

In the
Supreme Court of the United States



GARY ROBINSON,

Petitioner,

v.

JERRY HIGGINS, ET AL.,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

**BRIEF IN OPPOSITION
OF JUDICIAL RESPONDENTS
JUDGE MARY SHAW AND
MASTER COMMISSIONER CAROLE C. SCHNEIDER**

Melissa Norman Bork
Counsel of Record
DENTONS BINGHAM GREENEBAUM LLP
101 South Fifth Street, Suite 3500
Louisville, KY 40202
(502) 589-4200
melissa.normanbork@dentons.com

QUESTION PRESENTED

Whether Respondents, JUDGE MARY SHAW (“Judge Shaw”) and MASTER COMMISSIONER CAROLE C. SCHNEIDER (“Commissioner Schneider”) (collectively the “Judicial Respondents”), are entitled to absolute judicial and quasi-judicial immunity from Petitioner, Gary Robinson’s (“Robinson”) claims against them arising from rulings and orders entered in a state court foreclosure action.

PARTIES TO THE PROCEEDINGS

Petitioner

- Gary Robinson

Judicial Respondents

- Judge Mary M. Shaw
- Master Commissioner Carole C. Schneider

Other Respondents

- Jerry N. Higgins
- State of Kentucky
- Tax Ease Lien Servicing, LLC
- Alyssa Cochran

ADDITIONAL RELATED CASES

Pursuant to Supreme Court Rule 15.2, the Judicial Respondents identify the following directly related cases not identified in Robinson's Petition for Writ of Certiorari or otherwise as required in Supreme Court Rule 14.1(b)(iii).

Related State Court Proceedings

Jefferson (County, Kentucky) Circuit Court
No. 17-CI-400112

Tax Ease Lien Servicing, LLC v. Gary Robinson
Final Judgment: November 9, 2020

Kentucky Court of Appeals

No. 2020-CA-1545

Gary Robinson v. Tax Lien Servicing, LLC, et al.
Final Judgment: June 16, 2021

Kentucky Supreme Court

No. 2021-SC-0268

Gary Robinson v. Tax Lien Servicing, LLC, et al.
Final Judgment: September 22, 2021

Related Federal Proceedings

Gary Robinson v. Jerry Higgins, et al.

No. 3:22-cv-0068-GNS

Gary Robinson v. Tax Lien Servicing, LLC, et al.
Final Judgment: February 18, 2022

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OPINIONS BELOW

The opinion of the Sixth Circuit Court of Appeals is unreported and unpublished, and reproduced in full in the Appendix attached by Robinson. (Pet.App.1a-7a). The Memorandum and Order of the U.S. District Court for the Western District of Kentucky, Louisville Division, is also unreported and unpublished, and reproduced in full in the Appendix attached by Robinson. (Pet.App.10a-18a).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Supreme Court Rule 15.3 and 24.2(f), the Judicial Respondents identify the constitutional and statutory provisions involved in this case as:

- U.S. Const. Amend. XIV
- 42 U.S.C. § 1983

Contrary to Robinson's Petition for Writ of Certiorari, neither 5 U.S.C. § 551 nor 28 U.S.C. §§ 1346(a), 1491 are relevant to the Court's consideration of this case. Although Robinson's original complaint purported to assert a claim under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* (Pet.App.109a-131a), his amended complaint, the operative pleading in this action which Robinson entirely omitted from his Appendix, contained no reference to such claim. (Res.App.1a). The Sixth Circuit expressly declined to consider any claims Robinson raised only in his original complaint, but did not reassert in his amended

complaint. (Pet.App.3a-4a). As such, this case does not involve the construction or application of 5 U.S.C § 551.

Similarly, Robinson failed to challenge the dismissal of his Tucker Act claim on appeal and the Sixth Circuit concluded that Robinson abandoned the claim. (Pet.App.4a). Thus, Robinson cannot now seek review of that claim by this Court. *E.E.O.C. v. Federal Labor Relations Authority*, 476 U.S. 19, 24 (1986) (“Our normal practice, from which we see no reason to depart on this occasion, is to refrain from addressing issues not raised in the Court of Appeals.”) (citations omitted). As such, this case also does not involve the construction or application of 28 U.S.C. §§ 1346(a), 1491.

Additionally, the Due Process Clause of the Fifth Amendment does not apply to state actors, such as the Judicial Respondents. *Scott v. Clay County*, 205 F.3d 867, 873 n.8 (6th Cir. 2000). As such, Robinson’s citation to the Fifth Amendment Due Process Clause is “a nullity, and redundant of h[is] invocation of the Fourteenth Amendment Due Process Clause” (*id.*) and this case does not involve the construction or application of the Fifth Amendment



COUNTER STATEMENT OF THE CASE

The Judicial Respondents object to Robinson’s characterization of this case as involving a constitutional challenge to Kentucky’s tax lien process. Petition for Writ of Certiorari (“Petition”). (Pet.2). Instead, the matter represents Robinson’s attempt to collaterally attack a final judgment entered in a state

court foreclosure action that he unsuccessfully challenged on appeal through the state court system and for which he now seeks to hold the trial court judge and master commissioner personally liable. As both the district court and Sixth Circuit Court of Appeals properly determined, Judge Shaw is entitled to absolute judicial immunity from Robinson’s claims, Commissioner Schneider is entitled to quasi-judicial immunity, and “Robinson’s contention that Judge Shaw acted without jurisdiction is ‘frivolous.’” (Pet.App.5a-6a). Robinson’s Petition fails to present issues preserved on appeal and presents no qualifying concerns which mandate review on certiorari.

Robinson’s Petition fails to provide a statement of the case “setting out the facts material to consideration of the questions presented . . .” as required by Sup. Ct. R. 14.1(g). Instead, Robinson merely identifies the constitutional provisions and federal statutes that he believes support his claims. Accordingly, the Judicial Respondents present this counterstatement of the case to provide the Court with a concise statement of the facts material to consideration of the question presented.

This case arises from a foreclosure action filed against Robinson by Tax Ease Lien Servicing, LLC in Jefferson Circuit Court, Case No. 17-CI-400112 in 2017 (the “Foreclosure Action”).¹ (Pet.App.2a). The

¹ Although the Foreclosure Action allegedly provides the foundation for his claims, Robinson’s List of Proceedings omits any reference to the Foreclosure Action and his unsuccessful state court appeals of that action. (Pet.iii). Robinson also omits any reference to his unsuccessful attempt to remove the Foreclosure Action to federal court. (*Id.*) The case identified by Robinson as a “Related State Proceeding[],” *Robinson v. Higgins, et al.*, Jefferson

case was assigned to Judge Shaw, who entered an order referring the case to the Master Commissioner for Judicial Sale. (*Id.*) The case was assigned to Commissioner Schneider, who issued a report that the court adopted. Judge Shaw then entered a judgment and order of sale, following which the court ordered distribution of the sale proceeds. (*Id.*) Robinson filed an appeal, which the Kentucky Court of Appeals dismissed. (*Id.*) He then sought discretionary review by the Kentucky Supreme Court, which was denied. (*Id.*)

After exhausting his state court appellate remedies, “Robinson filed a complaint in federal court

Circuit Court, Case No. 22-CI-001147 (*id.*), is a separate state-court action filed by Robinson against Respondent, Jerry N. Higgins, in which Robinson also asserted claims under the Administrative Procedure Act (5 U.S.C. § 551, *et seq.*), Foreign Agent Registration Act, 22 U.S.C. § 661, *et seq.*) and the Fair Debt Collection Practices Act (15 U.S.C. § 1692, *et seq.*), arising from the Foreclosure Action. (Pet.App.23a-27a). Case No. 22-CI-001147 was also dismissed (*id.*) and unsuccessfully appealed by Robinson. (Pet.App.19a-22a). Notably, documents included by Robinson in his Appendix appear to conflate Case No. 17-CI-400112 and Case No. 22-CI-001147 and misrepresent certain motions filed by Robinson and orders entered by the court in those cases. See, *e.g.*, Pet.App.36a-37a, purporting to be an Order entered in Jefferson Circuit Court, Case No. 22-CI-001147 on September 2, 2020, signed by Judge Shaw, and entered by the clerk on November 23, 2020 — which is impossible given that Robinson did not file Case No. 22-CI-001147 until “early March 2022” (Pet.App.24a) and that Judge Jessica Green presided in that case, not Judge Shaw. (Pet.App.23a). Robinson’s omission of any reference to the Foreclosure Action and manipulation of the documents in his Appendix appears to be a deliberate attempt to confuse the Court and obscure the collateral nature of his claims in this case.

regarding the foreclosure and simultaneously moved for discovery under Federal Rule of Civil Procedure 26 and to amend the complaint.” (*Id.*) Robinson’s Amended Complaint alleged that the Judicial Respondents violated his civil rights in the Foreclosure Action. (*Id.*) The Judicial Respondents moved to dismiss Robinson’s Amended Complaint under Fed. R. Civ. P. 12(b)(6) on the basis that: (1) Robinson’s claims were barred by judicial immunity and the Eleventh Amendment; (2) his amended complaint lacked sufficient detail to state a plausible claim for relief; (3) the orders entered in the state court foreclosure action are not subject to collateral attack; and (4) Robinson failed to effectuate sufficient process or service of process on either Judge Shaw or Commissioner Schneider. (Pet.App.14a-17a).

The district court granted the Judicial Respondents’ motion and dismissed Robinson’s claims against them on the basis that (i) “the Tucker Act did not create substantive rights”; (ii) “Robinson’s claims were barred by the *Rooker-Feldman* doctrine to the extent that he challenged the foreclosure judgment itself”; and (iii) “Judge Shaw had judicial immunity from suit, and Master Commissioner Schneider had quasi-judicial immunity from suit.” (Pet.App.2a-3a). The district court also “denied Robinson’s motion for discovery because his action was not exempt from initial disclosures under Rule 26(a)(1)(B), and he had given no justification for early discovery.” (Pet.App.3a). The court further “denied his motion to amend the complaint as moot because he complied with Rule 15(a).” (*Id.*).

The Sixth Circuit affirmed the district court’s judgment, agreeing that Judge Shaw was entitled to absolute immunity, while Commissioner Schneider was entitled to quasi-judicial immunity. (Pet.App.5a-6a).

Moreover, the Sixth Circuit held that Robinson could “not obtain his requested equitable relief from Judge Shaw and Master Commissioner Schneider because he had an adequate remedy at law to redress errors in his forfeiture proceedings by appeals through the state court system and his right to petition for review by the United States Supreme Court.” (Pet.App.6a).

Robinson’s Petition to this Court follows, in which he attempts to address the substance of his claims and not the basis for dismissal.

REASONS FOR DENYING THE PETITION

I. ROBINSON FAILED TO PRESENT THE PRESERVED ISSUES ON APPEAL TO THIS COURT.

Robinson failed to present the preserved issues on appeal to this Court for consideration on whether to grant a writ of certiorari. His Petition lists the Questions Presented as if the courts below addressed the merits of the claims. However, neither the district court nor the Sixth Circuit ever reached the merits of Robinson’s claims because both courts determined that the Judicial Respondents “enjoy absolute judicial immunity” from being sued for their roles in the state court Foreclosure Action. (Pet.App.5a-6a;17a). Indeed, the Sixth Circuit expressly held that its “determination that none of the defendants is subject to suit moots any need to consider [the substance of] Robinson’s due process claim from his amended complaint and the district court’s denial of his motion for discovery.” (Pet.App.7a).

Robinson’s Questions Presented inaccurately present the Court with questions on the merits of his dismissed Amended Complaint. The Judicial Respondents accurately state the Question Presented should

certiorari be granted. “Only the questions set out in the petition, or fairly included therein, will be considered by the Court.” *See* Sup. Ct. R. 14.1(a) (emphasis added).

Robinson asserts that “[a]t the heart of this petition is whether Kentucky’s tax lien process, executed without judicial oversight and in violation of federal due process standards, is constitutional,” and the Sixth Circuit erred in affirming the district court’s dismissal of his claims, “thereby foreclosing review of both the procedural errors and the constitutional violations raised by the petitioner.” (Pet.2). Yet, contrary to this assertion, the Sixth Circuit (and the district court) never reached the merits of Robinson’s claims because both courts dismissed his claims against the Judicial Respondents because they “enjoy absolute judicial immunity.” (Pet.App.5a). Moreover, rather than determining Kentucky’s tax lien process lacked judicial oversight, as stated by Robinson, the Sixth Circuit determined that Robinson’s claim for equitable relief against the Judicial Respondents failed because Robinson “had an adequate remedy at law to redress errors in his forfeiture proceedings by appeals through the state court system and his right to petition for review by the United States Supreme Court.” (Pet.App.6a). Robinson fails to indicate how his Questions Presented on the merits of his Amended Complaint survived the appellate process following dismissal on immunity grounds to reach this Court’s consideration.

As a result, this Court should deny certiorari on the basis that Robinson failed to present a question reflecting the issues preserved on appeal. Robinson’s questions are not properly before the Court, and pur-

suant to Rule 14.1(a), the Court will only review those questions that are “fairly included” in the Petition. Robinson’s request should be denied for his misrepresentation of the question alone.

II. THE PETITION DOES NOT PRESENT ANY QUALIFYING CONCERNS WHICH MANDATE REVIEW ON CERTIORARI.

Robinson fails to demonstrate or even argue compelling reasons sufficient for this Court to grant certiorari. “A petition for a writ of certiorari will be granted only for compelling reasons.” *See Sup. Ct. R. 10.* In determining whether such a compelling reason has been presented, the Court considers whether:

- (a) a United States court of appeals has issued an opinion on the present matter conflicting with that of a separate United States court of appeals or state court of last resort, or the opinion so far departed from accepted judicial proceedings such that this Court’s supervisory power is warranted; (b) a state court of last resort has decided a federal question in such a way that conflicts with another state court of last resort or of a United States court of appeals, or; (c) a state court of last resort or a United States court of appeals decided a question of important federal law that this Court should settle, or decided an important federal question such that its decision conflicts with this Court.

See Sup. Ct. R. 10(a)-(c) .

Robinson purports that his Petition is a “prime opportunity for the Court to clarify the limits of state action concerning tax lien enforcement and to reaffirm

the constitutional protections guaranteed under the Due Process Clause.” (Pet.2). Yet, even taking the most charitable view of his Petition, which is premised on issues that were not preserved on appeal, Robinson has not satisfied any condition necessary for this Court to exercise its discretion to grant certiorari. Robinson identified no: (a) United States court of appeals decision that conflicts with another circuit or a state court of last resort on an important federal question, or that is so far departed from accepted judicial proceedings to warrant exercise of this Court’s supervisory power; (b) federal question decided by a state court of last resort that conflicts with another state or United States court of appeals; or (c) state court of last resort’s determination of an important federal question that has not been settled by this Court or conflicts with decisions of this Court.

In fact, Robinson’s Petition fails to meet even the threshold of Rule 10 subsections (a) and (c) because federal courts are in agreement that judicial and quasi-judicial officials (*i.e.*, master commissioners) performing judicial functions are immune from civil suit for monetary damages. This Court has long recognized that judges are generally immune from civil suits for monetary damages. *See Mireles v. Waco*, 502 U.S. 9 (1991); *Forrester v White*, 484 U.S. 219 (1988). The public benefits of conferring judicial immunity outweigh the occasional unfairness to a litigant because it is of highest importance to the proper administration of justice that a judicial officer is without reservations or apprehensions of personal consequences when exercising their vested authority. *Mireles*, 502 U.S. at 10. If judges were personally liable for erroneous decisions, then the resulting lawsuits would incentivize

judges to avoid entering decisions likely to provoke such suits. *Forrester*, 484 U.S. at 226-27. “Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages.” *Mireles*, 502 U.S. at 11. This Court has a longstanding and emphatic recognition of the doctrine of absolute judicial immunity, which protects a broad range of judicial actions. *Id.*, 502 U.S. at 12-13 (concluding that the judge was immune from liability for allegedly authorizing police officers to use excessive force to bring an attorney into his courtroom).

Robinson failed in any way to show that the decisions in the district court and the Sixth Circuit in this action deviate from the well-recognized principles of absolute judicial immunity enunciated by this Court. Indeed, the United States courts of appeals agree on the issue of judicial immunity. *See, e.g., Johnson v. Turner*, 125 F.3d 324, 333 (6th Cir. 1997) (judicial officers were immune from monetary relief because their actions were not taken in the clear absence of all jurisdiction since they acted within the scope of their statutory functions); *Ashelman v. Pope*, 793 F.2d 1072 (9th Cir. 1986) (extending absolute judicial immunity to a judge who allegedly conspired with a prosecutor to predetermine the outcome of a proceeding); *King v. Myers*, 973 F.2d 354 (4th Cir. 1992) (magistrate judge was absolutely immune from civil liability for directing a police officer to effect warrantless arrest); *Green v. Maraio*, 722 F.2d 1013 (2d Cir. 1983) (recognizing immunity where a judge instructed a court reporter to alter a trial transcript). Similarly, courts recognize that quasi-judicial officers, such as master commissioners, are protected by quasi-judicial immunity for their official actions. *See Hughes*

v. Duncan, 93 F.4th 374, 378-79 (6th Cir. 2024) (citing *Butz v. Economou*, 438 U.S. 478, 514 (1978)).

Robinson also presents no argument that the Kentucky Supreme Court decided a federal question in such a way that conflicts with any other state court of last resort or a United States court of appeals as required to meet the threshold Rule 10 subsection (b).

Even if Robinson tries to relate his arguments to the considerations set forth in Rule 10, he offers no explanation for how the district court’s or Sixth Circuit’s decisions are relevant to the Questions Presented in his Petition. Instead, Robinson purports that certiorari is justified based on the merits of issues that are not before this Court on appeal.

Robinson entirely failed to satisfy the requirements of Rule 10 or provide any related considerations for this Court to grant certiorari in this case as it relates to the issues preserved for review before this Court. The Court has already determined the extent to which absolute judicial immunity shields both judicial and quasi-judicial officers from civil suits, holding that principles of judicial immunity dictate that “[a] judge is entitled to immunity from suit even when accused of acting in bad faith, maliciously, or corruptly.” *Mireles*, 502 U.S. at 11. In observance of these principles, “[j]udicial immunity can be overcome in only two situations—for non-judicial actions, *i.e.*, actions not taken in the judge’s judicial capacity, or for actions, though judicial in nature, which are taken in the complete absence of all jurisdiction.” *Id.*, 502 U.S. at 11-12. Robinson has not and cannot present any argument that the Judicial Respondents’ actions were non-judicial. And, the Sixth Circuit found Robinson’s

“contention that Judge Shaw acted without jurisdiction” to be “frivolous.” (Pet.App.6a).

Thus, this Court should deny certiorari as Robinson failed to provide a sufficiently compelling reason for this Court to review the well-considered Order of the Sixth Circuit, which did not reach the merits of Robinson’s Amended Complaint.



CONCLUSION

For the reasons stated herein, Robinson’s Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Melissa Norman Bork
Counsel of Record
DENTONS BINGHAM GREENEBAUM LLP
101 South Fifth Street, Suite 3500
Louisville, KY 40202
(502) 589-4200
melissa.normanbork@dentons.com

Counsel for Judicial Respondents

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