, 598 (1956).

Comity is practiced when a court of one jurisdiction voluntarily restrains itself from interfering in a matter falling within the purview of a court of another jurisdiction. See Yancoskie v. Del. River Port Auth., 78 N.J. 321, 324 (1978) (observing general rule of comity “that the court which first acquires jurisdiction has precedence in the absence of special equities”); Aly v. E.S. Sutton

Realty, 360 N.J. Super. 214, 222 (App. Div. 2003). Comity is grounded in notions of accommodation and good-neighborliness and is a necessary expedient to preserve the delicate balance of power and harmonious relations among the various sovereigns of our federalist system. See City of Philadelphia v. Austin, 86 N.J. 55, 64 (1981); Thompson v. City of Atlantic City, 190 N.J. 359, 382 (2007).

Notwithstanding that the Appellant apprised the trial court of the pendency of his appeal before the United States Court of Appeals for the Third Circuit, and even annexed the Notice of Appeal as part of the motion record, the trial court unfortunately ignored the very real and disastrous possibility of its premature dismissal of the Appellant's State law claims. In the event of a favorable decision by the United States Court of Appeals for the Third Circuit and following possible reversal of the District Court's order of dismissal, the Appellant's federal and State law claims would be resuscitated before federal court, in direct conflict with the trial court's dismissal with prejudice of the State law claims.

The trial court's dismissal of the Complaint was not only substantively flawed, but its apparently ill-considered hurried and imprudent decision now threatens to disturb the harmony and equipoise that ought properly exist between sister jurisdictions, and would have existed in this case had the trial court properly recognized and exercised a modicum of restraint.

The existential and pernicious possibility of two conflicting judgments of a State and federal court in the very same State is now no longer simply a perceived and theoretical concern, but an actual and immediate collision of parallel judicial tribunals.

As the trial court did not proceed, this Appellate Division must now and ought properly take this under the most serious consideration so as not to disrupt the delicate balance that the federal and state systems demand, and in order to preserve the highest public confidence in the judiciary.

CONCLUSION

“It is always possible to find aberrant examples in the law, but we should not craft rules for the needle rather than the haystack in an area like this.” Wallace v. Kato, 549 U.S. 384, 400 (2007) (J. Stevens, concurring).

The trial court’s dismissal of the Appellant’s State law claims on statute of limitations grounds is unsupported by any State or federal caselaw, court rule, or statute. By holding that the Appellant’s State law claims accrued when the verdict was announced and not when the judgment of acquittal was entered, the trial court made new law, which then conflicted with well-reasoned and longstanding legal precedent and sound public policy.

For the reasons set forth hereinabove, it is most respectfully submitted that this Court ought properly reverse the trial court’s dismissal of the Complaint as

untimely, and in the alternative in failing to apply the doctrine of equitable tolling and thereby permit further amendment of the pleadings, or in the alternative stay this matter pending the decision of the United States Court of Appeals for the Third Circuit, and to otherwise remand the matter to the trial court.

LAW OFFICES OF PETER W. TILL

*Attorneys for the Plaintiff-Appellant,
Lawrence DiGiesi*

Dated: November 18, 2024

By: /s/ Peter W. Till
Peter W. Till

LAWRENCE DIGIESI,

Plaintiff/Appellant,

vs.

TOWNSHIP OF BRIDGEWATER
POLICE DEPARTMENT;
TOWNSHIP OF BRIDGEWATER;
ALFRED NICARETTA;
KENNETH DOLIDA; THOMAS
KOCHANSKI; PETER OCHS;
JOHN MITZAK; SHAWN
O'NEILL; AND PAUL PAYNE,

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-0000107-24

On Appeal from the Final Decision of
the Superior Court of New Jersey, Law
Division, Civil Part, Somerset County

Docket Below: SOM-L-0453-24

Sat Below:
Hon. John E. Bruder, J.S.C.

**BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS TOWNSHIP OF
BRIDGEWATER AND TOWNSHIP OF BRIDGEWATER POLICE
DEPARTMENT**

Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher, P.A.

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TABLE OF CONTENTS

PRELIMINARY STATEMENT1

STATEMENT OF FACTS AND PROCEDURE.....2

STANDARD OF REVIEW4

LEGAL ARGUMENT5

 I. The trial court correctly determined that plaintiff’s complaint was time-
 barred and appropriately dismissed the complaint.....5

CONCLUSION7

TABLE OF AUTHORITIES

Cases

<u>Bayer v. Twp. of Union</u> , 414 N.J. Super. 238, 258 (App. Div. 2010).....	5
<u>Di Cristofaro v. Laurel Grove Mem'l Park</u> , 43 N.J. Super. 244 (App. Div.1957).....	4
<u>Lapolla v. Cty of Union</u> , 449 N.J. Super. 288 (App. Div. 2017).....	6
<u>McNellis-Wallace v. Hoffman</u> , 464 N.J. Super. 409(App. Div. 2020).....	6
<u>Muller Fuel Oil Co. v. Ins. Co. of N. Am.</u> , 95 N.J. Super. 564 (App. Div. 1967)....	6
<u>Printing Mart-Morristown v. Sharp Elecs. Corp.</u> , 116 N.J. 739 (1989)	4
<u>Save Camden Pub. Schs. v. Camden City Bd. of Educ.</u> , 454 N.J. Super. 478, (App. Div. 2018)	5
<u>Teamsters Local 97 v. State</u> , 434 N.J. Super. 393 (App. Div. 2013).....	5
<u>Williams v. Page</u> , 160 N.J. Super. 354, 36 1 (App. Div. 1978).....	6

Statutes

42 U.S.C. § 1983.....	1, 2
N.J.S.A. 59:8-1, et seq.....	5
N.J.S.A. 2C:30-6	3
N.J.S.A. 10:6-2	3
N.J.S.A. 2A:14-2.....	6

Other Authorities

Margolis & Nowack, <u>Claims Against Public Entities</u> (Gann 2011)	5
--	---

Rules

<u>Rule 4:6-2(e)</u>	1, 4
----------------------------	------

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

March 27, 2024 Order	Pa108
August 16, 2024 Order	Pa001

TRANSCRIPTS

Submitted and Ordered by Plaintiff

APPENDIX TABLE OF CONTENTS

Plaintiff/Appellant's Appendix is complete and sufficient and is relied upon as a Joint Appendix.

PRELIMINARY STATEMENT

This matter concerns one narrow issue of law – whether plaintiff failed to comply with the applicable statute of limitations for his various causes of action against the Township of Bridgewater and its police officers stemming from being indicted but ultimately found not guilty of aggravated assault.

In short, plaintiff/appellant Lawrence Digiesi was involved in an altercation at a local bar in the Township of Bridgewater, which led to the other party sustaining lower body injuries. After an investigation, he was indicted by a grand jury on charges of aggravated assault.

Following a bench trial, plaintiff/appellant was found not guilty in open court on June 6, 2017, via an oral decision of the Superior Court Judge. On July 1, 2019, plaintiff/appellant brought a lawsuit against the defendants in federal court alleging various constitutional violations under 42 U.S.C. § 1983, together with various state law claims. On March 7, 2024, the federal court dismissed all federal counts of the complaint as barred by the statute of limitations and declined supplemental jurisdiction over the state law counts of the complaint.

Plaintiff/appellant subsequently filed a ten-count complaint in the Superior Court containing the state law claims, which was dismissed pursuant to Rule 4:6-

2(e) on August 16, 2024, on the same grounds as the federal counts, being barred by the statute of limitations. That dismissal is the subject of the instant appeal.

STATEMENT OF FACTS AND PROCEDURE¹

On or about March 13, 2016, officers from the Township of Bridgewater Police Department responded to a call relating to an altercation at the Green Knoll Grill, a local bar in Bridgewater, between plaintiff/appellant Lawrence Digiesi and a patron, Michael Dolida. (Pa093-Pa103). According to plaintiff/appellant, Mr. Dolida and his fiancé Melissa DeBlasio, entered the establishment through a side entrance and began engaging in disruptive behavior. (Pa093-Pa103). Dolida and plaintiff/appellant ultimately ended up in a shoving match, wherein Dolida stumbled and sustained a lower body injury. (Pa093-Pa103).

After an investigation, plaintiff/appellant was indicted on charges of aggravated assault relating to the altercation with Dolida. (Pa007). Following a bench trial, the Hon. Kathy C. Qasim, J.S.C., found plaintiff/appellant not guilty of aggravated assault via oral decision on June 6, 2017, in open court where plaintiff was present. (Pa103). The Judge's decision indicated that the Judge found the State's witnesses credible but that the court could not find beyond a reasonable doubt

¹ These sections have been combined for the purpose of expediency and clarity.

plaintiff/appellant Digiesi had the requisite mental state to commit an aggravated assault. (Pa103).

Following this decision, on July 1, 2019, plaintiff/appellant filed a complaint in federal court alleging various federal constitutional violations against the Township of Bridgewater, its police department, and its individual officers under 42 U.S.C. §1983, along with various related state law counts. (Pa110-Pa122). After extensive discovery was conducted on the federal docket, on March 27, 2024, the Hon. Georgette Castner, U.S.D.J., issued an order and opinion dismissing all federal counts pled against all defendant/respondents as time-barred. (Pa110-Pa122). The Judge stated that plaintiff/appellant knew the underlying proceedings against him terminated favorably upon Judge Qasim's decision on June 6, 2017, and that waiting to file the complaint meant all federal claims such as constitutional violations, malicious prosecution, and false arrest/imprisonment were time-barred as filed a few weeks beyond the applicable two-year statute of limitations. (Pa110-Pa122). The court, however, declined supplemental jurisdiction over the state law counts of the complaint. (Pa110-Pa122).

Plaintiff/appellant subsequently filed the instant action alleging various violations of state law against the Bridgewater Defendants and individual officers including the following counts; (a) Count One for unlawful detention under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2; (b) Count Two for false imprisonment

under N.J.S.A. 2C:30-6; (c) Count Three for various violations of the New Jersey Constitution; (d) Count Four for negligence; (e) Count Five for malicious abuse of legal process; (f) Count Six for malicious prosecution and malicious use of process; (g) Count Seven for malicious misrepresentation; (h) Count Eight for aiding the commission or a tort/concert of action; (i) Count Nine for civil conspiracy; and (j) Count Ten for municipal liability. (Pa004-Pa029).

On August 16, 2024, the Honorable John E. Bruder, J.S.C., dismissed plaintiff/appellant's State Court complaint on the grounds that the counts therein were similarly time-barred. (Pa030). This appeal follows. (Pa123).

STANDARD OF REVIEW

Rule 4:6-2(e) provides an opportunity for a litigant to file a motion to dismiss for "failure to state a claim upon which relief can be granted." A court must examine the legal sufficiency of the facts asserted in the complaint and determine whether a cause of action is "suggested" by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). The court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned." Ibid. (quoting DiCristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 253 (App. Div. 1957)). Although plaintiffs are afforded reasonable inferences

of fact, the court cannot credit mere conclusory allegations. Teamsters Local 97 v. State, 434 N.J. Super. 393, 413 (App. Div. 2013).

An appellate court's review of the trial court's grant of a motion to dismiss is a question of law that is reviewed de novo, applying the same standard as the trial court. Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487 (App. Div. 2018).

LEGAL ARGUMENT

I. THE TRIAL COURT CORRECTLY DETERMINED THAT PLAINTIFF'S COMPLAINT WAS TIME-BARRED AND APPROPRIATELY DISMISSED THE COMPLAINT.

According to N.J.S.A. 59:8-8, "[a] claim relating to a cause of action ... for injury or damage to person ... shall be presented as provided in this chapter not later than the 90th day after accrual of the cause of action. After the expiration of six months from the date notice of claim is received, the claimant may file suit in an appropriate court of law. The claimant shall be forever barred from recovering against a public entity or public employee if: ... b. Two years have elapsed since the accrual of the claim" According to N.J.S.A. 59:8-1, "[a]ccrual shall mean the date on which the claim accrued"

Accrual of a cause of action for false arrest is determined by the date of the arrest. Bayer v. Twp. of Union, 414 N.J. Super. 238, 258 (App. Div. 2010). "The

statute of limitations for claims under the NJCRA [New Jersey Civil Rights Act] is two years." Lapolla v. Cty. of Union, 449 N.J. Super. 288, 298 (App. Div. 2017); see also N.J.S.A. 2A:14-2. This is because claims under the NJCRA are characterized as personal injury actions. See Margolis & Novak, Claims Against Public Entities, cmt. on N.J.S.A. 59:8-8 (Gann 2024).

Next, "[m]alicious prosecution is not a favored cause of action" Williams v. Page, 160 N.J. Super. 354, 361 (App. Div. 1978). The elements of a malicious prosecution claim require "(1) that the criminal action was instituted by defendant against plaintiff; (2) that it was actuated by malice; (3) that there was an absence of probable cause for the proceeding, and (4) that it terminated favorably to plaintiff." Ibid. "Since a suit for malicious prosecution must await a favorable termination of the criminal proceeding, the statute of limitations does not begin until such termination." Muller Fuel Oil Co. v. Ins. Co. of N. Am., 95 N.J. Super. 564, 577 (App. Div. 1967). This echoes the presence of the "discovery rule" where actions accrue upon an alleged victim's awareness of the injury. See McNellis-Wallace v. Hoffman, 464 N.J. Super. 409, 417-18 (App. Div. 2020).

Thus, it is clear here that all actions pled by plaintiff fall within either the purview of the New Jersey Civil Rights Act/New Jersey Constitution or the Tort Claims Act, all of which carry two-year statutes of limitations for the filing of a complaint.

There are thus three potential dates, the last of which could govern the applicable statute of limitations. First, there was the date plaintiff was arrested; Second, there was the date plaintiff became on notice of some of the alleged violations, such as the alleged conspiracy; Third, the governing date is the date the underlying proceedings terminated in his favor. The absolute latest of these dates is the 'Third' date, that is, even assuming the time to file plaintiff's causes of action began upon his "not guilty" trial verdict, that date would make the two-year statute of limitations June 6, 2019, whereas, the initial complaint was not filed until July 1, 2019.

There are no violations alleged after his acquittal. Therefore, unquestionably, plaintiff was aware of the not guilty verdict beginning at the time it was rendered on June 6, 2017. In the related federal case, as well as in the case below, the Judges cited ample authority demonstrating that the date an alleged victim knew of an acquittal starts the clock, as opposed to the entry of any form judgment of acquittal on the docket weeks later.

CONCLUSION

For the reasons set forth above, the trial court's order dated August 16, 2024, should be upheld as a matter of law, and an order should be entered dismissing plaintiff's appeal.

Savo, Schalk, Corsini, Warner,
Gillespie, O'Grodnick & Fisher, P.A.

Matthew R Flynn, Esq.

Matthew R. Flynn, Esq.

Dated: 02-06-2025

LAWRENCE DIGIESI,

Plaintiff/Appellant,

v.

TOWNSHIP OF BRIDGEWATER
POLICE DEPARTMENT;
TOWNSHIP OF BRIDGEWATER;
ALFRED NICARETTA; KENNETH
DOLIDA; THOMAS KOCHANSKI;
PETER OCHS; JOHN MITZAK;
SHAWN O'NEILL AND PAUL
PAYNE,

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No.: A-000107-24

On Appeal from:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY
DOCKET NO.: SOM-L-453-24

Sat Below: Hon. John E. Bruder, J.S.C

**BRIEF ON BEHALF OF DEFENDANTS/RESPONDENTS, THOMAS
KOCHANSKI, PETER OCHS, JOHN MITZAK AND SEAN O'NEILL**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF FACTS	1
LEGAL ARGUMENT	3
I. THE HONORABLE JOHN E. BRUDER, J.S.C. PROPERLY DISMISSED THE APPELLANT/PLAINTIFF'S STATE COURT CAUSE OF ACTION FOR FAILING TO COMPLY WITH THE APPLICABLE TWO YEAR STATUTE OF LIMITATIONS	3
CONCLUSION	11

TABLE OF AUTHORITIES

Cases

<u>Bougher v. University of Pittsburg,</u> 882 F.2d 72, 80 (3d Cir. 1989)	4
<u>Cito v. Bridgewater Township Police Department,</u> 892 F.2d 23 (1989).....	4
<u>Diamond v. NJ Bell Telephone Company,</u> 51 N.J. 594, 242 A.2d 622 (N.J. 1968)	8
<u>Fernandi v. Strully,</u> 35 N.J. 434, 173 A.2d 277 (N.J. 1961).....	8
<u>Lopez v. Swyer, et al.,</u> 62 N.J. 267, 300 A.2d 563 (N.J. 1973)	8
<u>New Market Poultry, Inc. v. Fellows,</u> 51 N.J. 419, 241 A.2d 633 (N.J. 1968)	8
<u>Rogers v. Cape May County Office of the Public Defender,</u> 208 N.J. 414, 211, 31A.3d. 934	7
<u>Schmidt v. Celgene Corporation,</u> 425 N.J. Super. 600 (App. Div. 2012).....	6, 7
<u>Yerzy v. Levine,</u> 57 N.J. 234, 271 A.2d 425 (N.J. 1970)	8

Statutes

N.J.S.A. 2A:14-2	4, 5
N.J.S.A. 59:8-1	4

STATEMENT OF FACTS

1. By way of Complaint, the Plaintiff/Appellant alleges that his civil rights were violated by Officers Thomas Kochanski, Peter Ochs, John Mitzak and Shawn O'Neill of the Bridgewater Township Police Department for their involvement in an investigation of an alleged assault that occurred on March 13, 2016, following an incident with an individual by the name of Michael Dolida at the Green Knoll Grill in Bridgewater, New Jersey. According to the complaint, the Plaintiff/Appellant was charged by the Bridgewater Police Department with aggravated assault and subsequently indicated by a Somerset County Grand Jury. The matter proceeded to trial without a jury and on June 6, 2017, the Honorable Kathy C. Qasim, J.S.C. found the Plaintiff/Appellant not guilty on all charges. (Pa 004-Pa029).

2. The Plaintiff/Appellant initiated suit first in Federal Court on July 1, 2019. (Pa 110-Pa122).

3. On March 7, 2024, the Honorable Georgette Castner, U.S.D.J. dismissed the Plaintiff/Appellant's Federal Court complaint on the grounds that he did not file the same within the applicable two year statute of limitations. As an aside, it should be noted that while Judge Castner's Order dismissed

Plaintiff/Appellant's Federal causes of action, it did not dismiss the Plaintiff/Appellant's State Court causes of action. (Pa110-Pa122).

4. Plaintiff/Appellant subsequently filed on April 11, 2024, the identical Complaint in the Superior Court of New Jersey, Law Division, Somerset County. (Pa004-Pa029).

5. On August 16, 2024, the Honorable John E. Bruder, J.S.C. dismissed the Plaintiff/Appellant's State Court actions on the identical grounds, i.e., statute of limitations. (Pa002).

LEGAL ARGUMENT

POINT I

THE HONORABLE JOHN E. BRUDER, J.S.C. PROPERLY DISMISSED THE PLAINTIFF/APPELLANT'S STATE COURT CAUSE OF ACTION FOR FAILING TO COMPLY WITH THE APPLICABLE TWO YEAR STATUTE OF LIMITATIONS.

The sole issue for this Honorable Court to decide is whether the Plaintiff/Appellant filed his State Court Complaint within the applicable two year statute of limitations. In deciding this appeal, the Honorable Court should be cognizant of the following undisputed facts:

1. Plaintiff/Appellant's cause of action accrued on the day that he was found not guilty on June 6, 2017 in the Superior Court; and
2. Plaintiff/Appellant did not file the original action in the Federal Court within the two year applicable statute of limitations. Rather, the Federal Court action was filed on July 1, 2019, after the expiration of the applicable two year statute of limitations; the State Court complaint was filed on April 11, 2024.

The Defendants/Respondents respectfully submit that the Plaintiff/Appellant has failed to comply with the applicable statute of limitations in the State of New

Jersey for filing civil rights actions. In particular, N.J.S.A. 2A:14-2 provides for the following:

Every action at law for an injury to a person caused by a wrongful act, negligence or default of any person within the State will be commenced within the two years next after the cause of action shall have accrued.

Said statute has applied to Section 1983 and Section 1985 civil rights actions in Cito v. Bridgewater Township Police Department, 892 F.2d 23 (1989). *See also*, Bougher v. University of Pittsburgh, 882 F.2d 72, 80 (3d Cir. 1989). ("Two year statute of limitations is the application to Section 1985 action and runs from the date of each overt act causing damage to the plaintiff.")

In determining the date of accrual, the reviewing Court must look at N.J.S.A. 59:8-1, date of accrual cause of action, which provides the following:

Accrual shall mean the date on which the claim accrued and shall not be affected by notice provisions contained therein.

Defendants/Respondents respectfully submit that the Plaintiff/Appellant's cause of action accrued when, in the presence of Judge Qasim, he was found not guilty on all the charges on June 6, 2017.

In his decision, Judge Bruder agreed with the Defendants/Respondents' argument concerning the accrual and the two year statute of limitations, but

expanded on our analysis. First, the trial Court acknowledged that it was a two year statute of limitations which applied in the instant matter. This has never been disputed by Plaintiff/Appellant's counsel. (See N.J.S.A. 2A:14-2). Second, the trial court found that the statute of limitations accrued when he was found not guilty. More specifically, Judge Bruder noted the following in his opinion:

This Court -- while this is an important issue and an interesting issue, I see it perhaps from my perspective a little more clearly than, I think, the position that's being argued by the plaintiff. I do believe and I am going to find that the statute of limitations began to run at the time the defendant was in court and he was found not guilty. The accrual date is the date that is triggered on the date of the discovery of the injury by the plaintiff or from the date when through the exercise of reasonable diligence such injury should have been discovered by the plaintiff, whichever is earlier, and that latter reference would be a reference to what's called the discovery rule. And as was argued by, I believe, Mr. Guss in his paperwork, to draw a -- from similar state law case or state law -- state law, with respect to the discovery tolling of a statute of limitations in, for instance, a medical malpractice case, that's when the defendant -- or excuse me -- the plaintiff knew or should have known that malpractice potentially was committed upon him. And in this case, the defendant the plaintiff, I should say, Mr. DiGiese was sitting in court when he was advised that he was being found not guilty.

The Court finds that that is the correct date of the commencement of the statute of limitations for purposes of instituting suit. Now, the plaintiff has sought to distinguish the holding of the federal court in this matter from Judge Castner when the federal court essentially dismissed with prejudice the federal claims on -- based -- indicating that they were time barred. I -- this Court is not bound by Judge Castner's or the federal court's ruling in any way, shape or form.

However, this Court does agree with Judge Castner's calculation of the commencement of the accrual date. Judge Castner was dealing with the same statute of limitations with which we're dealing here, meaning a two-year period of statute of limitations, and Judge Castner found, and this Court is of the view correctly found, that the statute of limitations began running regardless of the length of the statute of limitations between federal and state cases. And here, we've acknowledge that as far as the remaining or the agreed-upon state claims that we're discussing here, Judge -- it's a two-year statute of limitations. Judge Castner found that it's when that the -- the accrual date commenced on the day that the defendant was found guilty, [sic] which is June 6th, 2017.

Transcript of Motion to Dismiss, Page 23, line 8 through Page 25, line 5.

Finally, Judge Bruder found that the Plaintiff/Appellant's arguments concerning equitable tolling of the statute of limitations simply had no merit whatsoever. In particular, Judge Bruder noted the following:

Plaintiff's counsel argues a couple of other theories -- I shouldn't say theories, but asks to perhaps relax this period based upon substantial compliance and for that, plaintiff cites Schmidt v. Celgene Corporation, 425 N.J. Super. 600, an Appellate Division case from 2012, for the doctrine of substantial compliance to excuse an untimely filing before the Superior Court where the plaintiff first timely and previously filed a claim in federal court. I read -- I read the Celgene case a little bit differently. Plaintiff argues that New Jersey courts have applied the doctrine of substantial compliance to excuse an untimely filing and I do -- I know that the courts have done that, but the Schmidt v. Celgene Corporation, I read that opinion to say that they did not -- they did not when applying substantial compliance excuse an untimely filing. In that case, the Court held that to the contrary, the doctrines of substantial

compliance and the similar doctrine are different, but similar, of equitable tolling do not permit the plaintiff to proceed in New Jersey. And accordingly, that Court essentially affirmed the Law Division striking down or dismissal of the plaintiff's case, as this Court is doing here.

The difference here is that -- the difference between what is argued Celgene stands for and what occurred here is that plaintiff points out where the plaintiff had first timely and previously filed a claim in federal court, which was dismissed by that court for lack of jurisdiction, and then followed by a prompt filing in New Jersey. We don't have that here. We do not have a timely filing. And there's a distinction between this case and the Celgene case. In Celgene there was a timely filing. In this case, as Judge Castner indicated, there was not a timely filing and so that case was not dismissed for lack of jurisdiction, that case was dismissed with prejudice as being time barred.

Transcript of Motion to Dismiss, Page 25, line 6 through Page 26, line 18.

A review of Plaintiff/Appellant's brief further reveals arguments concerning a distinction between a verdict and an Order of Judgment of Acquittal. This analysis is far-reaching. This is because the facts in the instant matter are quite simple. The Plaintiff/Appellant was found not guilty on June 6, 2017 and did not within the two year statute of limitations file his cause of action in Federal Court. There is no negotiation with regard to compliance of the statute of limitations. The statute of limitations is black and white and has nothing to do with an individual's due process rights.

In support of this particular argument, the Plaintiff/Appellant asked the Court to review the New Jersey Supreme Court decision of Lopez v. Swyer, et al., 62 N.J. 267, 300 A.2d 563 (N.J.1973). This particular case dealt with medical malpractice, the statute of limitations and the discovery rule. In this case, the New Jersey Supreme Court acknowledged that the discovery rule was first announced in Fernandi v. Strully, 35 N.J. 434, 173 A.2d 277 (N.J.1961). It went on to analyzing this decision, as well as New Market Poultry, Inc. v. Fellows, 51 N.J. 419, 241 A.2d 633 (N.J. 1968), Diamond v. NJ Bell Telephone Company, 51 N.J. 594, 242 A.2d 622 (N.J. 1968) and Yerzy v. Levine, 57 N.J. 234, 271 A.2d 425 (N.J. 1970) stating that "[i]n the first place, the question as to the application of the statute of limitations is ordinarily a legal matter, and as such, should traditionally be within the province of the Court." Id. at 274, 300 A.2d at 566. The Supreme Court went on to state that "[t]he determination by a judge should ordinarily be made at a preliminary hearing and outside the presence of a jury." Supra. at 275, 300 A.2d at 567. More importantly, it noted "[w]here credibility is not involved, affidavits with or without depositions may suffice; it is for the Trial Court to decide." Supra. Finally, the Court noted "that the burden of proof will rest upon the party claiming the indulgence of the rule." Supra. at 276. 300 A.2d at 568. Accordingly, the

Supreme Court found that the statute of limitations in the State of New Jersey commenced when the party knew or should have known the accrual of fair cause of action.

Applying the New Jersey Discovery Rule to the applicable matter, it is undisputed that it confirms Judge Bruder's analysis that the Plaintiff/Appellant knew or should have known that when he was found not guilty, the statute of limitations commenced against the parties.

In further support of the fact that the equitable tolling argument does not apply, the Defendants/Respondents rely upon Rogers v. Cape May County Office of the Public Defender, 208 N.J. 414, 211, 31 A.3d. 934 (N.J. 2011), wherein the New Jersey Supreme Court was called upon to determine the accrual of a legal malpractice case against the public defender arising out of the representation of a criminal. In Rogers, the defendant was convicted for various drug offenses in 1999. In October of 2000, on appeal from the denial of post-judgment relief, his conviction was reversed by the Appellate Division based upon ineffective assistance of counsel. The case was remanded for a trial. In July of 2008, the indictment was dismissed with prejudice. In November of 2009, the defendant filed a tort claims notice against the trial lawyers for negligence. The sole issue the

Supreme Court decided was exactly when the defendant was exonerated. In deciding the case, the New Jersey Supreme Court found the defendant was not exonerated until the indictment was dismissed with prejudice in July of 2008 and thus, his claims were not time-barred for the one year statute of limitations.

In applying the undisputable law in the instant matter to the facts at hand, the Plaintiff/Appellant knew when in the presence of the Court on June 6, 2017 Judge Qasim found him not guilty of all criminal charges. Pursuant to the applicable statute dealing with the definition of accrual, that is when his claim arose, and not two months later when the Judge entered a form of Judgment.

CONCLUSION

Based on the above, it is respectfully submitted that the Plaintiff/Appellant's appeal must be dismissed as a matter of law.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard J. Guss", is written above the printed name.

Richard J. Guss, Esq.

Dated: January 3, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000107-24

LAWRENCE DIGIESI,

Plaintiff-Appellant,

CIVIL ACTION

ON APPEAL FROM

v.

SUPERIOR COURT
LAW DIVISION, CIVIL PART
SOMERSET COUNTY

TOWNSHIP OF BRIDGEWATER
POLICE DEPARTMENT;
TOWNSHIP OF BRIDGEWATER;
ALFRED NICARETTA; KENNETH
DOLIDA; THOMAS KOCHANSKI;
PETER OCHS; JOHN MITZAK;
SHAWN O'NEILL AND PAUL
PAYNE

Sat Below:

Defendants-Respondents.

Honorable John E. Bruder, J.S.C.

**REPLY BRIEF FOR
PLAINTIFF-APPELLANT, LAWERNCE DIGIESI**

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TABLE OF CONTENTS

INTRODUCTION	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	2
LEGAL ARGUMENT	
I. THE RESPONDENTS OFFER NO MEANINGFUL OPPOSITION TO THE APPELLANT’S ARGUMENTS ADDRESSING THE ISSUE OF WHEN FAVORABLE TERMINATION OF THE UNDERLYING CRIMINAL PROCEEDING WAS PROPERLY REGARDED AS ORDERED AND OFFICIAL.	3
II. THE RESPONDENTS HAVE FAILED TO ADDRESS THE TRAIL COURT’S ERRONEOUS APPLICATION OF THE DISCOVERY RULE IN DETERMINING WHEN A CAUSE OF ACTION FOR MALICIOUS PROSECUTION ARRUES.	6
CONCLUSION	7

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

Order Granting Township of Bridgewater Motion to Dismiss, filed August 16, 2024	Pa001
--	-------

Order Granting Individual Defendants Motion to Dismiss, filed August 16, 2024	Pa002
--	-------

TABLE OF AUTHORITIES

STATUTES

42 <u>U.S.C.</u> § 1983	3
-------------------------	---

COURT RULES

<u>Rule</u> 4:6-2(e)	2
<u>Rule</u> 3:20	5
<u>Rule</u> 3:21-5	3

CASES

<u>Hayes v. Delamotte</u> , 231 N.J. 373 (2018)	5
<u>Isko v. Planning Bd.</u> , 51 N.J. 162 (1968)	5
<u>Lopez v. Swyer</u> , 62 N.J. 267 (1973)	7
<u>Suburban Dep’t Stores v. City of East Orange</u> , 47 N.J. Super. 472 (App. Div. 1957)	5

INTRODUCTION

The Appellant seeks to have this appellate panel squarely confront the very issue that was sidestepped by the trial court, and now again ignored by the Respondents for a second time in conjunction with this appeal.

As they proceeded before the trial court below, the Respondents again offer nothing of substance in response to the Appellant's carefully considered and otherwise legally supported arguments. The Respondents continue to repeat and embrace the trial court's flawed, erroneous, misplaced, and unsupported analyses, which response really constitutes a surrender as to the merits of this very substantive debate.

The appellate issue is straightforward - when does the cause of action for a claim of malicious prosecution accrue. More precisely, the issue now before the Appellate Division is whether a criminal proceeding terminates in the defendant's favor when the trial judge reads an opinion and announces a verdict of not guilty, or is it when the clerk proceeds with the required publishing of the official action – the judgment of acquittal. It is most respectfully submitted that the Respondents' failure to substantively answer this seminal question renders this appeal essentially unopposed.

PROCEDURAL HISTORY

Immediately following the dismissal of his federal claims by the United States District Court for the District of New Jersey, the Plaintiff filed the subject Complaint on April 11, 2024 (Pa004).

The Defendants then filed separate motions to dismiss the Complaint pursuant to Rule 4:6-2(e), based on the statute of limitations.

At the conclusion of oral argument on August 16, 2024, the trial court summarily entered orders granting both motions and dismissed the Complaint with prejudice as time-barred (Pa001-003).

On September 13, 2024, the Plaintiff filed a Notice of Appeal (Pa123-131).

STATEMENT OF FACTS

While employed as a security guard at a restaurant in Bridgewater, New Jersey, the Plaintiff was arrested and criminally charged with third-degree aggravated assault as a result of efforts to remove a patron (Pa007-008).

The criminal trial court found the Defendant not guilty on June 6, 2017 (Pa103), and thereafter the clerk entered a judgment of acquittal on July 31, 2017, pursuant to Rule 3:21-5 (Pa105-107).

On July 1, 2019, the Appellant filed a Complaint before the United States District Court against the Township of Bridgewater, the Bridgewater Police Department, and various individual Bridgewater police officers, alleging claims

under 42 U.S.C. § 1983 and New Jersey State law torts, including negligence and malicious prosecution (Pa111).

On March 27, 2024, the United States District Court dismissed the Appellant's federal claims with prejudice as time-barred, holding that the statute of limitations began to run on the date when the finding of not guilty was announced (June 6, 2017), - and not the date upon which the Clerk of the Court officially entered and published a judgment of acquittal (July 31, 2017). (Pa108-109). The United States District Court separately declined to exercise supplemental jurisdiction over the Appellant's State law claims, dismissing them without prejudice. Id.

On April 25, 2024, the Appellant filed a Notice of Appeal with the United States Court of Appeals for the Third Circuit.

Briefs have been submitted by all parties, and the case has been tentatively listed on the merits for Friday, March 28, 2025.

I. THE RESPONDENTS OFFER NO MEANINGFUL OPPOSITION TO THE APPELLANT'S ARGUMENTS ADDRESSING THE ISSUE OF WHEN A FAVORABLE TERMINATION OF THE UNDERLYING CRIMINAL PROCEEDING WAS PROPERLY REGARDED AS ORDERED AND OFFICIAL.

In addition to the longstanding precedent that further contravenes the trial court's misapplication of the discovery rule, the Appellant has properly advanced the legal argument that the final judgment rule and Rule 3:21-5 fully support the legal

holding that the subject malicious prosecution claim accrued two years from the judgment of acquittal, and not date of the verdict. The Respondents offer no analysis of either rule, but instead continue to embrace the legally unsupported opinions of the United States District Court and also the trial court below.

Rule 3:21-5 brings finality to these defendants found not guilty. Neither the trial court below nor the Respondents considered or addressed the very obvious ancillary issues that flow from a judgment of acquittal, beyond simply the dismissal of the criminal charges, which the New Jersey Rules of Court clearly anticipate. It is well supported that only upon a judgment of acquittal may a defendant (who has been found not guilty) then address additional remaining substantive legal issues in connection with the criminal case, such as the return of personal property seized, restitution, forfeiture, and ultimately, expungement. These issues are substantive, not procedural, and again may only be resolved upon entry of a written order. It would be an obviously futile exercise for an acquitted defendant to apply to the court for an expungement absent the formality of a judgment of acquittal, but based only upon a verdict.

Rather than encouraging finality, the trial court below sought to preclude and punish those defendants who are legally obligated to await a written order from the court. Moreover, as the United States District Court did not consider Rule 3:21-5, and neither did the trial court below, the trial court's reliance upon the District

Court's decision is all the more flawed. Absent relying upon any decisional law to support the inexplicable application of the discovery rule to a cause of action for malicious prosecution, the trial court ignored these glaringly obvious and much discussed considerations, yet unfortunately and hastily proceeded to analyze the subject facts akin to a personal injury case.

The final judgment rule is an even older and more substantive doctrine fostering finality in litigation. It stands for the proposition that it is only what a court adjudicates, not what it says in an opinion, that has any direct legal effect. Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (quoting Isko v. Planning Bd., 51, N.J. 162, 175 (1968) and Suburban Dep't Stores v. City of East Orange, 47 N.J. Super. 472, 479 (App. Div. 1957). While the Respondent's submissions argue that the Appellant did not need to wait for a final judgment as the State of New Jersey could not have appealed a not guilty verdict, this very obtuse argument must fail. By way of further explanation, this Court could envision a scenario where the formal filing of a judgment of acquittal would be absolutely necessary and utterly required after a verdict of not guilty has been announced. For example, if the State faced a scenario of post-verdict jury tampering, it could then move to set aside the verdict and seek a new trial. Similarly, a scenario could also arise where a trial judge sets aside a jury's guilty verdict as against the weight of the evidence, pursuant to Rule 3:20. The Respondents have yet again offered nothing to rebut this argument.

II. THE RESPONDENTS HAVE FAILED TO ADDRESS THE TRIAL COURT'S ERRONEOUS APPLICATION OF THE DISCOVERY RULE IN DETERMINING WHEN A CAUSE OF ACTION FOR MALICIOUS PROSECUTION ACCRUES.

In applying statutes of limitations to various claims, courts have embraced different methodology to determine the precise moment when a cause of action accrues.

Absent any argument as to its applicability, the trial court below unilaterally and erroneously invoked the discovery rule – an equitable tolling doctrine – to determine when the cause of action accrued. Again, the discovery rule is an equitable rule that seeks to preserve the untimely claim of an otherwise blameless plaintiff who did not learn of his or her injury until after the statute of limitations expired. It is clearly an exception to the statute of limitations and excuses a plaintiff's late filing for equitable reasons. The rule has no connection and otherwise nothing to do with determining when a malicious prosecution claim accrues, and further becomes relevant only after the establishment that a claim was filed after the statute of limitations has run.

When addressing claims of malicious prosecution, the decisional law announces that such a claim accrues only upon the favorable termination of the underlying criminal proceeding. The discovery rule, however, is an equitable tolling doctrine that applies to personal injury claims. Although arising out of tort law, they

stand in opposition to each other when analyzing timeliness and with one having nothing to do with the other.

Having never conceded that the subject complaint was untimely filed, the Appellant never sought refuge pursuant to the discovery rule, and it otherwise had no place in the trial court's analysis.

Rather than analyzing the accrual issue, which is the element of favorable termination of the underlying criminal proceeding, the trial court proceeded to simply ignore and instead proceeded to assume the claims were untimely filed. Even having *sua sponte* invoked an equitable tolling doctrine, the trial court inexplicably failed to proceed with any equitable tolling analysis. If the discovery rule were indeed even applicable, the trial court was required to conduct a hearing, pursuant to Lopez v. Swyer, 62 N.J. 267 (1973). Now apparently and admittedly decided in an obvious wave of confusion, the trial court egregiously erred even in failing to explain the reason for its conclusion.

CONCLUSION

If the Appellant's rights pursuant to the New Jersey Constitution are intended to mean anything, this appellate panel must reckon with the trial court's illogical and erroneous treatment of the Appellant, as both the attempted logic and outcome of the trial court is unsupported by any statute, court rule, or precedent.

Most precisely, by finding that the Appellant's State law claims accrued when the verdict was announced and not when the judgment of acquittal was entered, the trial court below ostensibly invoked new law, which obviously conflicted with well-reasoned and sound public policy.

The trial court's unfortunate treatment of this civil rights litigation as a slip-and-fall case surely constitutes error in violation of well settled constitutional notions for due process.

For the reasons set forth hereinabove, it is most respectfully submitted that this Court ought properly reverse the trial court's dismissal of the Complaint as untimely.

LAW OFFICES OF PETER W. TILL

*Attorneys for the Plaintiff-Appellant,
Lawrence DiGiesi*

Dated: February 20, 2025

By: /s/ Peter W. Till
Peter W. Till