In the Supreme Court of the United States

Brian P. Carr, *pro se*

Petitioner

versus

Sam Reed, in his official capacity as Secretary of State of the State of Washington, Wanda Briggs in her official capacity as Chair of the State of Washington Commission of Judicial Conduct, and Rob McKenna, in his official capacity as Attorney General of the State of Washington and representing in their official capacity as representatives of the State of Washington and, separately, as private individuals the Honorable Robert L. Harris, John F. Nichols, Barbara D. Johnson, Kenneth Eiesland, Rich Melnick, John Hagensen, Kelli E. Osler, Joel Penoyar, (J.) C. C. Bridgewater, J. Robin Hunt, Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James M. Johnson

Respondents

Petition for a Writ of Certiorari

From the United States Court of Appeals

for the Ninth Circuit

Brian P. Carr, *pro se*
11301 NE 7th St, Apt J5
Vancouver, WA 98684
brian@brian.carr.name
503-545-8357

Questions Presented

1. Does the *Rooker-Feldman* doctrine preclude the federal district courts from hearing U.S. constitutional issues when the state appellate courts knowingly and intentionally conceal direct and clear violations of the constitutions and statutes by the lower state courts?
2. Does the *Rooker-Feldman* doctrine or *res judicata* preclude the federal district courts from hearing U.S. constitutional issues when the state courts had been asked to address those issues but had carefully kept the required facts out of the decisions (i.e. they are not '*inextricably intertwined*'[1])?
3. Does absolute judicial immunity apply when the judge intentionally and knowingly violates their oath of office through direct and clear violations of the constitution or statutes and takes specific actions to conceal the violations?
4. When the state judiciary knowingly and intentionally violates the constitution and statutes and attempts to conceal these violations, what is the appropriate role of the federal district courts?

1 Where the district court must hold that the state court was wrong in order to find in favor of the plaintiff, the issues presented to both courts are inextricably intertwined. *Doe & Assoc. Law Offices v. Napolitano*, 252 F.3d 1026 (9th Cir. 2001)

Table of Contents

Table of Authorities, Constitution and Statutes

Table of Cases and References

Table of Record References

App	Src	Document Description	Page References
A9	WA	Temporary Order for Protection, October 15, 2004	9
	17	Plaintiff's Declaration August 15, 2007	9
	21	Amended Complaint August 15, 2007	9
A12	27-2	Defendants' Exhibit E Opinion May 6, 2006	10
A21	27-2	Defendants' Exhibit E Order January 31, 2007	10
	36	Plaintiff's Declaration September 24, 2007	9, 12
	36	Plaintiff's Exhibit D, Opinion May 6, 2006	10
A1	36-3	Plaintiff's Exhibit B Orders 2004 and 2005	9
	36-4	Plaintiff's Exhibit C Orders 2005	9
	36-5	Plaintiff's Exhibit E Brief, May 2005	9
	56	Plaintiff's Declaration October 15, 2007	9
	56-5	Exhibit G, Petition June 2, 2006	10
A22	63	Order Granting Summary Judgment Nov 5, 2007	7, 9, 13
	66	Notice of Appeal November 15, 2007	7
A42	CA9	Dispositive Memorandum, March 3, 2009	7, 10

Jurisdiction

The federal district court had subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a case arising under 28 U.S.C. § 1367, 42 U.S.C. § 1981, 42 U.S.C. § 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985 (3), and 42 U.S.C. § 1986 as a case seeking to enforce rights and privileges secured by the laws of the United States as authorized by 28 U.S.C. § 2201 (a) and 28 U.S.C. § 2202 as well as under the Fourteenth Amendment of the U.S. Constitution guarantees of Due Process and Equal Protection of the Law. The Ninth Circuit Court of Appeals had jurisdiction to hear this appeal pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 1292 as the trial court issued a final decision on November 5, 2007[2] and a Notice of Appeal was filed on November 15, 2007.[3] The Court of Appeals issued a despositive memorandum on March 3, 2009,[4] a Motion for Rehearing was submitted on March 13, 2009 and this motion was denied on March 20, 2009. This petition was filed and served in accordance with U.S. Supreme Court Rule 29 with this court having jurisdiction under 28 U.S.C. § 1254 (1) and 28 U.S.C. § 1651 (a). Proof of service of this petition is provided in the Certification on page 17.

Preliminary Statement

The Ninth Circuit Court's decision that Mr. Carr's case should be dismissed without prejudice (allowing him to refile in another forum) was a plausible interpretation of the *Rooker-Feldman* doctrine.[5] However, the Washington state judiciary has widespread violations of the rule of law with the state appellate courts concealing direct and clear violations of the constitutions and statutes. While such situations were mentioned peripherally as exceptions when the *Rooker-Feldman* doctrine was first developed, they have never been defined by this court and this court is the only court which can clearly establish how this lawlessness by state courts should be dealt with.

While this petition focuses on a relatively arcane restriction of the Washington state constitution, it invalidates the jurisdiction of the original decisions and is a direct and clear violation. There

2 WAWD 3:07-cv-05260-RJB 63 Order Granting Summary Judgment Nov 5, 2007.
3 WAWD 3:07-cv-05260-RJB 66 Notice of Appeal November 15, 2007.
4 CA9 07-35962 Dispositive Memorandum, March 3, 2009
5 CA9 07-35962 Dispositive Memorandum, March 3, 2009

are numerous other violations of statutes and the constitution, but they are left as matters for the federal district court to resolve as a trier of fact upon a review of all the evidence in the matter.

Statement of Facts

In the state of Washington, the District Court is a court of limited jurisdiction[6] and can process many RCW 26.50 (domestic violence) requests, but in cases where there is a shared residence (as in the cases cited herein), the Superior Court, the court of general jurisdiction,[7] must hold the hearing and issue the Order (RCW 26.50.020 (5) (c)). In Clark County, the Superior Court chose not to hear these cases, but delegated the authority to the District Court.[8] Unfortunately there does not appear to be any legal way to delegate these matters.

While the Superior Court can appoint commissioners under the Washington state constitution to process these matters[9], these constitutional commissioners can not 'exceed three in number' in any given county.[10] There were already two constitutional commissioners and there were six District Court judges. The Washington state statutes also provide for Family Court commissioners under RCW 26.12 who are not limited in number, but have extremely limited jurisdiction[11] and can only complete the initial portions of RCW 26.50 requests, ex parte hearings and temporary restraining orders.[12] When faced with this dilemma the Clark County Superior Court apparently decided to simply ignore the numeric limit on constitutional commissioners and appointed eight such commissioners.[13]

This violation of the numeric limits of the constitution was further aggravated by the Superior Court's decision to try to keep these appointments secret. They put in place barriers to appeal so

6 RCW 3.
7 RCW 2.08 and Washington State Constitution, Article 4, Section 6.
8 *A Process Evaluation of the Clark County Domestic Violence Court* by Kleinhesselink and Mosher, Washington State University Vancouver, 2003.
9 *State v. Karas* - 108 Wn. App. 692 (2001)
10 Washington State Constitution, Article 4, Section 23
11 *Ordell v. Gaddis*, 99 Wn.2d 409 (1983)
12 RCW 26.12.060 (6) and RCW 2.24.040
13 WAWD 3:07-cv-05260-RJB 36 Plaintiff's Declaration September 24, 2007 ¶6, pg 5-26, 36-3 Plaintiff's Exhibit B Orders 2004 and 2005, and 36-4 Plaintiff's Exhibit C Orders 2005.

that their violations of the constitution would not be exposed.[14] For example, while the illicit Orders were signed, the records in the matter never indicated what person signed the order.[15] However, in an environment where appeals were blocked and without proper jurisdiction, Clark County District Court made numerous other 'shortcuts' in the process such as omitting the required ex parte hearings.[16]

Domestic violence cases are problematic due to the urgency of a quick decision and the lax requirement of only probable cause. In such cases some errors are virtually certain especially with the shortcuts taken by the District Court. There were such errors in the two cases which involved Mr. Carr, the plaintiff-petitioner. Mr. Carr was able to overcome the barriers to appeal and document the appointments of four constitutional commissioners in both 2004 and 2005.[17]

The Washington state Court of Appeals, Division II, was faced with a serious dilemma with this appeal.[18] Washington state case law is quite clear about the effect of invalid orders (such as the appointment of commissioners beyond the numeric limit of the constitution) declaring that any resulting orders and arrests are themselves void ab initio.[19] To rule consistent with law would be highly disruptive and overturn several years of domestic violation orders (likely over a thousand orders) as well as any subsequent arrests and convictions. However, the only alternative was to ignore obvious violations of the state constitution, itself a violation of their oath of office. Sadly, the Court of Appeals chose the latter and intentionally and knowingly concealed the violations of the state constitution and violated their oaths of office.[20]

---

14 WAWD 3:07-cv-05260-RJB 17 Plaintiff's Declaration August 15, 2007 ¶14-16, WAWD 3:07-cv-05260-RJB 21 Amended Complaint August 15, 2007 ¶ 34-42, and WAWD 3:07-cv-05260-RJB 36 Plaintiff's Declaration September 24, 2007 ¶2-5

15 Appendix A-9 through A11, a comparison of the signature on A-11 with the signature on A-2 clearly indicates that is was Clark County District Court Judge Eiesland who signed the Order of October 15, 2004, but there was decision stating this until the federal court made this declaration, A-23, lines 25-28

16 RCW 26.50.070 (3), WAWD 3:07-cv-05260-RJB 36 Plaintiff's Declaration September 24, 2007 ¶3, and WAWD 3:07-cv-05260-RJB 56 Plaintiff's Declaration October 15, 2007 ¶7.

17 WAWD 3:07-cv-05260-RJB 36 Plaintiff's Declaration September 24, 2007 pg 5-26, 36-3 Plaintiff's Exhibit B Orders 2004 and 2005, and 36-4 Plaintiff's Exhibit C Orders 2005.

18 WAWD 3:07-cv-05260-RJB 36-5 Plaintiff's Exhibit E Brief, May 2005.

19 *Barker v. Barker*, 31 Wn. (2d) 506 (1948) and *Beyerle v. Bartsch*, 111 Wash. 287 (1920).

20 A-12, WAWD 3:07-cv-05260-RJB 36 Plaintiff's Exhibit D, Opinion May 6, 2006 pg 27-35, WAWD 3:07-cv-05260-RJB 27-2 Defendants' Exhibit E, Opinion May 6, 2006 pg 52-59.

Mr. Carr submitted a Petition for Review to the Washington state Supreme Court[21] which presented them with the same dilemma as faced by the Court of Appeals. The state Supreme Court also chose to ignore violations of the state constitution and violate their oaths of office.[22]

In apparent recognition that the previous appointments of all the Clark County District Court judges as constitutional commissioners were not valid, in 2006, 2007, and apparently through the present, the Clark County Superior Court instead appointed all the Clark County District Court judges as Family Court commissioners under RCW 26.12. These commissioners are not limited in number, but have extremely limited jurisdiction[23] and can only complete the initial portions of RCW 26.50 requests, ex parte hearings and temporary restraining orders[24]. RCW 26.50 matters have continued to be heard by the Clark County District Court as Superior Court matters without valid jurisdiction, but the lack of jurisdiction is different. Rather than the Clark County Superior Court hearing selective RCW 26.50 matters as required by statute, they have continued ignoring the rule of law, simply ignoring inconvenient requirements of the constitution and statutes.

The Federal District Court granted judicial immunity to all the judges and held that the injunctive relief sought was barred by the *Rooker-Feldman* doctrine and *res judicata*. The Ninth Circuit Court upheld these decisions but modified the order to dismiss without prejudice allowing Mr. Carr to refile in other forums.[25] In the meantime, a similar complaint about the lack of jurisdiction to issue the order was brought in Oregon courts where Mr. Carr had been arrested based on the Washington order, though charges were never filed due to a lack of evidence that Mr. Carr was in violation of the order. This case was appealed through the Oregon Supreme Court (A132012 and S055534) and the Oregon Federal District Court (3:08-CV-398-HA) made a similar decision which is under appeal before the Ninth Circuit Court (08-35902).

21 WAWD 3:07-cv-05260-RJB 56-5 Exhibit G, Petition of June 2, 2006.
22 A-21, WAWD 3:07-cv-05260-RJB 27-2 Defendants' Exhibit E, Order January 31, 2007 pg 60.
23 *Ordell v. Gaddis*, 99 Wn.2d 409 (1983)
24 RCW 26.12.060 (3) and RCW 2.24.040.
25 CA9 07-35962 Dispositive Memorandum, March 3, 2009

Argument

1. ***Rooker-Feldman*** Doctrine and ***res judicata***

Washington State Constitution, Article 4, Section 23 states

> There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, *not exceeding three in number*, who shall have authority to perform like duties as a judge of the superior court at chambers....[26]

This numeric limit was affirmed by the voters in 1981 and the Washington Supreme Court confirmed that the limit meant just what it said.[27] However, the defendant-respondent Harris signed orders appointing eight constitutional commissioners[28] including all the judges of the Clark County District Court.[29]

These appointment orders were made in violation of the Washington constitution and were invalid for that reason. They violated the rights of the plaintiff and numerous other Clark County residents' right to be heard by a judge rather than a commissioner. Further, Washington law is clear on the effect of Orders made when the court did not have jurisdiction. An order can be 'declared void for the reason that the ... court did not have jurisdiction to enter such decree.'[30] It is also well established that all subsequent actions based on the void order are void ab initio or void from the beginning.[31] Any Orders for Protection, arrests and convictions based on the invalid appointment Orders are similarly void.

When the Washington Court of Appeals was presented with incontrovertible evidence that the Clark County Superior Court Commissioners were appointed in violation of the constitutional numeric limits and a challenge to their individual jurisdiction, the Washington Court of Appeals stated in its unpublished opinion:

---

26 Italics added by Mr. Carr for emphasis.
27 *Ordell v. Gaddis*, 99 Wn.2d 409 (1983)
28 http://web.archive.org/web/20040406151256/www.clark.wa.gov/courts/superior/judges.html
29 *A Process Evaluation of the Clark County Domestic Violence Court* by Kleinhesselink and Mosher, Washington State University Vancouver, 2003.
30 *Beyerle v. Bartsch*, 111 Wash. 287 (1920) and *Barker v. Barker*, 31 Wn. (2d) 506 (1948).
31 *Beyerle v. Bartsch*, 111 Wash. 287 (1920)

> Carr argues that his due process rights and his right to have a judge adjudicate his case were violated because Clark County allegedly appointed more than three court commissioners. However, a family law commissioner is not a "commissioner" within the meaning of the constitutional provision limiting the number of court commissioners in counties...[32]

When faced with a clear and direct challenge to the individual jurisdiction of the deciding authority, the appellate court avoided any mention of what individual decided any decision and instead made an irrelevant comment about family law commissioners when all of the orders before them were for constitutional commissioners which are limited in number as they noted.

In face of intentional violations of the constitution and statutes and efforts to conceal these violations by the state appellate courts, these are exactly the circumstances when the *Rooker-Feldman* doctrine and *res judicata* do not apply. According to *Allen v. McCurry*, 449 U. S. 90 (1980):

> In reviewing the legislative history of [42 U.S.C. §] 1983 in *Monroe v. Pape*, [365 U.S. 167 (1961)] supra, the Court inferred that Congress had intended a federal remedy in three circumstances: where state substantive law was facially unconstitutional, where state procedural law was inadequate to allow full litigation of a constitutional claim, and where state procedural law, though adequate in theory, was inadequate in practice. 365 U.S., at 173-174. In short, the federal courts could step in where the state courts were unable or unwilling to protect federal rights. Id., at 176. This understanding of [42 U.S.C. §] 1983 might well support an exception to res judicata and collateral estoppel where state law did not provide fair procedures for the litigation of constitutional claims, or where a state court failed to even acknowledge the existence of the constitutional principle on which a litigant based his claim.[33]

These are the circumstances where 42 U.S.C. § 1983 overrides *res judicata* and collateral estoppel as the state courts intentionally and knowingly violated their oath of office and prevented the appeal of serious constitutional claims through fabrications of the record and raising issues unrelated to the case at hand while remaining silent on the actual issues raised.

32 WAWD 3:07-cv-05260-RJB 36 Plaintiff's Declaration September 24, 2007 pg34.
33 Italics and full references were added by the plaintiff-petitioner to comply with FRAP 32 (a) (6)

2. No Conflict with State Decisions

The federal district court claimed a lack of jurisdiction based on the *Rooker-Feldman* doctrine citing:

> Any issue raised in the suit that is "inextricably intertwined" with an issue resolved by the state court in its judicial decision is also barred from consideration by the federal court *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003) [34]

However, by the criteria established in *Doe & Assoc. Law Offices v. Napolitano*, 252 F.3d 1026 (9th Cir. 2001); *Samuel v. Michaud*, 980 F. Supp 1381, 1411 (D. Idaho 1996) of:

> Where the district court must hold that the state court was wrong in order to find in favor of the plaintiff, the issues presented to both courts are inextricably intertwined.

but this is clearly not the case. The decision of the state appellate court were facially correct, but did not address the facts or issues of the case before them. By carefully keeping the identity of deciding authorities out of the record in order to conceal their lack of individual jurisdiction, the state courts insured that their decisions were not 'inextricably intertwined' with a challenge to their individual jurisdiction; there were no conflicting facts.

3. Judicial Immunity

The federal district court granted absolute judicial immunity to all the defendants cited as private individuals.[35] There were separate arguments as to why each of the defendants should not receive judicial immunity, but they all had the common element that knowing violations of the law and a judge's oath of office should not be protected.

There is an apparent lack of recent decisions concerning judicial immunity by this court. In the ground breaking decision of *Stump v. Sparkman*, 435 U.S. 349 (1978), this court relied heavily on *Bradley v. Fisher*, 80 U.S. 335 (1871), from more than 100 years earlier, but ignored *Randall v. Brigham*, 74 U.S. 523 (1869) from just two years earlier. The common themes and contrasts between these three decisions is revealing. The underlying theme for these cases as well as *Forrester v. White*, 484 U.S. 219 (1988) appears to be that in all cases the judge who was granted immunity was making a good faith effort to uphold their oath of office and do the right thing.

34 WAWD 3:07-cv-05260-RJB 63 Order Granting Summary Judgment Nov 5, 2007 pg7ln28
35 WAWD 3:07-cv-05260-RJB 63 Order Granting Summary Judgment Nov 5, 2007 pg12-14.

After the fact, it was found that their efforts were sometimes misguided, unfounded (no jurisdiction) and just plain wrong (illegal). However, judges (and especially trial judges) have to make tough decisions every day and don't have the time to carefully research and consider every decision (cases need to move forward to some conclusion, sometimes in a very short time frame). Because of these difficulties, judges have been granted broad, special immunity from civil damages, but this court has struggled with defining the limits of this immunity (as the contrasts between the four cases clearly shows). In *Forrester* there is a suggestion of the basis of these limits with:

> *Most judicial mistakes and wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability.*

Of all the elements of due process, the right of appeal is certainly the most fundamental as it allows for the correction of the common errors which occur with even a good faith effort. However, efforts to conceal actions and interfere with the right of appeal strike at the very foundation of the rule of law. They are also indicative of intentional and knowing violations of the basic oath of office for judges. Knowing and intentional violations of the oath of office are never normal judicial acts which would be afforded the absolute immunity from civil damages. The critical factor is an effort to conceal the improper or illegal actions, not the illegal or improper actions themselves which could be simple error or even negligence.

According to this criteria, if a judge in open court, before all parties and their attorneys, and on the record were to make an offer of a favorable (and legal) finding to one party in exchange for sexual favors and a threat of an unfavorable finding if the favors were not provided, the judge would not be subject to civil damages,[36] but there is also virtually no possibility that the offending judge would actually be able to carry out the threatened result. However, if the same offer were made in an improper ex parte communication, efforts were made to keep the offer secret, and these elements were proved then the offending judge would be subject to civil damages.

According to this standard, each of the defendants cited as private individuals knowingly and intentionally violated their oath of office which is, intrinsically, not a normal judicial act and,

36 A finding of diminished mental capacity might be appropriate under these circumstances.

hence, judicial immunity is not applicable.

4. Federal District Court Role

Given the large number of appellate courts in the United States and the larger number of decisions entered therein, it is not possible for this court to review the full case history for each such decision and correct decisions which are facially correct but which are actually intentional efforts to conceal underlying facts and violations of statutes and laws. Indeed, it was the federal district court in this matter which identified the deciding individuals for the contested state decisions. How can individual jurisdiction be contested when the state courts knowingly and intentionally conceal this information? If the state courts are making a concerted effort to conceal their violations of the law, there needs to be a forum where the contested facts can be adjudicated. Only the federal district courts have the resources to consider the evidence, allowing all parties the opportunity to present their case, and make a determination of an intentional concealing of the facts of the underlying matter. Hopefully with such safeguards in place, these will become rare occurrences.

Conclusion

There are several issues raised in this matter which are controversial, disruptive and politically unpopular. This court has little to gain from dealing with these issues; any decision would be controversial and unpopular. It would be much easier for this court to simply hold its nose, look away, and deny the requested writ. Indeed ten other courts have done just that and worse with these issues.

The problem with this is that it is all too common. When the judiciary gets into the habit of ignoring the law when it is inconvenient, the people of the U.S. will come to realize that they do not really live under a government of law, but instead a 'strong man rules' government. When the other parts of the government come to that realization, those parts with more intrinsic power, such as the military, will follow suit and we will soon have a military dictatorship.

Our government of law was founded with great sacrifice by patriots who risked life and limb to

create something better. For the last 200 years our government of law has been maintained by unsung patriots who supported and upheld the law even when it was difficult and costly, sacrificing of themselves as needed to preserve the rule of law. This court is asked to continue that tradition and take the tough stand, addressing the central issues as they are and doing what the court can to preserve our government of law.

U.S. v. Lee 106 U.S. 196, (1882) states

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.
>
> It is the only supreme power in our system of government, and every man who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes on the exercise of the authority which it gives.

The defendants claimed that they can ignore constitutionally mandated restrictions and actions and violate the constitutions, statutes, and their oaths of office with impunity, but the members of the Washington state judiciary are not permitted to simply ignore the rule of law. Mr. Carr asks that this court to remand this matter to the federal district court, directing that the trial court take those actions necessary to return the Washington state judiciary to the rule of law.

Respectfully submitted, April 17, 2009 (Vancouver, WA).

_____

Signature of Plaintiff-Appellant
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357

Certification

I, Brian P. Carr, am the petitioner in this matter and certify under oath and penalty of perjury that true and accurate copies of this petition as well as the preceding Motion to Proceed in Forma Pauperis were served on the respondents on this date by mailing with the United States Postal Service using First Class Mail. A copy of these papers were mailed to each counsel for the respondents at:

Bernard F. Veljacic, WSBA #28702
Attorney for Defendants
Clark County Prosecuting Attorney, Civil Division
PO Box 5000
Vancouver WA 98666-5000

and

JOHN R. NICHOLSON, WSBA #30499
Attorney for Defendants
Assistant Attorney General
800 Fifth Avenue, Suite 2100
Seattle, WA 98104

Further, the record appendix was previously mailed in a like fashion on March 21, 2009.

I certify under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct.

Respectfully submitted, April 17, 2009 (Vancouver, WA).

_____
Signature of Petitioner
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357