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Supreme Court Update

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Discussed herein are five criminal law and procedure cases heard by the Supreme Court in its 2022 Term that do not relate *solely* to federal criminal practice or federal habeas practice. It includes civil cases announcing rules potentially germane to criminal appellate practice in Texas. The two cases decided this Term are discussed first, followed by a description of the issues presented in the three cases still awaiting decision at the time of writing.

A terrific resource for all of these cases, and to track the Court's jurisprudence in general, is SCOTUSblog.com, which, for each case on which certiorari is granted, compiles the decision below, the briefs, the transcript of oral argument, and the Court's opinion, as well as expert commentary.[1]

I. Reed v. Goertz, 143 S. Ct. 955 (2023): Due Process, Accrual of Procedural Due Process Claim Challenging Postconviction DNA Testing Access

Background and Issue: Rodney Reed was convicted in 1998 of the murder of Stacey Stites. Reed has long maintained his innocence. The primary evidence against Reed at his trial was the DNA profile of sperm found in Stites's vaginal tract that matched Reed's. Reed's explanation was that he and Stites had been secretly carrying on an affair, notwithstanding Stites's engagement to Jimmy Fennel, a local police officer. Reed was convicted at trial and sentenced to death.

Since at least 2014, Reed has sought to obtain DNA testing of crime scene evidence that was never forensically examined, arguing that DNA profiles of that evidence could point to a new suspect – with non-forensic evidence amassed that Reed argues points to Jimmy Fennel's guilt. Reed used Article 64 of the Texas Code of Criminal Procedure to seek an order for testing from the state courts, with the trial court first denying his request in 2014, the Court of Criminal Appeals remanding for further findings in 2016, and the Court of Criminal Appeals ultimately affirming the denial in April 2017 and, finally, denying Reed's request for rehearing in October of that year. In August 2019, Reed commenced litigation in federal court pursuant to 42 U.S.C. § 1983, claiming that to the extent the DNA testing provision of Article 64 does not permit him access to testing that statute denies him his right to procedural due process – a claim recognized in *Skinner v. Switzer*, 562 U.S. 521 (2011). His suit named as the defendant Bryan Goertz, the Bastrop County District Attorney who, the suit alleges, is the custodian of the evidence Reed seeks to test, and it seeks a declaration that the Court of Criminal Appeals's interpretation of Article 64 violates Due Process. The Fifth Circuit Court of Appeals rejected Reed's claim on the ground that it was barred by the governing two-year statute of limitations, which the court held began to run in 2014, when the state district court first denied the testing request, and not in 2017, with the Court of Criminal Appeals denied rehearing on their affirmance of the district court ruling. Reed sought, and the Supreme Court granted, certiorari to decide "whether the statute of limitations for a § 1983 claim seeking DNA testing of crime-scene evidence begins to run at the end of state court litigation denying DNA testing,

[1] *See*, SCOTUSblog, http://www.scotusblog.com.

including any appeals . . . or whether it begins to run at the moment the state trial court denies DNA testing, despite any subsequent appeal."

Held: (6-3 for petitioner, Kavanaugh, J.; Justices Thomas, Alito, Gorsuch dissenting) A brisk six-page opinion holds that Reed's § 1983 action did not accrue until the end of the state court litigation, which in his case came when the Court of Criminal Appeals denied hearing in October 2017. Therefore, Reed's claim was not barred by the two-year statute of limitations.

Justice Kavanaugh begins the opinion by quickly dispatching with three of the state's "threshold" arguments against the Court's jurisdiction in this case, namely standing, sovereign immunity, and the *Rooker-Feldman* abstention doctrine. 143 S. Ct. 955, 960—61. First, Mr. Reed had standing to bring his suit, contrary to Texas's contention, because the injury he claimed – unlawful denial of access to evidence for DNA testing – could be redressed by the named defendant – the prosecutor who denied access to the evidence – abiding by a court order declaring the denial to be unconstitutional. Second, sovereign immunity was no bar to the suit because Reed sought declaratory relief against a state official rather than damages and therefore comes squarely within the doctrine of *Ex parte Young*, 209 U. S. 123, 159–161 (1908). Finally, the *Rooker-Feldman* abstention doctrine that bars federal courts from adjudicating challenges to state court judgments is not implicated by Reed's claim, the Court holds, because he challenges *not* the adverse judgment of the Court of Criminal Appeals itself, but rather the underlying DNA testing statute that the decision authoritatively construes.

On the merits, the majority concludes that the question of the timeliness of Reed's suit is resolved by straightforward application of rules of accrual: The statute of limitations does not begin to run until a plaintiff has a "complete and present cause of action." *Id.* at 961 (citing *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal*. 522 U. S. 192, 201 (1997)). Mr. Reed's procedural due process claim would not accrue until both elements of the claim had been met, namely (1) deprivation by state action of a protected interest in life, liberty, or property, and (2) inadequate state process. *Id*. Reed's argument as to the second element is that the Court of Criminal Appeals's authoritative construction of Article 64 is unconstitutional because it conditions his state-created liberty interest in proving his innocence with DNA evidence on compliance with fundamentally unfair procedures. His cause of action was therefore not "complete and present" until the Court of Criminal Appeals concluded the process of rending the challenged construction of the statute, which did not occur until the conclusion of the appellate litigation – specifically, with the CCA's denial of rehearing. *Id*.

The majority asserts that this result is reinforced by considerations of federal and judicial economy. *Id.* at 962. If Reed's claim accrued after the *trial* court's holding rather than the CCA's holding, then that would result in duplicative state and federal court proceedings. *Id.* Further, beginning federal litigation before the end of the state court appeal would deprive the Texas courts of the opportunity to cure the due process flaw without federal involvement. *Id.*

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