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Many clients simply don't appreciate the structural differences between state and federal court, and the importance of staying in one lane or the other. (Depositphotos.com image)

Briefly: Sometimes you can't get there from here

By: Eric J. Magnuson and Vidya Dindiya | June 29, 2021


Creativity sometimes works out, but even extreme creativity may not be enough in some cases. A tenacious state court litigant in a criminal case might be able to seek relief in federal court by habeas, challenging the constitutionality of his or her conviction. Not so in the civil world, although recently there was an interesting try.

Emem Ufot Udoh v. Clerk of Minn. Appellate Courts, No. 21-CV-1031 (PJS/HB) (D. Minn. 2021) was a federal case decided here in Minnesota. Udoh sought post-conviction relief from a state court conviction after a jury found him guilty of sexually abusing his two stepdaughters. The state District Court granted Udoh's request for an evidentiary hearing based on his claim that his stepdaughters had recanted their trial testimony, but denied relief on all other claims. *Id.* Udoh immediately appealed the court's decision, but the Minnesota Court of Appeals dismissed Udoh's appeal as premature, since not all issues had been resolved in the post-conviction proceedings.

A few months later, the state court issued a second order denying relief on Udoh's sole remaining claim. Udoh filed another notice of appeal, but used the file number of the previously dismissed appeal. The Minnesota Clerk of Appellate Courts rejected his filing.

Udoh then petitioned the Minnesota Court of Appeals to direct the clerk to accept his appeal. The court did so, and ordered him to file a brief within 60 days of delivery of final transcript. Despite having gotten to the appellate court, Udoh did not file the brief as directed. As a result, the court dismissed his appeal. Ever determined, Udoh filed a motion to reinstate the appeal, which the court of appeals denied.

Udoh then sought further review by the Minnesota Supreme Court. However, he once again missed the filing deadline, and the Supreme Court denied the petition as untimely.



Never one to say die, Udoh then filed suit in the United States District Court for the District of Minnesota, asking for a writ of mandamus pursuant to 28 U.S.C. § 1361 to compel the Minnesota Court of Appeals to accept his untimely brief.

The federal court was no more helpful to Udoh than the state courts had been. A federal court can issue a writ of mandamus to compel a federal officer, employee, or agency to perform a duty, but it lacks the authority under that statute to compel any action by state officers of agencies. *Van Sickle v. Holloway*, 791 F.2d 1431, 1436 n.5 (10th Cir. 1986). The federal magistrate judge recommended that his suit be dismissed.

Not so fast, said Udoh on appeal to the District Court judge. Udoh switched horses, and claimed that he really meant to base his claim on the All Writs Act, 28 U.S.C. § 1651 and pursuant to 42 U.S.C. § 1983, now claiming that the state had violated his constitutional right of access to the courts. Unfortunately, this was not an argument that he had raised before the magistrate judge, and the District Court was not open to entertaining it. The court overruled Udoh's objection.

But the District Court did not stop there. It explained that even if he had pleaded the right statute, Udoh could not get the relief that he sought because he could not state a claim for relief under either statute. "[T]his Court has no authority to issue a writ of mandamus telling a state court how it must perform its judicial duties." Udoh, No. 21-CV-1031 (PJS/HB) at 3. More to the point, state courts are protected by state immunity under the Eleventh Amendment. In sum, Udoh could not get what he wanted from the federal court.

As this procedural history of Udoh's post-conviction proceedings makes clear, the present action is essentially an appeal of a state-court order "masked as a § 1983 action." *Robins v. Ritchie*, 631 F.3d 919, 925 (8th Cir. 2011). Under the Rooker-Feldman doctrine, federal District Courts lack subject-matter jurisdiction over cases like this one, "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the District Court proceedings commenced and inviting District Court review and rejection of those judgments."

* * *

The Minnesota Court of Appeals dismissed Udoh's petition for review, then denied Udoh's motion to reinstate the appeal, because Udoh did not comply with a deadline set by that court. If Udoh wishes to have that result overturned by a federal court, he must obtain review from the Supreme Court of the United States. This Court has no authority — through a writ of mandamus, a federal civil rights action, or otherwise — to "overturn" the decision of the Minnesota Court of Appeals to dismiss Udoh's petition for review. Udoh, No. 21-CV-1031 (PJS/HB) at 3 (internal citations omitted).

But even then, the game was not over. Udoh also sought damages from the Minnesota Clerk of Appellate Courts in his personal capacity, a claim that the federal court concluded it could entertain. To the extent that Udoh was asserting a "challenge [to] the actions taken by [the clerk] ... rather than the state court orders themselves," Udoh's claim was within the court's

jurisdiction to consider. *Caldwell v. DeWoskin*, 831 F.3d 1005, 1009 (8th Cir. 2016) (internal quotations omitted). But taking jurisdiction is not the same as recognizing the validity of a claim. On the merits, the court concluded that the refusal of the state court clerk of appellate court's refusal to file Udoh's untimely brief did not deprive him of his right of access to the courts under the First or 14th Amendments. "Udoh had the right to ask the Minnesota Court of Appeals, the Minnesota Supreme Court, and the United States Supreme Court to fix that mistake. No one deprived Udoh of his right of "access" to the state courts." Udoh, No. 21-CV-1031 (PJS/HB) at 9 (internal citations omitted).

To close the loop, the federal court pointed out that Udoh still had a possibility of further recourse. "If Udoh wishes to have that result overturned by a federal court, he must obtain review from the Supreme Court of the United States." *Id.* at 7.

So why have we spent so much time reviewing a case which, while interesting in its details, seems pretty narrow in its legal significance?

In our experience, many clients simply don't appreciate the structural differences between state and federal court, and the importance of staying in one lane or the other. The two systems exist side-by-side, but for the most part, operate independently of one another. There are relatively few occasions when a federal District Court can review and rule upon actions taken by a state court. Habeas proceedings specifically authorized by statute and the Constitution are one such exception.

In almost every other case, however, the only avenue of federal review from a state court decision is to go to the United States Supreme Court. But that court has little interest in reviewing matters of state law, whether they are substantive or procedural. In the end, litigants must make their case in the jurisdiction where their issues start, and cannot turn to another jurisdiction for help.

A couple of postscripts.

First, we think the federal District Court judge, Hon. Patrick Schiltz, should be commended for his patience and willingness to address on the merits and in some detail the issues raised by Udoh's unsuccessful efforts. A significant component of justice is being heard, even if your prayer for relief is denied. Mr. Udoh can't complain that his arguments were ignored. They were addressed, and he knows why they were rejected.

Second, as noted above, Mr. Udoh is not one to give up. On April 23, 2019, he filed a petition for certiorari with United States Supreme Court. And one should not dismiss out of hand the prospects of a pro se litigant making any impression on the Supreme Court. Just remember that Clarence Gideon, a man with an eighth-grade education, filed a successful handwritten petition with the Supreme Court asserting his right to counsel under the Sixth Amendment. Unfortunately, Mr. Udoh's petition was denied on June 3, 2019.

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