UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

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MOREHEI PIERCE, a/k/a Christopher
Pierce,

    Plaintiff - Appellant,

v.

KRIS KOBACH, Attorney General;
MARK DUPREE, District Attorney,

    Defendants - Appellees.

No. 23-3121
(D.C. No. 5:23-CV-04028-JWB-ADM)
(D. Kan.)

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ORDER AND JUDGMENT[*]

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Before **BACHARACH**, **KELLY**, and **MORITZ**, Circuit Judges.[**]

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Plaintiff-Appellant Morehei Pierce, appearing pro se, appeals from the district

court's dismissal of his civil rights action seeking money damages. 42 U.S.C.

§ 1983. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

In July 1993, Mr. Pierce pled guilty to kidnapping and aggravated robbery and

was sentenced to consecutive fifteen-year terms. In 2000, he filed two habeas

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[*] This order and judgment is not binding precedent, except under the doctrines
of law of the case, res judicata, and collateral estoppel. It may be cited, however, for
its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[**] After examining the briefs and appellate record, this panel has determined
unanimously that oral argument would not materially assist in the determination of
this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore
ordered submitted without oral argument.

petitions under 28 U.S.C. § 2254 that were consolidated for decision and denied on the merits. Pierce v. Nelson, No. 5:00-cv-03240-DES, ECF No. 9 (D. Kan. Jan. 31, 2001). He sought to appeal, but this court denied his application for a COA and dismissed his appeal. Pierce v. Nelson, 16 F. App'x 979, 980 (10th Cir. 2001) (unpublished). Subsequently, Mr. Pierce filed numerous challenges to his conviction and sentence and this court imposed filing restrictions.

In this action, Mr. Pierce sued the Kansas attorney general and the Wyandotte County district attorney alleging that the state district court erroneously dismissed his request for exoneration after being paroled. R. 4–10. A federal magistrate judge recommended dismissal of Mr. Pierce's complaint for lack of jurisdiction under the Rooker-Feldman doctrine, and alternatively because the complaint alleges no facts implicating defendants. Id. 19–21. Mr. Pierce timely objected but only stated that the magistrate judge's report concluded that Kansas is not liable and the defendants have information, facts, and knowledge ostensibly resulting in liability. Id. 26. The district court found this objection lacked specificity and left Mr. Pierce no entitlement to appellate review. In turn, the district court also agreed with the magistrate judge's reasoning and dismissed the complaint. Id. 29–30.

From the outset, we note that under the umbrella of challenging the state dismissal, in this § 1983 action Mr. Pierce also seeks $12.5 million in damages incurred by his allegedly unlawful conviction after being paroled. R. 7–8. Such a claim would appear to be barred given he does not allege that his conviction "has been reversed on direct appeal, expunged by executive order, declared invalid by a

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state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Heck v. Humphrey, 512 U.S. 477, 486–87 (1994).

In any event, given the lower court did not address Heck's bar, we turn to waiver. This court recognizes a firm waiver rule: "a party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve" appellate review. United States v. 2121 E. 30th St., 73 F.3d 1057, 1060 (10th Cir. 1996). The objection must be "sufficiently specific to focus the district court's attention on the factual and legal issues that are truly in dispute." Id.

Here, Mr. Pierce's objections lacked any specificity with respect to the magistrate judge's analysis concerning jurisdiction and the complaint's inability to state a claim. Thus, the firm waiver rule applies unless the interests of justice dictate otherwise.[1] Johnson v. Reyna, 57 F.4th 769, 778 (10th Cir. 2023). To determine the applicability of the interest-of-justice exception, we consider three factors: "[1] a pro se litigant's effort to comply, [2] the force and plausibility of the explanation for his failure to comply, and [3] the importance of the issues raised." Id. (alterations in original) (quoting Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010)). The third factor is akin to a plain error analysis. See Morales-Fernandez v. I.N.S., 418 F.3d 1116, 1119–20 (10th Cir. 2005).

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[1] The firm waiver rule is also inapplicable where "a pro se litigant has not been informed of the time period for objecting and the consequences of failing to object." Morales-Fernandez v. I.N.S., 418 F.3d 1116, 1119 (10th Cir. 2005). Here, Mr. Pierce was given the proper warning and timely filed.

Mr. Pierce offers no explanation for his failure to specifically challenge the magistrate judge's legal analysis. On appeal, and in his response to an order to show cause as to why he has not waived appellate review, he simply states he made "specific objections" because the Midwest Innocence Project said he was innocent of the underlying convictions. Aplt. Br. at 3; Aplt. Response to Order at 1. This does not explain his failure to challenge the actual analysis conducted by the magistrate judge here, an analysis untethered to his underlying guilt or innocence. Thus, the first two factors cut against him.

As to the third factor, we see no plain error. Here, Mr. Pierce, a state court loser, seeks review of his state court dismissal — a claim federal courts, other than the Supreme Court, have no jurisdiction to adjudicate. See Graff v. Aberdeen Enterprizes, II, Inc., 65 F.4th 500, 514–15 (10th Cir. 2023). And to be sure, the complaint makes no factual allegations as to the defendants. It exclusively attacks the state court dismissal as wrongful. Thus, the firm waiver rule bars Mr. Pierce's appeal and no exception applies.

AFFIRMED.

> Entered for the Court
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> Paul J. Kelly, Jr.
> Circuit Judge