No. 19-5633

IN THE SUPREME COURT OF THE UNITED STATES

JAMES F. JOHNSON, PETITIONER

v.

RICHARD S. TISCHNER, DIRECTOR, COURT SERVICES AND OFFENDER SUPERVISION AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in holding that the Rooker-Feldman doctrine barred both it and the district court from exercising jurisdiction to reverse a decision of the D.C. Superior Court.

ADDITIONAL RELATED PROCEEDINGS

D.C. Superior Court:

Johnson v. CSOSA, No. F-33483-76 (Sept. 27, 2004)

D.C. Court of Appeals:

Johnson v. United States, No. 04-CO-1670 (June 23, 2005)

U.S. District Court (D.D.C.):

Johnson v. Gray, No. 12-0967 (Nov. 14, 2012)

U.S. Court of Appeals (D.C. Cir.):

Johnson v. Ware, No. 12-5388 (Apr. 30, 2013)

Supreme Court of the United States:

Johnson v. Ware, No. 13-6340 (Oct. 15, 2013)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-2a)[1] is not published in the Federal Reporter, but is reprinted at 767 Fed. Appx. 10. The order of the district court (Pet. App. 4a-5a) is unreported.

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[1] The appendix to the petition for a writ of certiorari is not paginated. This brief treats the appendix as if it were separately and sequentially paginated, with the first page of the appendix as page 1a. Petitioner's "Exhibit One" is separately marked in the original materials and is referenced as such.

JURISDICTION

The judgment of the court of appeals was entered on April 19, 2019. A petition for rehearing and rehearing en banc was denied on June 14, 2019. Pet. App. 3a; C.A. Doc. 1792940. The petition for a writ of certiorari was filed on August 2, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The District of Columbia Sex Offender Registration Act of 1999 (Act), D.C. Code § 22-4001 et seq. (LexisNexis 2012), requires sex offenders to register with the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA). Id. § 22-4014(1); see id. § 22-4001(1). As relevant here, the Act defines "sex offender" to include a person who lives in the District of Columbia and who "[c]omitted a registration offense at any time and is in custody or under supervision on or after July 11, 2000." Id. § 22-4001(9)(B). A "registration offense," in turn, is defined to encompass various sex-related crimes, including "forcible rape." Id. § 22-4001(8)(B). Certain registration offenses, including "forcible rape," are classified as "lifetime registration offenses." Id. § 22-4001(6)(A). Sex offenders who commit lifetime registration offenses are required to register with CSOSA for life. Id. § 22-4002(b)(1).

The Act "gives to CSOSA the authority to decide whether someone convicted of a sex crime prior to the law's enactment committed a registration offense." Anderson v. Holder, 647 F.3d

1165, 1170 (D.C. Cir. 2011). CSOSA's initial determination "is subject to judicial review in [the D.C.] Superior Court." In re W.M., 851 A.2d 431, 436 (D.C. 2004) (citing Section 22-4004). If the Superior Court rejects a convicted defendant's challenge to CSOSA's initial determination, it "is required to enter an order certifying that [the] person is a sex offender" and requiring the person to register. D.C. Code § 22-4003(d)(4) (LexisNexis 2012); see id. §§ 22-4003(a), 22-4004(c)(2).

2. In 1976, petitioner was convicted of rape while armed, in addition to other crimes. Pet. App. 4a; Pet. Ex. 1 (copy of judgment). In 2003, while petitioner was under supervision for separate convictions, CSOSA informed him that, as a result of his rape conviction, he was subject to lifetime registration under the Act. See D.C. Code §§ 22-4001(6)(A), (8)(B), and (9)(B), 22-4002(b)(1), 22-4014(1) (LexisNexis 2012). Petitioner challenged CSOSA's determination in D.C. Superior Court. The court rejected petitioner's arguments and, as the Act mandates, entered an order certifying petitioner as a sex offender and requiring him to register for life. See Johnson v. CSOSA, No. F-33483-76 (D.C. Super. Ct. Sept. 27, 2004); see also Johnson v. Gray, et al., No. 12-civ-967, D. Ct. Doc. 7-3 (D.D.C. Aug. 3, 2012) (attaching Sept. 27, 2004 Superior Court decision).[2]

[2] The D.C. Court of Appeals dismissed petitioner's appeal as untimely. Johnson v. United States, No. 04-CO-1670 (D.C. Ct. App. June 23, 2005).

In 2012, petitioner filed a petition for a writ of mandamus in the United States District Court for the District of Columbia seeking to compel CSOSA to relieve him of his obligation to register as a sex offender for life and arguing that the registration requirement violated the Ex Post Facto Clause. Johnson v. Gray, 2012 WL 5512869, at *1 (D.D.C. Nov. 14, 2012). The district court denied the petition for mandamus and dismissed the case, id. at *2; the D.C. Circuit summarily affirmed, 2013 WL 2395115, at *1 (Apr. 30, 2013); and this Court denied the petition for a writ of certiorari, 571 U.S. 969 (2013).

3. In 2018, petitioner brought this suit again challenging the requirement that he register as a sex offender. Pet. App. 4a-5a. The district court dismissed the complaint, explaining that petitioner had already unsuccessfully challenged his designation as a sex offender in D.C. Superior Court and that it was without jurisdiction to disturb that court's ruling. Pet. App. 5a. The court of appeals summarily affirmed, concluding that "[l]ower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." Pet. App. 1a (quoting Lance v. Dennis, 546 U.S. 459, 463 (2006) (per curiam)). The court of appeals subsequently denied petitioner's petition for rehearing, Pet. App. 3a, and rehearing en banc, C.A. Doc. 1792940.

ARGUMENT

Petitioner contends (Pet. 3-6) that the court of appeals erred in concluding that both it and the district court lacked

jurisdiction to review the D.C. Superior Court's decision. That argument fails under the Rooker-Feldman doctrine, which precludes the lower federal courts from reviewing state-court judgments. Further review is unwarranted for the additional reasons that petitioner seeks mere error correction and this case is a poor vehicle for resolving the questions presented. Although petitioner also raises (Pet. 1-2) various questions regarding the merits of his claims, none is properly presented here.

1. a. This Court has long recognized that the lower federal courts lack subject-matter jurisdiction to review final state-court decisions, as well as decisions of the courts of the District of Columbia. Skinner v. Switzer, 562 U.S. 521, 531–532 (2011); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482–486 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415–416 (1923). That principle, called the Rooker-Feldman doctrine, is grounded in 28 U.S.C. 1257, which grants this Court exclusive jurisdiction to review such decisions. See, e.g., Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 292 (2005) ("[28 U.S.C.] 1257, as long interpreted, vests authority to review a state court's judgment solely in this Court.").

As a doctrine of jurisdiction, Rooker-Feldman departs in certain ways from standard preclusion principles. Exxon Mobil Corp., 544 U.S. at 292–293. For instance, it does not apply to parallel state and federal litigation, ibid., nor does it bar actions by a nonparty to the earlier state suit, see Lance v.

Dennis, 546 U.S. 459, 464–466 (2006) (per curiam). Additionally, if the plaintiff presents an "'independent claim,'" "it is not an impediment to the exercise of federal jurisdiction that the 'same or a related question' was earlier aired between the parties in state court." Skinner, 562 U.S. at 532 (citation omitted). For example, although "a state-court decision is not reviewable by lower federal courts, * * * a statute or rule governing the decision may be challenged in a federal action." Ibid. Thus, at bottom, the doctrine is limited to lawsuits "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp., 544 U.S. at 284.

That is precisely what this case is. After CSOSA designated petitioner a sex offender subject to lifetime registration, he sought review in the D.C. Superior Court. That court rejected petitioner's arguments and, pursuant to the Act's requirements, certified him as a sex offender subject to lifetime registration and ordered him to register. See p. 3, supra. It was the Superior Court's order that triggered the consequences of which petitioner now complains. Because the current suit is, "in essence, * * * an attempt to obtain direct review of the" Superior Court's order, it is barred by Rooker-Feldman. ASARCO Inc. v. Kadish, 490 U.S. 605, 622 (1989); see Exxon Mobil Corp., 544 U.S. at 288 n.2 ("The injury of which the petitioners (the losing parties in state court)

could have complained in the hypothetical federal suit would have been caused by the state court's invalidation of their mineral leases, and the relief they would have sought would have been to undo the state court's invalidation of the statute.").

Petitioner offers no reason to doubt this conclusion. This suit thus represents a quintessential example of a "case[] brought by [a] state-court loser[] complaining of injuries caused by [a] state-court judgment[] rendered before the district court proceedings commenced and inviting district court review and rejection of [that] judgment[]." Exxon Mobil Corp., 544 U.S. at 284.

b. Petitioner also appears to contend (Pet. 1, 6) that the government waived any argument based on Rooker-Feldman. This contention is meritless. Because Rooker-Feldman governs the scope of the lower federal courts' subject-matter jurisdiction, it "can never be forfeited or waived." Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006) (citation omitted); see Exxon Mobil Corp., 544 U.S. at 284. Although the court of appeals addressed the basic jurisdictional question, it did not rule on the waiver issue petitioner now raises. See United States v. Williams, 504 U.S. 36, 41 (1992) (This Court's "traditional rule * * * precludes a grant of certiorari * * * when the 'question presented was not pressed or passed upon below.'") (citation omitted).

c. Review is unwarranted for the additional reason that petitioner seeks mere error correction. He does not identify any

circuit split on the jurisdictional issue or provide any reason to believe that it arises frequently.

2. Petitioner also seeks review of various questions related to the merits of his registration obligations. (Pet. 1-2.) Because the district court dismissed for lack of jurisdiction and the court of appeals affirmed on the same basis without addressing the merits, none of those questions is properly presented here. See Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 ("[W]e are a court of review, not of first view.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 2019