No. 23 - 6913

IN THE SUPREME COURT OF THE UNITED STATES

2024 TERM

CARL K. THOMPSON,

Petitioner,

vs.

MARJORIE K. ALLARD, Chief Judge,
Alaska Court of Appeals,

TRACY WOLLENBERG, Judge
Alaska Court of Appeals,

TIMOTHY W. TERRELL, Judge,
Sitting by Designation on
the Alaska Court of Appeals,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CARL K. THOMPSON
ID No. 123486
WILDWOOD CORRECTIONAL COMPLEX
10 CHUGACH AVE.
KENAI, AK 99611

QUESTIONS PRESENTED

Was there a violation of the Rooker-Feldman doctrine?

Did the Panel of the Ninth Circuit abuse its discretion by finding amendment to the complaint would be "futile"?

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DECISION BELOW

Mr. Thompson brings this Petition from a final decision of the Ninth Circuit Court of Appeals, filed December 16, 2022.

The Ninth Circuit denied the appeal on August 30, 2023; en banc review denied on November 30, 2023. [App. A, Pp. 2-3]

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment to the United States Constitution:

No State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

JURISDICTION IN THE SUPREME COURT

Mr. Thompson filed a § 1983 civil action in the U.S. District Court of Alaska in April of 2022. The court screened the suit and in September of 2022, denied it.

Mr. Thompson timely filed a notice of appeal. On August 30, 2023, the a Panel of the Ninth Circuit denied the screening appeal. Mr. Thompson sought Rehearing en banc. The court denied en banc review on November 29, 2023. [App. Id.]

The jurisdiction of the Supreme Court is invoked prusuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

In 2018, Mr. Thompson filed a writ of habeas corpus with the superior court (trial court), in Alaska, pursuant to Alaska Statute 12.75.010 ("AS"). In the writ, Mr. Thompson argued that the trial court had lost "jurisdiction" over his 1987 convictions for murder and tampering with evidence, and thus, his "criminal judgment was void." Without addressing the merits of Mr. Thompson's claims, the trial court simply converted the writ of habeas corpus to a post-conviction relief application, and dismissed it; under the provisions contained in AS 12.72.020(a).

In 2020, Mr. Thompson filed a timely pro se appeal of the trial court ruling, arguing the trial court erred when it converted the writ to a PCRA and dismissed it; because this violated the "Susspension Clause" of Article I. § 13 of Alaska's Constitution. The court disagreed, and denied the appeal in 2021. [App. C]

Mr. Thompson timely filed a Petition for Hearing with the Alaska Supreme Court, but the court declined to entertain the petition; without commenting.

Mr. Thompson filed a timely pro se Petition for writ of certiorari with the U.S. Supreme Court. However, the Court refused to grant certiorari. Thompson v. Alaska, 142 S.Ct. 1161 (2022)

In 2022, Mr. Thompson filed a civil rights action, pursuant to 42 U.S.C. § 1983, with the U.S. District Court in Alaska,

asking the court for declaratory relief. Specifically, Mr. Thompson asked the court to declare that the justices of the Alaska Court of Appeals (Respondents) illegally "suspended the writ of habeas corpus," in violation of the "Suspension Clause" of Article I § 13 of Alaska's Constitution, since only the Governor of Alaska had the authority to suspend the writ of habeas corpus.

The district court screened the lawsuit, and dismissed it, concluding: (1) that state court judges had immunity, that "extends to both injunctive and declaratory relief against judicial officers." [App. B, page 3 n.10]; (2) that "Rooker-Feldman doctrine" prohibited a federal court from reviewing claims brought by litigants who lost in state court and allege "injuries caused by the state court." And (3) "No viable claim can be asserted against the state judicial officers and no other defendants may be substituted under these facts; therefore, amendment is futile." [App. B, p. 3 n.10, p. 4]

Mr. Thompson timely filed a Notice of Appeal of the district court's ruling.

On appeal in the Ninth Circuit, Mr. Thompson argued: (1) the defendants lost any "judicial immunity" they had when they ruled, in caselaw, that the writ of habeas corpus was superseded, which Black's Law Dictionary found was synonymous with "suspend[ed]," because doing so was not a judicial action that a judge could legally take, according to Art. I § 13 of Alaska's Constitution, that only the Governor could suspend

the writ of habeas corpus; (2) that Rooker-Feldman doctrine was not implicated, since Mr. Thompson's suit never sought to overturn the state court judgment; and (3) that amendments could have corrected any deficiencies in the complaint.

The Ninth Circuit ruled that Mr. Thompson's suit was: (1) "a de facto appeal of a prior state court judgment[,]" that was barred by Rooker-Feldman doctrine, and (2) that "amendment would be futile." [App. A, p. 2]

Mr. Thompson filed a timely petition for rehearing, with suggestion for rehearing en banc, but on November 29, 2023, the Ninth Circuit declined the invitation to rehear the case. [App. A, p 3]

Mr. Thompson filed a motion, in the Ninth Circuit, requesting the court "stay" the Panel's Memorandum decision, pursuant to Fed. R. App. Proc. 41(d)(1), while he pursued a Writ of Certiorari in the Supreme Court. The court treated this motion as a "motion to recall the mandate[,]" and denied it on December 14, 2023. [App. A p. 4]

REASONS FOR GRANTING THE WRIT

This Court has not ruled upon the questions presented in this case. The decision of the Ninth Circuit ruled that the Rooker-Feldman doctrine was violated in Mr. Thompson's § 1983 suit.

However, caselaw from the Ninth Circuit has ruled that judges have "judicial immunity" from suits seeking declaratory relief, while the circuit courts of the Third, Fourth, Fifth, Seventh, Eighth, Tenth, and Eleventh, have ruled that judges have no immunity from suits that seek declaratory relief; creating a split within the United States Courts of Appeal.

If Respondent justices had no immunity from declaratory relief, then could there have been a violation of the Rooker-Feldman doctrine?

Precedent from this Court suggests that the Panel of the Ninth Circuit abused its discretion when it ruled that any amendments to Mr. Thompson's § 1983 suit would be "futile."

ARGUMENT

I.

THERE WAS NO VIOLATION OF THE ROOKER-FELDMAN DOCTRINE

The Panel of the Ninth Circuit ("Panel") ruled that Mr. Thompson's federal court § 1983 suit against the three justices of the Alaska Court of Appeals ("Respondents") was "a forbidden de facto appeal of a prior state court judgment[.]" [App. A, p. 2]

A. There is a Circuit Split on Whether Judicial Immunity Extends to Suits for Declaratory Relief Judgments

The Ninth Circuit has ruled that, pursuant to the 1996 Federal Court Improvement Act ("FCIA"), codified 42 U.S.C. § 1983, that judges have immunity from even declaratory relief. See Moore v. Urquhart, 899 F.3d 1094, 1104 (9th Cir. 2019), cert. denied (sub nom), Johanknecht v. Moore, 139 S.Ct. 2615 (2019). The District Court reached the exact same conclusion when it screen the suit in 2022. [App. B, p. 3, n.3]

However, the Third, Fourth, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have split with the Ninth Circuit, finding that declaratory relief is not barred by the amendment to § 1983. See Allen v. Debello, 861 F.3d 443, 440 (3rd Cir. 2017) ("[A] judge who acts as an enforcer or administrator of a statute can be sued under § 1983 for declaratory (if declaratory relief is unavailable)[.]"; Gibson v. Goldston, 85 F.3d 218, 226, 226 (4th Circuit 2003) (The judge "stepped out of the judicial role in a variety of ways, which made plain in combination that she was engaged in an extrajudicial

function."); LeClerk v. Webb, 419 F.3d 405, 414, (5th Cir. 2005) ("When acting in its enforcement capacity, the Louisiana Supreme Court, and its members, are not immune from suits for declaratory ... relief."); File v. Martin, 33 F.4th 385, 391 (7th Cir. 2019) (No "judicial immunity" when plaintiff sought a "pre-enforcement suit against the justices...blocking enforcement of the rules[.]"), cert. denied (sub nom), Hickey v. Martin, 143 S.Ct. 745 (2019); Justice Networks Inc. v. Craighead City, 931 F.3d 753, 763 (8th Cir. 2019) ("Currently, most courts hold that the amendment to § 1983 does not not bar declaratory relief against judges."); Lawrence v. Kuenhold, 271 Fed. Appx. 763, 766 n.6 (10th Cir. 2008) ("The Tenth Circuit has concluded that the only type of relief available to a plaintiff who sues a judge is declaratory relief."); and Story v. Bolin, 225 F.3d 1234, 1242 (11th Cir. 2000) ("[T]he 1996 amendments to § 1983 would limit the relief available to plaintiffs to declaratory relief.").

In fact, the Ninth Circuit has been asked, but refused to address whether judges have immunity from declaratory relief. See Shuler v. Scott, (unpublished) WL 8600707 *22 (N.D. Cal. 2023) ("While the Ninth Circuit has not yet explicitly answered whether the statutory amendment to § 1983 bars declaratory relief."), Citing: Lund v. Cowan, 5 F.4th 964, 970 n.2 (9th Cir. 2021) ("Section 1983 bars prospective declaratory relief.")

If this Court agrees that Mr. Thompson's suit for

declaratory relief was actionable, then the Court should similarly conclude that the Rooker-Feldman doctrine was not violated too. The Panel sidestepped the question of judicial immunity issue when Mr. Thompson argued it. This should be seen as the Panel's acquiescence with Mr. Thompson's position.

This Court has found there was no Rooker-Feldman "shoal" when a state prisoner sought injunctive relief against a district attorney ("state officer") for allegedly abrogating the prisoner's due process protections, surrounding how a "statute or rule" was applied in denying the prisoner DNA testing. Skinner v. Switzer, 562 U.S. 521, 532, 131 S.Ct. 1289, 179 L. Ed. 2d 233 (2011).

While Skinner only sued the district attorney who prosecuted him, while Mr. Thompson has sued the justices of the Alaska Court of Appeals, for declaratory relief; for the way they have enforced the erroneous application of Alaska Civil Rule 86(m) to suspend the writ of habeas corpus in Mr. Thompson's case.

The only possible justifications for barring declaratory relief against Respondents in this case, are: (1) the amendment to § 1983 might foreclose declaratory relief, or might not, depending on whether declaratory relief was "unavailable"? In Mr. Thompson's case there has never been a finding that declaratory relief was, or was not available; and (2) a judge only has immunity if his or her "act[s] or omission[s]" w[ere] taken in the judge's "judicial capacity[.]" § 1983.

Mr. Thompson argued in the Ninth Circuit, that Respondents' lost whatever immunity they had, when they declared that the writ of habeas corpus had been suspended, in caselaw, since that was a judicial act that a judge could not legally take, according to, Art. I, § 13, of Alaska's Constitution, since such an act had been reserved solely for the Executive Branch of Alaska's government to take.

In fact, Mr. Thompson argued in his brief to the Ninth Circuit, that by suspending the writ of habeas corpus, Respondents' acted in "absence of all jurisdiction," citing: Stump v. Sparkman, 435 U.S. 349, 357, 98 S.Ct. 1099, 55 L. Ed. 2d 55 (1978).

Moreover, Mr. Thompson's suit also was not a violation of the Rooker-Feldman doctrine, for other reasons: (1) the lawsuit was filed in the district court, which invoked the court's jurisdiction, pursuant to 28 U.S.C. § 1331 (federal question), making it: (1) an "original" action; and (2) the suit raised an "independent claim" from that which was presented in state court. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 2809, 293, 125 S.Ct. 1517, 161 L. Ed. 2d 454 (2005). Under the Exxon Court's holding, Mr. Thompson's suit never came close to violating the Rooker-Feldman doctrine. Moreover, the Panel never explained specifically why the suit violated the Rooker-Feldman doctrine. The only thing Mr. Thompson's federal court suit sought was declaratory relief. Nothing more than that. That clearly would not strip the federal court of jurisdiction

to hear the suit.

This Court's review is warranted, pursuant to Supreme Court Rule 10(c), as the issues clearly show that a "United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court."

B. The Panel Erred by not Allowing Amendments

The Panel agreed with the district court, finding that the court did not "abuse its discretion in dismissing without leave to amend because amendment would be futile." [App. p. 2]

However this Court has construed the Federal Rules of Civil Procedure much more broadly than the Panel has.

For example, "Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded. If the underlying facts or circumstances relied upon by a plaintiff may be proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." (Authorities omitted.) See Forman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L. Ed. 2d 222 (1962).

Any deficiencies with Mr. Thompson's suit can certainly be corrected by amendment, as none are fatal.

The only amendments that Mr. Thompson would like to make, if allowed, are: (1) add a claim for injunctive relief. The only reason Mr. Thompson did not originally raise a claim for injunctive relief in his suit, was because he believed this type of relief was not available under the amendment to § 1983.

However, when researching his arguments for the Ninth Circuit brief, he discovered that the Third, Fourth, and Seventh Circuits have ruled injunctive relief was available, against any state official who acts in an enforcement, administrative, or legislative capacity. See: Allen v. Debello, 861 F.3d 843, 844 (3rd Cir. 2017); Gibson v. Goldston, 85 F.3d 218, 224 (4th Cir. 2003); and File v. Martin, 33 F.4th 385, 391 (7th Cir. 2019), cert. denied, 143 S.Ct. 745. These decisions conflict with that of the Ninth Circuit, as set forth by the district court's screening order [App. B, p. 3 n.10]; (2) tailor the original declaratory relief to be more specific. Mr. Thompson would simply ask the district court to declare that Alaska Civil Rule 86(m) was unconstitutional, since it violates the Suspension Clause of Art. I, § 13 of Alaska's Constitution, and thus, violated Mr. Thompson's due process right, pursuant to the Fourteenth Amendment, since applying the rule prevented Mr. Thompson from challenging his void conviction in state court. This relief was specifically allowed by, Ex parte Young, 209 U.S. 123, 148-49, 28 S.Ct. 441, 52 L. 2d 714 (1908); and (3) name the Alaska Attorney General as the sole defendant, seeking an injunction, restraining him from enforcing Civil Rule 86(m).

These amendments would certainly be within the scope and spirit of Federal Civil Rule 15, and would not be overly burdensome for the district court, or Respondents to comply with. These amendments should also be seen to be well within

the "interest of justice" exception. Forman, ibid.

This Court's review is warranted on this issue, pursuant to Supreme Court Rule 10(c), as a United States court of appeals has decided an important question of federal law in a way that "conflicts with relevant decisions of this Court."

CONCLUSION

WHEREFORE, Mr. Thompson requests that the Court order Respondents to show cause why this Petition for Writ of Certiorari should not immediately issue. Alternatively, order any other relief which the Court finds warranted by the facts and circumstances of this case.

RESPECTFULLY SUBMITTED, 23rd day of January, 2024.

S/ Carl K. Thompson
Carl K. Thompson
Petitioner pro se