

No.

IN THE
Supreme Court of the United States

RICHARD SHARIF, PETITIONER

v.

MYRON F. MACKOFF

*PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Whether the *Rooker-Feldman* doctrine bar a claim, which is indirectly related to a state court order, but does not seek any relief from that state court order and it does not affect the state court order?
2. Whether the doctrine of judicial immunity is applicable in a case where the trial Judge's act that violated Plaintiff's constitutional right was committed while the judge had no jurisdiction over the case because it was pending in the appellate court.?

PARTIES TO THE PROCEEDING

The Petitioners Richard Sharif a Respondent in a state court action. The Respondent in this Petition, Myron F. Mackoff, is the state court judge who is presiding over the Petitioner's state court action

STATEMENT OF RELATED CASES

Richard Sharif v. Myron F. Mackoff, Appellate Case No. 22-1190, U.S. Court of Appeals for the Seventh Circuit, *en banc*. July 11, 2023

Richard Sharif v. Myron F. Mackoff, Appellate Case No. 22-1190, U.S. Court of Appeals for the Seventh Circuit. June 13, 2023

Richard Sharif v. Myron F. Mackoff, Appellate Case No. 22-1190, U.S. District Court for the Northern District of Illinois. January 25, 2023, (App. 8a) of Illinois, decision dated: Sep. 15, 2022.

TABLE OF CONTENTS

	Page
QUESTION(S) PRESENTED	i
PARTIES TO THE PROCEEDING	ii
STATEMENT OF RELATED CASES	ii
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW	1
JURISDICTION.....	1
RELEVANT PROVISIONS INVOLVED.....	1
STATEMENT	2
REASONS FOR GRANTING THE PETITION	5
CONCLUSION	20
 APPENDIX	
<i>Circuit Court Decision</i>	1a
<i>District Court Decision</i>	8a
<i>Order Denying Rehearing</i>	12a

TABLE OF AUTHORITIES

	Page
<i>Ashelman v. Pope</i> , 793 F.2d 1072 (1986).....	17
<i>Bradley v. Fisher</i> , 13 Wall. 335, 20 L.Ed. 646 (1872)	
<i>Davis v. Burris</i> , 51 Ariz. 220, 75 P.2d 689 (1938).....	17
<i>Dawson v. Newman</i> , 419 F.3d 656, (7th Cir. 2005)....	12,15
<i>Dellenbach v. Letsinger</i> , 889 F.2d 775 (7th Cir. 1989)	13,14
<i>Dykes v. Hosemann</i> , 743 F.2d 1488, 1490 (11th Cir. 1984)	18
<i>D.C. Ct. of App. v. Feldman</i> , 460 U.S. 462, 476, 482-84 (1983).....	5
<i>Exxon Mobil Corp. v. Saudi Basic Indus. Corp.</i> , 544 U.S. 280, 291 (2005)	5,6
<i>Faulkner v. Loftus</i> , 2018 WL 11181980, at *17 (N.D. Ill. 2018)	12
<i>Floyd & Barker</i> , 77 Eng. Rep. 1305 (1607).....	17
<i>Hadzi-Tanovic v. Johnson</i> , 62 F.4th 394 (7th Cir. 2023)	7
<i>Marshalsea</i> , 77 Eng. Rep. 1027 (1612)	17
<i>Milchtein v. Chisholm</i> , 880 F.3d 895, 898 (7th Cir. 2018)	5,10
<i>Mireles v. Waco</i> , 502 U.S. 9, 11 (1991)), <i>aff'd</i> 775 F. App'x 245 (7th Cir. 2019).....	12
<i>Rooker v. Fid. Tr. Co.</i> , 263 U.S. 413, 415 (1923).....	5
<i>United States v. Maloney</i> , 71 F.3d 645 (C.A.7 1995), cert. denied, 519 U.S. ---, 117 S.Ct. 295, 136 L.Ed.2d 214 (1996)	20

STATUTES

42 U.S.C. § 1983	1,3,7,19
Illinois Constitution, Article VI, Section 6 & 9.....	2

OPINIONS BELOW

The Seventh Circuit's *en banc* decision, July 11, 2023, (App. 12a). The Seventh Circuit's reissued decision affirming district court order dismissing the complaint, but on different grounds, June 13, 2023, (App. 1a); The district court's opinion January 25, 2023, (App. 8a).

JURISDICTION

The judgment of the court of appeals was entered on June 13, 2023; and its Order denying petitioner's timely filed petition for rehearing *en banc*, was decided and filed on July 11, 2023 (12a).

This petition for writ of certiorari is filed within ninety (90) days of the date the Court of Appeals denied petitioners' timely filed petition for rehearing *en banc*. 28 U.S.C. § 2101(c). Revised Supreme Court Rule 13.3.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED**42 U.S.C. 1983.**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Introduction

The Petitioner Richard Sharif ("Sharif") was ordered to jail by Appellee state court judge Myron F. Mackoff ("Mackoff") for failing to pay attorney's fees. Sharif appealed the order and two months later, while the appeal was pending and Mackoff had no jurisdiction, Mackoff violated Sharif's rights by forcing him to choose between withdrawing his appeal or remaining in jail. The district court dismissed the action on the ground that Mackoff had absolute immunity. However, the Seventh Circuit panel then modify the judgment to make the dismissal based on lack of jurisdiction because of the *Rooker-Feldman* doctrine.

STATEMENT

I. Legal Background

The Illinois Constitution, Article VI, Section 6 and 9 provide separate and independent jurisdiction for trial courts and for appellate courts, respectively. It is

an indisputable fact that Mackoff, as a trial judge, had no jurisdiction over Sharif, in the Illinois State Appellate Court, in an Appellate Court Proceeding seeking to vacate Mackoff's order that incarcerated Sharif. This case is distinguishable from the cases the lower court relied upon. In this case Mackoff did not make an inadvertent error. It was would an error to apply *Dawson* in this case because Mackoff knew exactly what he was doing. He was trying to prevent the Appellate Court from reviewing a grossly unjust order to incarcerate an innocent man for refusing to pay attorney's fees to an attorney who is a friend and a close political ally of Mackoff. Also, this case does not deal with a procedural error, such as paying for trial transcripts to appeal, for the *Dellenbach* case to apply.

Mackoff's act deprived Sharif of a *meaningful* opportunity to procedural due process for which 42 USC 1983 statutorily provides a private right of action that supersedes common law doctrine of judicial immunity.

Ultimately, Mackoff does not have judicial immunity because he had no jurisdiction in the Appellate Court, and he cannot invoke judicial immunity because it violates a party's civil right. Given a party's statutory right, under 42 USC § 1983, to sue a judge it should override the common law doctrine of judicial immunity.

II. Factual Background and Procedural History

Petitioners, on May 14, 2021, Sharif commenced a first-impression action against Mackoff, an Illinois State Court Judge. The Illinois Attorney General, appeared on behalf of the Defendant and moved on behalf of the Defendant to dismiss the Complaint.

In this case, Mackoff, is a state court judge who had jurisdiction over the trial level proceeding in Sharif's divorce proceeding. (Compl. #1-2). Although Mackoff had no appellate court jurisdiction, because he is a state court trial level judge, he forced Sharif to choose between remaining in jail or withdrawing his pending appeal. Mackoff used his official power under state law to deprive Sharif of his right to appeal. (Compl. #3-4).

Sharif was ordered to jail not because he failed to pay child support, he never failed to pay child support, it was for failing to pay attorney's fees to an attorney who is a friend of Mackoff. Mackoff did not want Sharif to appeal his ruling and expose his corruption to the Appellate Court. Mackoff had jurisdiction to send Sharif to jail, but after Sharif appealed the Order incarcerating him, Mackoff had no jurisdiction. While Mackoff lacked jurisdiction he interfered with the appellate court by giving Sharif the ultimatum of either staying in jail or withdrawing his pending appeal from the Order incarcerating him. (Compl. #2-3).

On September 24, 2021, the district court entered an order dismissing Sharif's Complaint by Default and Granted Mackoff's motion to dismiss (Doc. 25). On January 7, 2022, Sharif filed a motion seeking to vacate said Order granting the Default Judgment on the basis that there was no service of process. Subsequently, the district court dismissed the Complaint on the basis of absolute judicial immunity and thereafter the Seventh Circuit panel affirmed the dismissal, but on different grounds. The panel affirmed the dismissal for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine.

REASONS FOR GRANTING THE PETITION

I. The *Rooker-Feldman* doctrine does not bar a claim that is indirectly related to a state court order, but does not seek relief from that court order and does not affect the state court order or judgment.

The *Rooker-Feldman* doctrine is not applicable because Sharif is not asking this Court to review any state court order. The order that incarcerated Sharif was already appealed and it was pending on appeal in the Appellate Court. Sharif was not asking the district court to review that order. Sharif was asking the district court to review acts by Mackoff that occurred AFTER that order was rendered. Sharif was asking the district court to review acts by Mackoff while he did not have jurisdiction over his case because jurisdiction was in the Appellate Court. *Jakupovic v. Curran*, 850 F.3d 898, 902 (7th Cir. 2017); *D.C. Ct. of App. v. Feldman*, 460 U.S. 462, 476, 482-84 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415 (1923); *Skinner v. Switzer*, 562 U.S. 521, 531-32 (2011); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005).

Opposing counsel correctly argues that “The key question, then, “is whether the federal plaintiff seeks the alteration of a state court’s judgment.” *Milchtein v. Chisholm*, 880 F.3d 895, 898 (7th Cir. 2018).” However, counsel does not indicate which judgment Sharif wants altered. Sharif was not asking the district court to get him out of prison or to alter Mackoff’s Order that incarcerated him. That order was pending on appeal and when this action was filed Sharif had already given into Mackoff’s ultimatum and withdrew his appeal and as a result Mackoff agreed to release Sharif. Since this

action was commenced when Sharif was not in prison and there is no judgment to alter, then the *Rooker-Feldman* doctrine does not apply.

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005) is the controlling case where the Court the *Rooker-Feldman* doctrine should apply only to “cases 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.” Id. at 284. The panel held “All of these requirements are met here. Sharif lost in state court, and he complains of injuries caused by a state-court judgment rendered before the federal case was filed.” However, this is not what the Complaint alleges and it is not the relief the Complaint seeks. Sharif made it very clear that he is not complaining about the state-court order that incarcerated him. Sharif’s Complaint makes it very clear that although the state-court order that incarcerated him is related to the claim he is raise, there is absolutely no reference in his Complaint to any relief from that order.

Sharif accepted the order and was dealing with it in the state appellate court. Sharif was not asking the district court to review any part of that order. Sharif was asking the district court to review the act by Mackoff that gave him a choice between withdrawing his appeal of that order or remaining in jail. This act is the sole basis of Sharif’s Complaint, which does not require any review of the order that incarcerated him. Whether the order is upheld or reversed, it has no effect on Sharif’s claim. Thus, Sharif is not complaining of his injuries cause by a state-court order.

The Seventh Circuit goes on to say that Sharif “also invites the federal court to review and reject the state-

court judgment by awarding damages against the judge who issued the judgment.” This is false. Nowhere in the Complaint does Sharif make this request. Mackoff’s act outside his jurisdiction of using his official power under state law to force Sharif to choose between remaining in jail or withdrawing his appeal is the claim Sharif is inviting the federal court to review. There is no state court claim or cause of action pleaded in the state court concerning said act by Mackoff that Sharif is complaining about. Nowhere in Sharif’s district court Complaint is there a claim pleaded where Sharif can be considered a “state-court loser.” *Exxon Mobil Corp.*, 544 U.S. at, 284.

This case is NOT similar to the recent decision in *Hadzi-Tanovic v. Johnson*, 62 F.4th 394 (7th Cir. 2023), because it’s factually distinguishable. Unlike *Hadzi-Tanovic* Sharif was not asking the district court to vacate Mackoff’s order incarcerating him or getting him out of jail or to do anything that might have any effect on that order. This is an undeniable fact. (**Emphasis added**). In *Hadzi-Tanovic*, after the state court issued an order requiring that the mother’s parenting-time with her children be supervised, the mother filed an action in federal court, under 42 U.S.C. §§ 1983 & 1985, seeking relief that will have some effect on that state court parenting-time order. However, Sharif’s Complaint does not seek ANY relief that will have ANY effect on the state-court order that incarcerated him, the state-court pending appeal or ANY other state court order. The relief Sharif seeks is monetary damages for deprivation of his rights under federal law against Mackoff for acting under the color of law to deprive him of his constitutional rights. This will have absolutely no effect on anything happening in the state court order.

Unlike the state court judge in *Hadzi-Tanovic*, who acted within his jurisdiction, the state court judge in this case, Mackoff, acted outside his jurisdiction. Mackoff's act was performed while only the state appellate court had jurisdiction. In that, there was no action pending in the state court related to what Mackoff did. A careful review of the *Hadzi-Tanovic* case, will clearly show that the *Rooker-Feldman* doctrine is not applicable in this case for three reasons: 1) the state-court judge in this case, Mackoff, acted outside his jurisdiction, 2) the relief that Sharif seeks will have absolutely no effect on the state-court order or judgment, and 3) there was never any pleading of any facts as elements in support of any state court claim or cause of action litigated on the trial level for Sharif to be a "state-court loser" or for Sharif to appeal in the state appellate court. Thus, there should be no doubt that the *Rooker-Feldman* doctrine is not applicable in this case.

The panel goes on to say that "Sharif insists he 'is not complaining about his imprisonment,' but *Rooker-Feldman* still bars the suit if he is complaining about injuries caused by the state-court order rather than some independent action." Again, the damage Sharif is complaining about is not that he was placed in jail, it is about being deprived his right to appeal in the state court by Mackoff, who used his official power under the color of law, to keeping Sharif in jail until he withdraws his pending appeal. The panel goes on to say:

This is true even though Sharif seeks damages instead of direct reversal of the state-court order. See, e.g., *Bauer v. Koester*, 951 F.3d 863, 866 (7th Cir. 2020). Sharif has not alleged any harm not caused by state-court orders. For

instance, Sharif suggests that Judge Mackoff set a high bond and kept him in jail for over 30 days to interfere with his appellate rights. These injuries arise from the court's orders that set his bond and caused him to be jailed. See *Mains v. Citibank, N.A.*, 852 F.3d 669, 675 (7th Cir. 2017).

There are no such allegations in the Complaint. The only act Sharif is complaining about is Mackoff, under the color of state law, using his official power to keep him in jail unless he withdraws his pending appeal. The panel mistakenly believes that Sharif is attacking the order that incarcerated him when it says:

To the extent that Sharif alleges that Judge Mackoff issued a “ruling”—however inappropriate—telling Sharif to withdraw his appeal or remain in jail, then his claims clearly attack the legitimacy of a state-court order.

However, Sharif made no requests for relief from Mackoff's initial ruling that place him in jail whether or not it was inappropriate. The panel assumes that Sharif is attacking the legitimacy of the state-court-order that incarcerated him because it is related to Sharif being in jail, but Sharif is not questioning whether or not that order is legitimate. Sharif is questioning the act by Mackoff that came two months later in using his official power under state law to force him to choose between staying in jail or withdrawing his appeal. The panel does not point to anywhere in the Complaint to justify its assumption of what Sharif's claim seeks. In fact, Sharif could concede and will do so if needed that the order incarcerated him was legitimate and that he deserved to be incarcerated.

Now how can the order being valid have any effect on the one act by Mackoff that Sharif is complaining about, which is Mackoff using his official power to subsequently force Sharif to choose between withdrawing his appeal and getting out of jail.

Although the order that incarcerated Sharif is related to his claim by initially sending him to jail, there are two separate and distinct injuries: one caused by the order incarcerating Sharif, for which a claim attacking it is barred by the *Rooker-Feldman* doctrine, and the other which is Mackoff using his official power to force Sharif to choose between staying in jail or withdrawing his appeal of that order, which is not barred by the *Rooker-Feldman* doctrine because relief from this action by Mackoff has absolutely no effect on the order that incarcerated Sharif. *Swartz v. Heartland Equine Rescue*, 940 F.3d 387, 392 (7th Cir. 2019).

Ultimately, “The key question, then, “is whether the federal plaintiff seeks the alteration of a state court’s judgment.” *Milchtein v. Chisholm*, 880 F.3d 895, 898 (7th Cir. 2018).” However, the panel did not indicate how Sharif wants to alter the order or judgment. This is because Sharif’s claim does not seek to alter any order or judgment. Thus, the *Rooker-Feldman* doctrine does not apply in this case, which is a first-impression case.

II. To resolve whether a state court judge can invoke judicial immunity where he had no jurisdiction within the appellate court or the appellate process.

The district court held that Mackoff had judicial immunity because he had jurisdiction over imprisoning Sharif. However, the district court misunderstood the

injury that Sharif is complaining about. Sharif is not complaining about his imprisonment by Mackoff, he is complaining about Mackoff's interfering with his right to appeal from the order that incarcerated him. (Compl. #3). Mackoff is a trial level judge with no appellate jurisdiction. See Verified Complaint (Doc. #6) at Paragraph #3: "Mackoff's immunity ends is when he forced Richard [Sharif] to choose between withdrawing his pending interlocutory appeal or remain in jail until the Appellate Court got around to hearing his appeal, which typically, and most likely, will take over one year.

A. The Illinois Appellate Court has separate and independent jurisdiction from the Trial Court.

Jurisdiction at the trial level court is separate and distinct from the jurisdiction in the appellate court. Pursuant to Illinois Constitution, Article VI, Section 6:

APPELLATE COURT - JURISDICTION Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located except in cases appealable directly to the Supreme Court and except that after a trial on the merits in a criminal case, there shall

Pursuant to Illinois Constitution, Article VI, Section 9:

CIRCUIT COURTS - JURISDICTION Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme

Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

Obviously, these are separate jurisdictions and any act by a judge within his or her respective jurisdiction has judicial immunity. However, there should be no dispute that outside the judge's jurisdiction they do not have immunity.

B. Mackoff had no appellate jurisdiction and thus no judicial immunity

Mackoff has no appellate jurisdiction and his involvement in Sharif's appeal was without having any jurisdiction. This case is distinguishable from the cases the district court relied upon in its Order dismissing this action, it stated:

Dawson v. Newman, 419 F.3d 656, 660 (7th Cir. 2005). "When a judge does something that qualifies as a judicial act (that is, the act is carried out in a judicial capacity and jurisdiction is not clearly absent), then absolute immunity applies—even if the conduct was baseless, malicious, corrupt, or violates the Constitution." *Faulkner v. Loftus*, 2018 WL 11181980, at *17 (N.D. Ill. 2018) (citing *Mireles v. Waco*, 502 U.S. 9, 11 (1991)), *aff'd* 775 F. App'x 245 (7th Cir. 2019). "[W]hether an act by a judge is a 'judicial' one relates to the nature of the act itself," meaning "whether it is a function normally

performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.” *Mireles*, 502 U.S. at 12.

However, in this case, interfering with Sharif in the appellate court to terminate the appellate court process, by Mackoff a trial judge, does not “qualify as a judicial act.” The act of threatening to keep an innocent man in jail, until and unless he withdraws his appeal (Compl. #3) is not “a function normally performed by a judge, and to the expectation of the parties.” Therefore, *Dawson* does not apply and Mackoff does not have immunity in this case because he had no jurisdiction over Sharif’s in the appellate court.

C. The *Dellenbach* case is distinguishable from this case

The lower court erred in holding that Sharif’s claims against Mackoff are similar to the Seventh Circuit’s decision in *Dellenbach v. Letsinger*, 889 F.2d 775 (7th Cir. 1989). Sharif contends that his case is distinguishable because in *Dellenbach* the state trial court judge was accused of contacting the chief judge of the state court of appeals NOT to block the appeal of a criminal case, but rather to just pause it until the party pays for a trial transcript. *Id.* at 760. Paying for the trial transcript is part of the process in the trial court to commence an appeal. The judge in *Dellenbach* was within his jurisdiction in requiring the party to pay for the transcript. The plaintiff in *Dellenbach* argued the trial judge lacked jurisdiction since the case was on appeal. *Id.* The Seventh Circuit determined the trial judge did not act in the clear absence of jurisdiction

since he had jurisdiction at the trial level and could “reasonably believe” that he retained some control over the case. *Id.* “If he erred in his belief that he had authority to deal with matters relating to the transcript, his error was, at most, a ‘grave procedural error’—not an act in the ‘clear absence of all jurisdictions.’” *Id.*

In *Dellenbach*, the state court judge was dealing with an issue related to his jurisdiction, namely: the trial court transcript. Moreover, the state judge was not blocking the plaintiff from appealing because for the plaintiff to perfect his appeal he would have to comply with the process of obtaining the trial transcript. This has absolutely nothing to do with a state court judge using his authority to intentionally stop a party from appealing as Mackoff has done in this case. In this case, Mackoff used his authority to intentionally keep Sharif in jail for 30 days past what is normally done in a domestic relations matter, until Sharif withdrew his appeal. *Dellenbach* is factually distinguishable because in this case Mackoff could not have “reasonably believed” that he had authority in the appellate court proceeding to threaten to keep Sharif in jail until he withdrew his appeal.

It is not reasonable to equate a judge requiring a party to abide by a trial level procedure, such as payment for trial transcript, to a judge using his authority to have a party choose between staying in jail or continuing his appeal. The precedent that *Dellenbach* sets is that a party that seeks to appeal has to pay for the trial transcript. This is distinguishable from the precedent the instant case would set, should this appeal be denied, which is that a trial level judge can release a party from jail if that party agrees to

withdraw his appeal. This implies that the party was in jail only on the basis of his appeal and nothing else.

D. Judge Mackoff's act was not an inadvertent error.

The district court erroneously held that Mackoff's conduct, of keeping Sharif in jail until he withdrew his pending appeal, was an inadvertent procedural error. In *Dawson v. Newman*, 419 F.3d 656, 661 (7th Cir. 2005), the court held that: "If a judge errs 'through inadvertence or otherwise, a party's remedy is through appellate process'" However, in this case Mackoff did not make an inadvertent error. It was an error to apply *Dawson* in this case because Mackoff knew exactly what he was doing when he threatened to keep Sharif in jail indefinitely until and unless Sharif withdrew his appeal. Also, in this case, we were not dealing with a procedural error such as paying for trial transcripts, as in *Dellenbach*.

In this case, Mackoff wrongfully placed Sharif in jail so that his family can pay \$100,000 to get him out of jail. The money would go to Attorney Newman who is a friend and a close political ally with Mackoff. Mackoff knew that he had absolutely no factual or legal basis to incarcerate Sharif and did not want the issued ruled upon by the State Appellate Court. The standard time to keep a "dead-beat-dad" in jail for paying child support is 30 days. However, in this case Sharif was not a "dead-beat-dad," he never failed to pay child support, he was only behind in paying attorney's fees to Newman. The district court stated in its January 25, 2022, Order (Doc. 35) that denied Sharif's Motion to Amend his Complaint (Doc. 27):

Sharif brings this case against Judge Myron F. Mackoff, an Associate Judge of the Domestic Relations Division of the Circuit Court of Cook County, challenging actions that arose during divorce proceedings. Sharif alleges Mackoff sent him to jail with a \$100,000 bond for failing to pay attorneys' fees. Because Sharif could not afford the bond, he appealed to the Illinois Appellate Court. But the appellate court did not consider Sharif's appeal an emergency, so Sharif says Mackoff forced him to choose between spending over a year in jail while pursuing the appeal or withdrawing the appeal and being released. (Doc. 35, Pg.1)

First, as a matter of law, the Appellate Court does not consider incarceration an emergency. Second and it should be obvious, Mackoff has no factual or legal basis to incarcerate someone for not paying attorney's fees. This is an issue that Mackoff did not want the State Appellate Court to review. So Mackoff decided to keep Sharif in jail past the standard 30 days and falsely claimed to Sharif that he cannot release Sharif as long as his appeal was pending. After another 30 days have past, Sharif withdrew his appeal and in exchange Mackoff released him from jail. This was an intentional and deliberate act by Mackoff to interfere with the appellate process where he had no jurisdiction, to prevent an appellate review of his conduct. There can be no reasonable or rational comparison between Mackoff's acts within the Appellate Court or the Appellate Court process, with either *Dellenbach* or *Dawson*.

The district court seems to believe that Mackoff's acts were related to the case he was presiding over, or that that they were judicial in nature, so there must

have been some jurisdiction. However, in 1986 the Ninth Circuit, *en banc*, criticized its own “judicial nature” analysis to rule that it was an unnecessarily restrictive. *Ashelman v. Pope*, 793 F.2d 1072 (1986). Ultimately, it does not matter whether the act was judicial in nature, the issue is whether the judge had jurisdiction in the forum he was acting in. In this case, Mackoff clearly had no jurisdiction in the Appellate Court.

By citing *Dellenbach* and *Dawson*, and considering the factual scenarios in both cases, the district court seems to believe that Mackoff has discretion because either his act was related to the case he was presiding over or it was judicial in nature. However, the Supreme Court held that: “Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction.” *Piper V. Pearson*, 2 Gray 120 cited in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1872).

A judge must be acting within his jurisdiction as to subject matter **and** person to be entitled to judicial immunity from civil action for his act. *Davis v. Burris*, 51 Ariz. 220, 75 P.2d 689 (1938). In this case, Mackoff did not have jurisdiction over the person or jurisdiction over the subject matter, which was on appeal in a different court with a different jurisdiction, as described in Illinois Constitution, Article VI, Sections 6 and 9.

Let us not lose sight of the purpose for judicial immunity. It is a *doctrine* that originated in the seventeenth century, in two decisions: 1) *Floyd & Barker*, 77 Eng. Rep. 1305 (1607) and 2) *Marshalsea*, 77 Eng. Rep. 1027 (1612). In summary, the basis for the *doctrine* related to four (4) sound public policy grounds:

1. Finality of Judgment;
2. Maintenance of judicial independence;
3. Freedom from continual calumniations; and
4. Respect and confidence in the judiciary.

In this case, the fourth prong is the most relevant. Having the public exercise their right to appeal, without having to choose between remaining in jail for over a year or being free, if they withdrew their appeal, does not build confidence in the judiciary. Respect in the judiciary is related to whether Mackoff acted in good faith and believing that he had the authority to keep Sharif in jail if he does not agree to withdraw his appeal. Even if this Court believes that Mackoff acted in good faith, it should still allow this case to the jury. It is the jury that should consider the totality of circumstances to determine whether Mackoff acted in good faith or whether his act promotes respect and confidence in the law.

E. A state court judge cannot invoke judicial immunity for acts that violate a litigant's civil rights.

In *Dykes v. Hosemann*, 743 F.2d 1488, 1490 (11th Cir. 1984), the Appellant and her husband separated in 1977. They were residents of Pennsylvania and that same year the husband took their only child to his parents' home in Florida. The husband's father was a state court judge who entered an order that awarded custody of the child to the husband. This was a violation of state law because the judge did not have personal jurisdiction over the Appellant-wife. The Appellant was allowed to bring a claim against the Judge for violating her procedural due process civil

rights under 42 USC 1983, for not receiving notice. *Id* at 1496-97.

In this case, Mackoff's act deprived Sharif of a *meaningful* opportunity for procedural due process for which 42 USC § 1983 statutorily provides a private right of action that supersedes common law doctrine of judicial immunity. See CASE NOTE: "Federal tort law: judges cannot invoke judicial immunity for acts that violate litigant's civil rights; Robert Craig Waters. Tort & Insurance Law Journal, Spa. 1986 21 n3, p509-516." For Mackoff to threaten to keep Sharif in jail for the one or two years, while Sharif's appeal would remain pending, is not a providing a meaningful opportunity for procedural due process. Moreover, Mackoff did in fact deprive Sharif of a meaningful opportunity to due process by releasing him from jail in exchange for Sharif withdrawing his pending appeal.

Another reason a judge cannot invoke judicial immunity when he violates a party's civil right is that 42 USC § 1983 gives that party a statutory right to sue the judge and a statutory right override the common law doctrine of judicial immunity. *Id*.

F. The State Courts in Chicago have not changed their policies in appointing Judges, in Judges' ethical standards and in vetting prospective Judges. Nothing in the state judicial system was changed since 1985 or 1995.

The Seventh Circuit described in two separate decisions in 1985 and 1995, that the state courts in

Chicago were “most corrupt in the nation.”¹ Since 1995, there was no reform or any change in the state court system that appoints state court judges. There was no change in the policies for appointing judges, no change in judges’ ethical standards and no changes in the procedure for vetting prospective judges. Nothing has changed in the state judicial system since 1985. Thus, it should not be a surprise the same type of corruption that the Seventh Circuit described in 1985 and 1995, still continues today. Here is a recent article on more state court judges, where Mackoff comes from, and where taking bribes has been and still is typical.²

CONCLUSION

On the basis of the foregoing this Petition for Writ should be accepted.

Respectfully submitted,

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¹ United States v. Maloney, 71 F.3d 645 (C.A.7 1995), cert. denied, 519 U.S. ----, 117 S.Ct. 295, 136 L.Ed.2d 214 (1996)

² <https://chicago.suntimes.com/2020/9/11/21431547/ed-burke-michael-toomin-james-shapiro-investment-club-table-wisdom-margarita-kulys-hoffman>

APPENDIX

<i>Circuit Court Decision</i>	1a
<i>District Court Decision</i>	8a
<i>Order Denying Rehearing</i>	12a

United States Court of Appeals, Seventh Circuit.

Richard SHARIF, Plaintiff-Appellant,
v.
Myron F. MACKOFF, Defendant-Appellee.

No. 22-1190

Submitted January 5, 2023*Decided June 13, 2023

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:21-cv-02635, Charles P. Kocoras, Judge.

Attorneys and Law Firms

Richard Sharif, Chicago, IL, Pro Se.
Nadine J. Wichern, Attorney, Office of the Attorney General, Chicago, IL, for Defendant-Appellee.

Before DIANE S. SYKES, Chief Judge, DAVID F. HAMILTON, Circuit Judge, CANDACE JACKSON-AKIWUMI, Circuit Judge

ORDER

During state-court divorce proceedings, plaintiff-appellant Richard Sharif was held in contempt and jailed for failing to pay attorney's fees. He appealed the order sending him to jail, but he later withdrew that appeal. He then filed this suit in federal court. He alleged that the state-court judge violated his due process rights by forcing him to choose between withdrawing his appeal and remaining in jail. The district court dismissed the action on the ground that the state judge had absolute immunity and then denied

Sharif's motion to reconsider that ruling. Because there is no federal subject matter jurisdiction over this lawsuit, we modify the judgment to make the dismissal one for lack of jurisdiction and affirm the judgment as modified.

The defendant moved to dismiss for lack of jurisdiction and failure to state a claim for relief without raising factual issues about jurisdiction. We therefore treat the factual allegations of the complaint as true, without actually vouching for their truth. *Nelson v. City of Chicago*, 992 F.3d 599, 602 (7th Cir. 2021). Under a temporary order during the divorce proceedings, Sharif was required to pay maintenance and child support, as well as attorney's fees for a child representative. Sharif alleges that defendant Judge Mackoff, the presiding judge, increased the amount that Sharif was required to pay despite knowing that he could not afford to pay the new amount. Sharif appealed the maintenance order to the state appellate court, but the appeal was dismissed because temporary maintenance orders are not appealable under Illinois law. Sharif's motions to reduce the obligation were denied. When Sharif did not pay the required amount—specifically the attorney's fees—Judge Mackoff issued a contempt order, and Sharif was sent to jail. Judge Mackoff set Sharif's bond at \$100,000—an amount that he knew Sharif could not pay.

Sharif appealed the contempt order, but he says that the appellate court did not consider his incarceration an emergency. This led him to believe, he argues, that he could have been in jail for a year or more while the appeal was pending unless he paid what the judge had said he owed. Sharif remained in jail for over 60 days, which, he asserts, violated "the standard for Domestic Relation judges in keeping parents in

jail,” because Judge Mackoff did not want him to appeal the contempt order and thus “expose” the judge’s alleged corruption (allegedly requiring Sharif to pay fees to a friend of the judge). Sharif asserts that Judge Mackoff forced him to choose between withdrawing his appeal and remaining in jail until the appellate court heard his case. At times, this “forced choice” seems to be implied by the circumstances—the amount of fees, the high bond, and the unavailability of an expedited appeal combining to keep him jailed. But elsewhere, Sharif suggests that the choice was made explicit. For instance, in his appellate reply brief Sharif asserts for the first time that Judge Mackoff said in a ruling that “if Sharif withdraws his pending appeal, Sharif will be released from jail.”

According to Sharif, Judge Mackoff indeed released him from jail shortly after he withdrew his appeal of the contempt order, and then the judge lowered the required maintenance amount for unexplained reasons. Because contempt orders that impose sanctions are final judgments under Illinois law and immediately appealable, see Ill. S. Ct. R. 304(b)(5), and Sharif withdrew his appeal, the contempt order was a final decision before Sharif filed this federal action.

Sharif sued Judge Mackoff in federal court under 42 U.S.C. § 1983, alleging violations of his procedural and substantive due process rights. He also brought a claim under 18 U.S.C. § 1964, the civil remedy for criminal violations of the federal racketeering statute. Judge Mackoff moved to dismiss, arguing that the claims were barred by absolute judicial immunity and the *Rooker-Feldman* doctrine. Sharif did not respond to the motion to dismiss within the time prescribed by the district court’s briefing

order. The district court declined to apply the *Rooker-Feldman* doctrine, understandably finding some uncertainty in the precise scope, but granted the motion on the ground that Sharif's claims were barred by judicial immunity. Judgment was entered on September 24, 2021.

On January 7, 2022, Sharif filed a "Motion to Vacate Default Judgment" and sought leave to file an amended complaint. There had been no default judgment, so the district court construed the filing as a motion for relief from the judgment under Rule 60(b) of the Federal Rules of Civil Procedure. Sharif attested that he had never received notice of the motion to dismiss or the ruling, but the district court found that records from the Case Management/Electronic Case Files program showed that Sharif had been notified of the motion and the briefing order.

Sharif argued that the district judge had misunderstood his injury: he was seeking redress not for the incarceration but for Judge Mackoff's alleged interference with his appeal. Sharif also argued that Judge Mackoff did not have immunity from suit because that interference was outside his jurisdiction as a trial judge. The district court again ruled that absolute immunity barred the suit and denied the motion. The district court also denied Sharif's request for leave to file an amended complaint because amendment would have been futile given the judicial-immunity defense.

After the denial of his motion on January 25, 2022, Sharif filed his notice of appeal on February 6, 2022. This was a timely appeal of the denial of his Rule 60(b) motion, but the notice of appeal did not bring up the dismissal order. Sharif did not file his post-judgment motion until well after both the 28-day window for a motion that extends the time to appeal

and the 30-day window to file a civil appeal. See Fed. R. Civ. P. 59(e); Fed. R. App. P. 4(a)(1)(A), 4(a)(4); *Banks v. Chicago Bd. of Educ.*, 750 F.3d 663, 666–67 (7th Cir. 2014). We have jurisdiction to consider only the decision denying the Rule 60(b) motion. We review such denials for abuse of discretion, see *Banks*, 750 F.3d at 667, but we cannot overlook the issue of subject-matter jurisdiction.

We have appellate jurisdiction over the denial of the Rule 60(b) motion, but we cannot turn to the non-jurisdictional defense of absolute judicial immunity until we resolve the question of federal subject-matter jurisdiction. The *Rooker-Feldman* doctrine precludes the exercise of federal jurisdiction here. The doctrine stems from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The scope of the doctrine today is shaped by the Supreme Court's authoritative restatement of the doctrine in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). The Court explained there that the doctrine should apply only to “cases 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.” *Id.* at 284.

All of these requirements are met here. Sharif lost in state court, and he complains of injuries caused by a state-court judgment rendered before the federal case was filed. He also invites a federal court to review and reject the state court judgment by awarding damages against the judge who issued the judgment. This case is very similar to our recent decision in *Hadzi-Tanovic v. Johnson*, 62 F.4th 394 (7th Cir. 2023). There we dismissed under the *Rooker-*

Feldman doctrine a federal plaintiff's claims that she had been injured by state-court orders in divorce proceedings resulting from alleged corruption. We also overruled language from *Nesses v. Shepard*, 68 F.3d 1003 (7th Cir. 1995), that had led to the district court's uncertainty about *Rooker-Feldman* in this case. See 62 F.4th at 402.

Sharif insists that he “is not complaining about his imprisonment,” but *Rooker-Feldman* still bars the suit if he is complaining about injuries caused by the state-court order rather than some independent action. See *Iqbal v. Patel*, 780 F.3d 728, 730 (7th Cir. 2015). This is true even though Sharif seeks damages instead of direct reversal of the state-court order. See, e.g., *Bauer v. Koester*, 951 F.3d 863, 866 (7th Cir. 2020). Sharif has not alleged any harm not caused by state-court orders. For instance, Sharif suggests that Judge Mackoff set a high bond and kept him in jail for over 30 days to interfere with his appellate rights. These injuries arise from the court's orders that set his bond and caused him to be jailed. See *Mains v. Citibank*, N.A., 852 F.3d 669, 675 (7th Cir. 2017). Sharif also asserts that because of Judge Mackoff's actions, he was “incarcerated for two months” and that Judge Mackoff illegally withdrew funds (presumably the attorney's fees) from Sharif. These allegations, too, complain about injuries caused by the state court's contempt order, which itself enforced previous court orders. To the extent that Sharif alleges that Judge Mackoff issued a “ruling”—however inappropriate—telling Sharif to withdraw his appeal or remain in jail, then his claims clearly attack the legitimacy of a state-court order.

Because we cannot separate Sharif's alleged injuries from the contempt order, and because Sharif does not demonstrate that he lacked a “reasonable

opportunity" to raise his federal issues in state court, see *Swartz v. Heartland Equine Rescue*, 940 F.3d 387, 392 (7th Cir. 2019), federal jurisdiction over the case is barred by the *Rooker-Feldman* doctrine. We do not reach the merits of the dismissal order or the denial of the motion for leave to amend.

A jurisdictional dismissal must be without prejudice, but that designation signifies only that these are not decisions on the merits that would have preclusive effect in the proper forum. The case is over in federal court. See *Carter v. Buesgen*, 10 F.4th 715, 720 (7th Cir. 2021); *Hill v. Potter*, 352 F.3d 1142, 1144 (7th Cir. 2003). We therefore modify the district court's judgment of dismissal to a dismissal for lack of subject-matter jurisdiction. As modified, the judgment is AFFIRMED.

Footnote

*We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. Fed. R. App. P. 34(a)(2)(C).

United States District Court, N.D. Illinois, Eastern
Division.

Richard SHARIF, Plaintiff,
v.
Myron F. MACKOFF, Defendant.

21 C 2635

Signed 01/25/2022

Attorneys and Law Firms
Richard Sharif, Chicago, IL, Pro Se.
Amanda Leigh Kozar, Office of the Illinois Attorney
General, Chicago, IL, for Defendant.

ORDER

Charles P. Kocoras, United States District Judge

Before the Court is Plaintiff Richard Sharif's Motion to Vacate Default Judgment and for Leave to File an Amended Complaint. For the following reasons, the Court denies the Motion.

STATEMENT

Sharif brings this case against Judge Myron F. Mackoff, an Associate Judge of the Domestic Relations Division of the Circuit Court of Cook County, challenging actions that arose during divorce proceedings. Sharif alleges Mackoff sent him to jail with a \$100,000 bond for failing to pay attorneys' fees. Because Sharif could not afford the bond, he appealed

to the Illinois Appellate Court. But the appellate court did not consider Sharif's appeal an emergency, so Sharif says Mackoff forced him to chose between spending over a year in jail while pursuing the appeal, or withdrawing the appeal and being released.

Sharif claims violations of due process and the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* On September 24, 2020, the Court granted Mackoff's motion to dismiss, which Sharif did not respond to, based on judicial immunity. Dkt. # 25. The Clerk entered judgment the same day. Dkt. # 26. Sharif now moves to vacate default judgment and for leave to file an amended complaint.

While Sharif moves to vacate a default judgment, no default judgment was entered. The Court therefore construes his motion as one under Federal Rule of Civil Procedure 60. Rule 60(b) permits a court to grant relief from final judgment where there are instances of: (1) mistake or neglect; (2) newly discovered evidence; (3) fraud or misconduct by an opposing party; (4) the judgment being void; (5) the judgment being satisfied or no longer applicable, and (6) "any other reason that justifies relief." Fed. R. Civ. P. 60(b). "Relief under Rule 60(b) is an extraordinary remedy granted only in exceptional circumstances." *Nelson v. Napolitano*, 657 F.3d 586, 589 (7th Cir. 2011).

Sharif first contends that he did not receive notice of Mackoff's motion to dismiss or the Court's scheduling order. ECF records, though, show Sharif received notice via the email address listed on both his *pro se* appearance forms. *See* Dkt. # 3, 13. Regardless, Sharif has not shown a meritorious claim.

Sharif contends Mackoff is not entitled to judicial immunity because he acted outside his trial court jurisdiction by forcing Sharif to withdraw his appeal. In

other words, Sharif says Mackoff improperly acted with appellate jurisdiction.

“[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages.” *Mireles v. Waco*, 502 U.S. 9, 11 (1991). The Supreme Court has identified two circumstances where judicial immunity is overcome: “First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge’s judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of *all* jurisdiction.” *Id.* at 11–12 (emphasis added and internal citations omitted). Sharif argues the second exception is present here. We disagree.

Sharif’s allegations are similar to the Seventh Circuit’s decision in *Dellenbach v. Letsinger*, 889 F.2d 775 (7th Cir. 1989). There, a state trial court judge was accused of contacting the chief judge of the state court of appeals to block the appeal of a criminal case until the costs of a trial transcript were paid. *Id.* at 760. The plaintiff argued the trial judge lacked jurisdiction since the case was on appeal. *Id.* The Seventh Circuit determined the trial judge did not act in the clear absence of jurisdiction since he had jurisdiction at the trial level and could reasonably believe that he retained some control over the case. *Id.* “If he erred in his belief that he had authority to deal with matters relating to the transcript, his error was, at most, a ‘grave procedural error’—not an act in the ‘clear absence of all jurisdiction.’” *Id.*

Here, too, Mackoff could reasonably believe he retained jurisdiction even though Sharif appealed the incarceration order. Thus, we cannot say Mackoff acted in the clear absence of all jurisdiction. At most, he committed a procedural error for the Illinois court

system to remedy. *See Dawson v. Newman*, 419 F.3d 656, 661 (7th Cir. 2005) (“If a judge errs ‘through inadvertence or otherwise, a party’s remedy is through appellate process’ ”).

Because Sharif’s claims against Mackoff are barred by judicial immunity and he has not shown how an amended complaint would cure this defect, we deny leave to file an amended complaint.

CONCLUSION

For the reasons stated above, the Court denies Sharif’s Motion to Vacate Default Judgment and for Leave to File an Amended Complaint. (Dkt. # 27). Sharif’s Supplemental Affidavit (Dkt. # 37) was improperly filed as a motion. It is so ordered.

United States Court of Appeals, Seventh Circuit.

Richard SHARIF, Plaintiff-Appellant,

v.

Myron F. MACKOFF, Defendant-Appellee.

No. 22-1190

July 11, 2023

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:21-cv-02635, Charles P. Kocoras, Judge.

Before DIANE S. SYKES, Chief Judge, DAVID F.

HAMILTON, Circuit

Judge, CANDACE JACKSON-AKIWUMI, Circuit Judge

ORDER

On consideration of plaintiff Richard Sharif's petition for rehearing and rehearing en banc, filed June 26, 2023, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for rehearing.

Accordingly, the petition for rehearing and rehearing en banc filed by plaintiff Richard Sharif is DENIED.