NOT FOR PUBLICATION

FILED

AUG 30 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL THOMPSON, Plaintiff-Appellant, v. MARJORIE K. ALLARD, Judge; Chief Judge of the Alaska Court of Appeals; TRACEY WOLLENBERG, Judge; Judge of the Alaska Court of Appeals; TIMOTHY W. TERRELL, Judge; Judge Sitting by Designation on the Alaska Court of Appeals, Defendants-Appellees.	No. 22-35892 D.C. No. 3:22-cv-00075-SLG-KFR MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Sharon L. Gleason, District Judge, Presiding

Submitted August 15, 2023**

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

Alaska state prisoner Carl Thompson appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging claims arising out of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

state court proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Thompson's action because it was a forbidden de facto appeal of a prior state court judgment. *See Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003) (discussing the *Rooker-Feldman* doctrine).

The district court did not abuse its discretion in dismissing without leave to amend because amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard for review and explaining that leave to amend may be denied where amendment would be futile).

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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NOV 29 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARL THOMPSON, Plaintiff-Appellant, v. MARJORIE K. ALLARD, Judge; et al., Defendants-Appellees.	No. 22-35892 D.C. No. 3:22-cv-00075-SLG-KFR District of Alaska, Anchorage ORDER

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Thompson's petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 6, 7) are denied.

Thompson's motion to publish the memorandum disposition (Docket Entry No. 5) is denied.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 14 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARL THOMPSON, Plaintiff-Appellant, v. MARJORIE K. ALLARD, Judge; et al., Defendants-Appellees.	No. 22-35892 D.C. No. 3:22-cv-00075-SLG-KFR District of Alaska, Anchorage ORDER

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

We treat Thompson's "motion to stay the court's order denying the petition for rehearing en banc" (Docket Entry No. 10) as a motion to recall the mandate and deny the motion.

No further filings will be entertained in this closed case.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CARL K. THOMPSON,

Plaintiff,

v.

MARJORIE K. ALLARD, *et al.*,

Defendants.

Case No. 3:22-cv-00075-SLG-KFR

ORDER RE SCREENING ORDER AND REPORT AND RECOMMENDATION

Before the Court at Docket 1 is Plaintiff Carl K. Thompson's Prisoner's Complaint under the Civil Rights Act, 42 U.S.C. § 1983, and at Docket 3 is Mr. Thompson's Application to Waive Prepayment of the Filing Fee. These matters were referred to the Honorable Magistrate Judge Kyle F. Reardon. At Docket 5, Judge Reardon issued a Screening Order and Report and Recommendation, in which he recommended 1) this action be dismissed with prejudice, because the complaint failed to state a claim upon which relief may be granted and for the futility of amendment; 2) all pending motions be denied as moot; and 3) a dismissal under these circumstances should be a strike as required by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.*, 590 U.S. ___, 140 S. Ct. 172 (2020).[1] Plaintiff filed objections to the Report and Recommendation at Docket 6.

[1] 28 U.S.C. § 1915(g) prohibits a prisoner who has filed more than three actions or appeals in any federal court in the United States that are dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted from bringing any other actions without prepayment of fees unless the prisoner can demonstrate that he or she is in "immediate danger of serious physical injury."

These matters are now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."[2] A court is to "make a de novo determination of those portions of the magistrate judge's report or specified proposed findings or recommendations to which objection is made."[3] However, Section 636(b)(1) does not "require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."[4]

Plaintiff makes four objections to the Report and Recommendation. First, he objects to the magistrate judge's finding that the named defendants, three state court appellate judges, have judicial immunity.[5] Second, he objects to the magistrate judge's finding that the *Rooker-Feldman* doctrine bars Plaintiff's complaint.[6] Third, he objects to the magistrate judge's recommendation that the dismissal be with prejudice.[7] Fourth, he objects to the magistrate judge's finding that granting leave to amend would be futile.[8]

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[2] 28 U.S.C. § 636(b)(1).

[3] Id.

[4] *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

[5] Docket 6 at 2–3.

[6] Docket 6 at 2–4.

[7] Docket 6 at 2, 4.

[8] Docket 6 at 2, 4–5.

The Court has considered the objections on *de novo* review and finds each to be without merit. As to the first objection, on *de novo* review the Court agrees with the magistrate judge that the state court judges are accorded absolute immunity for their judicial acts pursuant to the Federal Courts Improvement Act of 1996 (codified at 42 U.S.C. § 1983).[9] Additionally, this immunity extends to both injunctive and declaratory relief against judicial officers.[10] The case Plaintiff cites, *Moore v. Urquhart*, 899 F.3d 1095, 1105 (9th Cir. 2018), is inapposite, as it held that unlike a judicial officer, a sheriff was a "quintessential executive branch official" when carrying out a judge's order and hence was not immune from liability.

Further, the Court finds that the *Rooker-Feldman* doctrine serves as an independent basis for dismissal of Plaintiff's case. Federal district courts lack jurisdiction to exercise appellate review over final state court judgments.[11] The *Rooker-Feldman* doctrine prohibits federal district courts from reviewing claims brought by litigants who have lost in state court and allege injuries caused by the state court.[12] The case Plaintiff cites, *Weilberg v. Shapiro*, 488 F.3d 1202 (9th Cir. 2007), is inapposite,

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[9] *See also Pierson v. Ray*, 386 U.S. 547, 554 (1967) (holding that the common law principle of judicial immunity is well established); *Lund v. Cowan*, 5 F.4th 964, 970–72 (9th Cir. 2021) (discussing how judicial immunity applies to official judicial acts).

[10] *Moore v. Brewster*, 96 F.3d 1240, 1243-44 (9th Cir. 1996), *superseded by statute on other grounds*; *Mullis v. U.S. Bankr. Ct. for Dist. of Nev.*, 828 F.2d 1385, 1388 (9th Cir. 1987); *Rote v. Comm. on Jud. Conduct & Disability of Jud. Conf. of United States*, 577 F. Supp. 3d 1106, 1126 (D. Or. 2021).

[11] *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007) (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415–16 (1923)); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482–86 (1983).

[12] *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

as it addressed whether the Supreme Court's ruling in *Heck v. Humphrey*, 51 U.S. 477 (1994), bars prospective plaintiffs from bringing a Section 1983 action that is based upon a violation of extradition law.

As to the third and fourth objections, the Court finds on *de novo* review that Plaintiff cannot plausibly allege a viable legal claim arising out the State of Alaska's Court of Appeals July 2021 ruling. The Court's aforementioned reasoning as to why the first and second objections fail precludes Plaintiff's objection that his legal arguments are meritorious and can succeed, or in the alternative that any weaknesses in pleading can be cured by amending the complaint. As explained above, Defendants are absolutely immune from suit and this Court lacks jurisdiction. Futility exists when "the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency[.]"[13] 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.[14]

In light of the foregoing, the Court ACCEPTS AND ADOPTS the Report and Recommendation at Docket 5 in its entirety, and IT IS ORDERED that this action is DISMISSED WITH PREJUDICE for failing to state a claim upon which relief may be granted and the futility of amendment. The application to waive prepayment of the filing fee is DENIED AS MOOT. This dismissal shall be counted as a STRIKE as required

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[13] *Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

[14] *Hartmann v. California Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny leave to amend when amendment would be futile.").

by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.* 590 U.S. ___, 140 S.Ct. 172 (2020).

The Clerk of Court shall enter a final judgment accordingly.

DATED this 6th day of September, 2022, at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

CARL K. THOMPSON, Plaintiff, v. MARJORIE K. ALLARD, et al., Defendants.	Case No. 3:22-cv-00075-SLG-KFR

SCREENING ORDER AND

REPORT AND RECOMMENDATON

On April 4, 2022, Carl K. Thompson, a self-represented prisoner (hereinafter "Plaintiff"), filed a Prisoner's Complaint under the Civil Rights Act, 42 U.S.C. § 1983 (hereinafter "Complaint"), a civil cover sheet, and an Application to Waive Prepayment of the Filing Fee.[1] The Court now screens Plaintiff's Complaint in accordance with 28 U.S.C. §§ 1915(e) and 1915A.

SCREENING REQUIREMENT

Federal law requires a court to conduct an initial screening of a civil complaint filed by a self-represented prisoner. In this screening, a court shall dismiss the case at any time if the court determines that the action:

[1] Dkts. 1-3.

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.[2]

To determine whether a complaint states a valid claim for relief, courts consider whether the complaint contains sufficient factual matter that, if accepted as true, "state[s] a claim to relief that is plausible on its face."[3] In conducting its review, a court must liberally construe a self-represented plaintiff's pleading and give the plaintiff the benefit of the doubt.[4]

Before a court may dismiss any portion of a complaint for failure to state a claim upon which relief may be granted, the court must provide the plaintiff with a statement of the deficiencies in the complaint and an opportunity to amend or otherwise address the problems, unless to do so

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[2] 28 U.S.C. § 1915A.

[3] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In making this determination, a court may consider "materials that are submitted with and attached to the Complaint." *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (citing *Lee v. L.A.*, 250 F.3d 668, 688 (9th Cir. 2001)).

[4] *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc)).

would be futile.[5] Futility exists when "the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency[.]"[6]

DISCUSSION

I. Complaint

Plaintiff brings suit against Marjorie K. Allard, Chief Judge of the Alaska Court of Appeals; Tracey Wollenberg, Judge of the Alaska Court of Appeals; and Timothy W. Terrell, Judge Sitting by Designation on the Alaska Court of Appeals (collectively "Defendants").[7] Plaintiff sues Defendants in their official capacities.[8]

In Claim 1, Plaintiff alleges Defendants acted with deliberate indifference to Plaintiff's liberty interest by converting his writ of habeas corpus to a post-conviction relief application, under Alaska Rule of Criminal Procedure 35.1, then denying it under the provisions of Alaska Statute (AS) 12.72.020(a). Plaintiff claims this action violated both the Suspension Clause

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[5] *See Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010) (citing *Albrecht v. Lund*, 845 F.2d 193, 195 (9th Cir. 1988)).
[6] *See Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).
[7] Dkt. 1
[8] *Id.*

of Article I, § 13 of Alaska's Constitution and his liberty interest under the Fourteenth Amendment to the United States Constitution.[9]

In Claims 2 and 3, Plaintiff alleges that Defendants violated the Separation of Power doctrine under Alaska's Constitution, and his liberty interest under the Fourteenth Amendment by creating caselaw stating the statutory writ of habeas corpus had been "superseded" by Criminal Rule 35.1 and Alaska Rule of Civil Procedure 86(m), thereby suspending Plaintiff's writ of habeas corpus, which the Superior Court then accepted when it dismissed Plaintiff's writ of habeas corpus in 2020.[10]

Plaintiff seeks declaratory relief that Defendants' interpretation of case law as it relates to his claimed writ of habeas corpus was unconstitutional, as well as "any other relief which the Court finds is just and equitable, in the interest of justice."[11]

In support of his claims, Plaintiff provides three exhibits: Exhibit A – Order Granting Motion to Dismiss in *Thompson v. Williams*, Case No. 4FA-18-02504CI; Exhibit B – Summary Disposition in *Thompson v. State of Alaska*, Court of Appeals Case No. A-13634; and Exhibit C – Order denying Petition

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[9] Dkt. 1 at 8.
[10] Dkt. 1 at 8.
[11] Dkt. 1 at 9.

for Hearing in *Thompson v. State of Alaska*, Supreme Court Case No. S-18164.[12]

II. Civil Rights Claims Under 42 U.S.C. § 1983

Claims under 42 U.S.C. § 1983 ("Section 1983") have specific required elements that a plaintiff must plead. Section 1983 is a federal statute that "is not itself a source of substantive rights," but provides "a method for vindicating rights [found] elsewhere."[13] In order to plead a proper Section 1983 claim, a plaintiff must allege plausible facts that if proven would establish each of the required elements of: "(1) a violation of rights protected by the Constitution or created by federal statute, (2) proximately caused (3) by conduct of a 'person' (4) acting under color of state law."[14]

To act under the color of state law, a complaint must allege that the defendants acted with state authority as state actors.[15] Furthermore, a defendant must be eligible for suit. Because none of the individuals sued by Plaintiff in this case are proper defendants under Section 1983, Plaintiff's Complaint must be dismissed.

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[12] Dkt. 1-1, 1-2, and 1-3.

[13] *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979))

[15] *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

a. Defendant Judges Allard, Wollenberg, and Terrell

A state court judicial officer is a state actor. However, "[j]udges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacities."[16] Moreover, judicial immunity extends to preclude prospective injunctive relief against a state court judge for acts or omissions made in that judge's official capacity.[17] This judicial immunity is immunity from lawsuit, not just from ultimate assessment of damages, and it cannot be overcome by allegations of bad faith or malice.[18]

Defendant Judges Allard, Wollenberg, and Terrell are all judicial officers in the Alaska Court of Appeals. Defendants are bound by Alaska Rules of Criminal Procedure, Alaska Statutes, the Alaska Constitution, and their duties as judicial officers to preside over appeal cases in the Alaska Court of Appeals. Any rulings or decisions Defendants may have made while presiding

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[16] *Ashelman v. Pope*, 793 F.2d 1072, 1075-76 (9th Cir. 1986) (citations omitted) (in determining if an action is judicial, courts focus on whether "(1) the precise act is a normal judicial function; (2) the events occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge; and (4) the events at issue arose directly and immediately out of a confrontation with the judge in his or her official capacity."). "These factors are to be construed generously in favor of the judge and in light of the policies underlying judicial immunity."

[17] 42 U.S.C. § 1983.

[18] *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); *Pierson v. Ray*, 386 U.S. 547, 554 (1967)).

over appeal cases, including Plaintiff's appeal, are acts performed in their official capacity. As judicial officers acting in their official capacity, Defendants are immune from suit as a matter of law. Therefore, they cannot be sued under 42 U.S.C. § 1983.[19]

CONCLUSION

Defendants are immune from suit. Therefore, Plaintiff fails to state a claim upon which relief may be granted. In addition, no defendants may be substituted under these facts; therefore, amendment is futile.[20]

IT IS THEREFORE RECOMMENDED:

1. This action should be **DISMISSED WITH PREJUDICE** for failing to state a claim upon which relief may be granted and the futility of amendment.
2. All pending motions should be **DENIED AS MOOT**.

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[19] The Court notes that even if Defendants were not immune from suit, this Court would lack jurisdiction over Plaintiff's claims, because the *Rooker-Feldman* doctrine "prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004).

[20] *Hartmann v. California Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny leave to amend when amendment would be futile.").

3. A dismissal under these circumstances should be a strike as required by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.*, 590 U.S. ___, 140 S.Ct. 172 (2020).[21]

4. The Clerk of Court should issue a final judgment.

DATED this 15th day of July, 2022 at Anchorage, Alaska.

s/ Kyle F. Reardon
KYLE F. REARDON
United States Magistrate Judge
District of Alaska

NOTICE OF RIGHT TO OBJECT

Under 28 U.S.C. § 636(b)(1), a district court may designate a magistrate judge to hear and determine matters pending before the Court. For dispositive matters, a magistrate judge reports findings of fact and provides recommendations to the presiding district court judge.[22] A district court judge may accept, reject, or modify, in whole or in part, the magistrate judge's order.[23]

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[21] 28 U.S.C. § 1915(g) prohibits a prisoner who files more than three actions or appeals in any federal court in the United States which are dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, from bringing any other actions without prepayment of fees unless the prisoner can demonstrate that he or she is in "imminent danger of serious physical injury."
[22] 28 U.S.C. § 636(b)(1)(B).
[23] 28 U.S.C. § 636(b)(1)(C).

A party may file written objections to the magistrate judge's order within 14 fourteen days.[24] Objections and responses are limited to five (5) pages in length and should not merely reargue positions previously presented. Rather, objections and responses should specifically identify the findings or recommendations objected to, the basis of the objection, and any legal authority in support. Reports and recommendations are not appealable orders. Any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the district court's judgment.[25]

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[24] *Id.*

[25] *See Hilliard v. Kincheloe*, 796 F.2d 308 (9th Cir. 1986).

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

CARL THOMPSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13634
Trial Court No. 4FA-18-02504 CI

SUMMARY DISPOSITION

No. 0199 — July 14, 2021

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Paul R. Lyle and Brent E. Bennett, Judges.

Appearances: Carl K. Thompson, *in propria persona*, Kenai, Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Clyde Sniffen Jr., Acting Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges.

Carl K. Thompson, representing himself, appeals the conversion of his petition for a writ of habeas corpus to an application for post-conviction relief, and the subsequent summary dismissal of that application. For the reasons explained in this decision, we affirm the judgment of the superior court.

The following facts are drawn from our decision in Thompson's case on direct appeal.[1] In 1986, Thompson killed his former wife by stabbing her twenty-nine times. After wrapping her body in chains, a bedspread, and a tent fly, Thompson dumped her body in a water-filled gravel pit. Following a jury trial, Thompson was convicted of one count of first-degree murder and one count of tampering with physical evidence.[2] He was sentenced to 99 years for the murder conviction and to a consecutive 5 years for the tampering with evidence conviction.

Thompson appealed, claiming (among other things) that the troopers should have advised him of his *Miranda* rights, that his statement to the troopers investigating the murder had not been voluntary, and that his sentence was excessive. This Court affirmed Thompson's convictions but remanded the case and instructed the superior court to order the sentences to be served concurrently.[3]

After the superior court amended Thompson's sentence, Thompson began a series of collateral challenges to his convictions in state and federal courts. Thompson's current challenge began in 2018, when he filed a petition for a writ of habeas corpus under Alaska Civil Rule 86 and AS 12.75.010 in the superior court.

Thompson alleged two general justifications for a writ, both of which were based on his allegation that a "fraud upon the court" had occurred before and during trial. First, Thompson generally alleged that a fraud upon the court had occurred: (1) when the prosecutor had opposed Thompson's motion to suppress the statement Thompson had given to the state troopers, (2) when the prosecutor failed to take corrective action when a trooper made (according to Thompson) false statements in an affidavit that the

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[1] *Thompson v. State*, 768 P.2d 127, 128 (Alaska App. 1989).

[2] Former AS 11.41.100 (1986) and AS 11.56.610, respectively.

[3] *Thompson*, 768 P.2d at 134.

prosecutor used as part of the State's opposition to that motion to suppress, and (3) when (according to Thompson) the prosecutor allowed a witness to commit perjury in her grand jury testimony and in her trial testimony. Second, Thompson generally alleged a "fraud upon the court" had occurred because his trial attorneys and his first post-conviction relief attorney were so incompetent that he was essentially not represented.

After reviewing Thompson's pleading, the superior court determined that Thompson was asserting claims in his habeas petition that could have been raised in an application for post-conviction relief under Alaska Criminal Rule 35.1.[4] The court also rejected Thompson's argument that post-conviction relief was an inappropriate vehicle to resolve the alleged jurisdictional defects in the conviction, noting that paragraphs (a)(2) and (a)(6) of Alaska Criminal Rule 35.1 specifically permit such challenges. Consequently, the superior court converted the petition for habeas into an application for post-conviction relief.[5]

After his habeas petition was converted, Thompson filed an amended application for post-conviction relief, where he for the most part repeated the allegations he had made in his habeas petition. After allowing oral argument, the superior court ultimately dismissed the application on its pleadings, finding that Thompson's allegations were barred by one or more of the provisions of AS 12.72.020.[6] We agree.

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[4] *See* Alaska R. Civ. P. 86(m).

[5] *See Fisher v. State*, 315 P.3d 686, 688 (Alaska App. 2013).

[6] *See* AS 12.72.020(a)(1)-(3), (5)-(6) (explaining that a claim for post-conviction relief may not be brought if "the claim is based on the admission or exclusion of evidence at trial," "the claim was, or could have been but was not, raised in a direct appeal from the proceeding that resulted in the conviction," more than one year has passed since the court's decision on appeal was final, "the claim was decided on its merits or on procedural grounds in any previous proceeding," or "a previous application for post-conviction relief has been filed under [AS 12.72] or under the Alaska Rules of Criminal Procedure").

The allegations Thompson raised in his habeas action involved claims that he was wrongfully convicted because the prosecutor committed misconduct regarding testimony and statements from certain witnesses, because the trial court made evidentiary errors or erroneous rulings, or because his attorneys provided ineffective assistance. All of these claims could have been raised during the criminal trial, in the direct appeal from that trial, or in Thompson's prior post-conviction relief applications.[7]

Furthermore, the superior court properly determined that the evidence Thompson was presenting was not "newly discovered." The evidence Thompson presented was a partial transcript of a deposition taken from one of his trial attorneys in 2000, and a number of affidavits from 1995 and 1998. The record shows that Thompson was aware of this evidence long before he filed his habeas petition in 2018.

We therefore agree that the superior court properly dismissed Thompson's application.

Accordingly, the judgment of the superior court is AFFIRMED.

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[7] *See* Alaska R. Crim. P. 35.1(a); *see also* AS 12.72.010(1), (2), (6), and (9) (permitting a person to institute a proceeding for post-conviction relief if "the conviction or the sentence was in violation of the Constitution of the United States or the constitution or laws of this state[,]" "the court was without jurisdiction to impose sentence," or "the conviction or sentence is otherwise subject to collateral attack upon any ground or alleged error previously available under the common law, statutory law, or other writ, motion, petition, proceeding, or remedy," or "the applicant was not afforded effective assistance of counsel at trial or on direct appeal").

Additional material from this filing is available in the Clerk's Office.