MOOTNESS:

An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect.*Dehoff v. Imeson,* 153 Fla. 553, 15 So.2d 258 (1943). A case is "moot" when it presents no actual controversy or when the issues have ceased to exist. *Black's Law Dictionary* 1008 (6th ed. 1990). A moot case generally will be dismissed.

Florida courts recognize at least three instances in which an otherwise moot case will not be dismissed. The first two were stated in *Holly v. Auld,* 450 So.2d 217, 218 n. 1 (Fla. 1984), where we said: "[i]t is well settled that mootness does not destroy an appellate court's jurisdiction ... when the questions raised are of great public importance or are likely to recur." Third, an otherwise moot case will not be dismissed if collateral legal consequences that affect the rights of a party flow from the issue to be determined. *See Keezel v. State,* 358 So.2d 247 (Fla. 4th DCA 1978).

As an initial matter, during the pendency of this appeal the investigation has been completed and Hinn's appointment revoked, leading the sheriff to argue that this appeal is moot. Although technically this case is moot, we will address the coverage of the Bill of Rights because this issue is "likely to recur" and therefore review is appropriate. Godwin v. State, 593 So. 2d 211 (Fla. 1992); see alsoRoesch v. State, 633 So. 2d 1, 2 n.1 (Fla. 1993) (reviewing moot issue where "capable of repetition but evading review").

Expectation of Privacy

Secretly recording a conversation is not a violation of the Federal Wiretap Act if done for legitimate purposes, a federal appeals court has ruled:

"Plaintiff-Appellant Marshall Caro filed a complaint in the United States District Court for the District of Connecticut (Dorsey, J.) alleging, inter alia, a civil cause of action under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, codified at 18 U.S.C. §§ 2510-21 ("Title III" or the "Wiretap Act"). The district court dismissed Caro's complaint. We affirm, and, in so doing, hold that the exception to the one-party consent provision of 18 U.S.C. § 2511(2)(d) requires that a communication be intercepted for the purpose of a tortious or criminal act that is independent of the intentional act of recording."

(Caro v Weintraub, 618 F.3d 94, Docket No. 09-3685-cv, Decided: August 13, 2010, United States Court of Appeals, Second Circuit)

“Chapter 934 explicitly and broadly prohibits “any person,” including private individuals, from recording oral communications without consent and disclosing such recordings. §§ 934.02(5), .03(1). Further, “[w]henever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial¤” § 934.06. But the statutory proscription of chapter 934 only applies where the person uttering the communication has a reasonable expectation of privacy in that communication under the circumstances. § 934.02(2) (defining “oral communication” as “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation¤”)...Considering these values and the already-existing legal exceptions that reflect them, we conclude that suppressing the recordings pursuant to chapter 934 under the circumstances of this case would produce an absurd result—a result we cannot fathom was intended by the legislature.4

Accordingly, we affirm.”

(McDade v. State, No. 2D11–5955, Decided: June 7, 2013, Fla. 2DCA, and Certified to the Fla.S.Ct.)

' “Oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.'
934.02(2), Fla.Stats.

Even if criminals had an expectation of privacy, it is <u>not</u> one <u>justifying the exception in which society is willing to protect</u>:

“Under the “society is prepared to recognize” test, I conclude that in 2011 a person who regularly and consistently abused a teenager in a bedroom of their shared home had no reasonable expectation that their conversations about the abuse would never be recorded.”
(McDade v. State, No. 2D11–5955, Decided: June 7, 2013, Fla. 2DCA, and Certified to the Fla.S.Ct., ALTENBERND, J., Concurring specially with opinion)

' “Oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception <u>under circumstances justifying such expectation</u> and does not mean any public oral communication uttered at a public meeting or any electronic communication.'
934.02(2), Fla.Stats.

Even if society was willing to protect an expectation of privacy, <u>no reasonable expectation of privacy exists</u> in today's modern world when criminals commit crimes:

“In this modern digital world, any such adult should have expected that eventually a teenage victim would record such conversations in self-defense. Accordingly, I concur in this decision because Mr. McDade could not reasonably expect his statements to be protected oral communications.”

(McDade v. State, No. 2D11–5955, Decided: June 7, 2013, Fla. 2DCA, and Certified to the Fla.S.Ct., ALTENBERND, J., Concurring specially with opinion)

' “Oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.'
934.02(2), Fla.Stats.

("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort") ***Bordenkircher*** **v.** ***Hayes*****, 434 U.S. 357, 363 (1978)**

When an award or punishment can fairly be categorized as "grossly excessive" in relation to these the crime supposedly committed, it enters the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment. (BMW of North America, Inc. v. Gore (94-896), 517 U.S. 559 (1996); Cf.*TXO*, 509 U. S., at 456.)

Three guideposts, each of which indicates that BMW did not receive adequate notice of the magnitude of the sanction that Alabama might impose for adhering to the nondisclosure policy adopted in 1983, lead us to the conclusion that the $2 million award against BMW is grossly excessive: the degree of reprehensibility of the nondisclosure; the disparity between the harm or potential harm suffered by Dr. Gore and his punitive damages award; and the difference between this remedy and the civil penalties authorized or imposed in comparable cases. We discuss these considerations in turn.

“None of these statutes would provide an out of state distributor with fair notice that the first violation--or, indeed the first 14 violations--of its provisions might subject an offender to a multimillion dollar penalty. Moreover, at the time BMW's policy was first challenged, there does not appear to have been any judicial decision in Alabama or elsewhere indicating that application of that policy might give rise to such severe punishment. [Therefore t]he sanction imposed in this case cannot be justified on the ground that it was necessary to deter future misconduct without considering whether less drastic remedies

could be expected to achieve that goal." (**BMW of North America, Inc. v. Gore (94-896), 517 U.S. 559 (1996)**)

http://www.akd.uscourts.gov/docs/general/jury_manual.pdf Provides:

" Rule 38, Fed. R. Civ. P., acknowledges the Seventh Amendment and statutory right to a jury trial, where such a demand has been timely made...Where a party fails to demand a jury in an action in which such a demand might have been made as a matter of right, the court has the discretion, upon motion under Rule 39(b), Fed. R. Civ. P., to order a trial by jury of any or all issues. Rule 39(c), Fed. R. Civ. P., authorizes the court "in all actions not triable of right by a jury" to try any issue with an advisory jury or (except in specified circumstances) with a stipulation, a jury "whose verdict has the same effect as if trial by jury had been a matter of right.""

and:

"White v. McGinnis, 903 F.2d 699, 700 (9th Cir.) (knowing participation in a bench trial without objection constitutes waiver of a timely jury demand), cert. denied, 498 U.S. 903 (1990)"

but:

"See DePinto v. Provident Sec. Life Ins. Co., 323 F.2d 826, 832 (9th Cir. 1963) (failure to demand a trial by jury does not constitute a waiver if such a demand is withheld in reliance upon a demand filed by another party, and if withdrawal of the latter demand is not consented to), cert. denied, 376 U.S. 950 (1964)."

Cf:
http://www.floridabar.org/TFB/TFBResources.nsf/0/BDFE1551AD291A3F85256B29004BF892/$FILE/Criminal.pdf?OpenElement which says:

“RULE 3.251. RIGHT TO TRIAL BY JURY
In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury in the county where the crime was committed.”

Contra: http://www.hlalaw.com/criminal-law-in-florida/ which says:

“Jury Trial

In Criminal Law, Individuals accused of felonies are entitled to a trial by a jury under the United States Constitution. There is no constitutionally guaranteed right to trial by jury for many misdemeanors and lesser offenses...

...Jury Trials

Defendants are entitled to a trial by jury on all criminal charges **except for second degree misdemeanors, which are minor charges**...

...Plea Arrangements

Florida, like most other states, permits plea bargaining. A person accused of a crime may bargain with the prosecutor to receive a lesser punishment. Typically, the accused person will plead guilty, sometimes to a lesser charge (for example, to manslaughter rather than murder). This process saves the government the time and cost of a jury trial in exchange for a reduced sentence.

An innocent defendant may want to enter into plea bargain to eliminate the risk of a trial and to obtain a lesser sentence or probation instead of jail, or be placed into a non-judicial pretrial diversion program.”

I (Gordon Wayne Watts) was charged, at various times, with the following:

843.02¤Resisting officer without violence to his or her person.—Whoever shall resist, obstruct, or oppose any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of **a misdemeanor of the first degree**, punishable as provided in s. 775.082 or s. 775.083.

[[775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For **a misdemeanor of the first degree**, by a definite term of imprisonment **not exceeding 1 year**;
(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.]]

[[775.083 Fines.—
(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:
(a) $15,000, when the conviction is of a life felony.
(b) $10,000, when the conviction is of a felony of the first or second degree.
(c) $5,000, when the conviction is of a felony of the third degree.
(d) $1,000, when the conviction is of **a misdemeanor of the first degree**.
(e) $500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.
(f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.
(g) Any higher amount specifically authorized by statute.]]

843.165 Unauthorized transmissions to and interference with governmental and associated radio frequencies prohibited; penalties; exceptions.—

(1) A person may not transmit or cause to be transmitted over any radio frequency with knowledge that such frequency is assigned by the Federal Communications Commission to a state, county, or municipal governmental agency or water management district, including, but not limited to, a law enforcement, fire, government administration, or emergency management agency or any public or private emergency medical services provider, any sounds, jamming device, jamming transmissions, speech, or radio frequency carrier wave except: those persons who are authorized in writing to do so by the agency's chief administrator; employees of the agency who are authorized to transmit by virtue of their duties with the agency; and those persons holding a valid station license assigned by the Federal Communications Commission to transmit on such frequencies.

(2) A person may not knowingly obstruct, jam, or interfere with radio transmissions made by volunteer communications personnel of any state, county, or municipal governmental agency, water management district, volunteers of any public or private emergency medical services provider, or volunteers in any established Skywarn program when the volunteers are providing communications support upon request of the governmental agency during tests, drills, field operations, or emergency events.

(3) Any person who violates this section commits **a misdemeanor of the first degree**, punishable as provided in s. 775.082 or s. 775.083.

(4) It is lawful for any person to transmit or cause to be transmitted speech or sounds over any authorized transmitter operating on frequencies specified in subsection (1) when the person:

(a) Has been commanded to do so by an authorized operator of the transmitter;

(b) Is acting to summon assistance for the authorized operator who, for any reason, is unable to make the transmission; or

(c)¤Is a radio technician or installer who is testing, repairing, or installing radio equipment at the request of a state, county, or municipal governmental agency, water management district, or licensed public or private emergency medical services provider.

History.—s. 1, ch. 79-63; s. 210, ch. 91-224; s. 1, ch. 99-365.

843.167¤Unlawful use of police communications; enhanced penalties.—

(1)¤A person may not:

(a)¤Intercept any police radio communication by use of a scanner or any other means for the purpose of using that communication to assist in committing a crime or to escape from or avoid detection, arrest, trial, conviction, or punishment in connection with the commission of such crime.

(b)¤Divulge the existence, contents, substance, purport, effect, or meaning of a police radio communication to any person he or she knows to be a suspect in the commission of a crime with the intent that the suspect may escape from or avoid detention, arrest, trial, conviction, or punishment.

(2)¤Any person who is charged with a crime and who, during the time such crime was committed, possessed or used a police scanner or similar device capable of receiving police radio transmissions is presumed to have violated paragraph (1)(a).

(3)¤The penalty for a crime that is committed by a person who violates paragraph (1)(a) shall be enhanced as follows:

(a)¤A misdemeanor of the second degree shall be punished as if it were a misdemeanor of the first degree.

(b)¤A misdemeanor of the first degree shall be punished as if it were a felony of the third degree.

(c)¤A felony of the third degree shall be punished as if it were a felony of the second degree.

(d)¤A felony of the second degree shall be punished as if it were a felony of the first degree.

(e)¤A felony of the first degree shall be punished as if it were a life felony.

(4)¤Any person who violates paragraph (1)(b) commits **a misdemeanor of the first degree**, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 2001-127.

Reed *v.* State, 470 So. 2d 1382 (Fla. 1985) holds:

“This cause is before us on a certified question of great public importance. *State v. Reed,* 448 So.2d 1102 (Fla. 5th DCA 1984). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const...

...On further review, the district court granted a writ of certiorari quashing the circuit court order and certifying a question of great public importance to this Court:

> *Does a criminal accused have the right to a jury trial in a county court for a petty offense created by state statute, under the Florida Constitution or criminal rule 3.251?*

Reed, 448 So.2d at 1105...

...For the above reasons I would adopt the generic class of crimes approach used by the United States Supreme Court in determining whether there is a right to a jury trial in criminal prosecutions. I believe that this approach is easier to apply than the current approach and more accurately reflects the intentions of the drafters of our state constitution."

Reed *v.* State, 470 So. 2d 1382 (Fla. 1985)

https://www.courtlistener.com/fla/9zrU/reed-v-state/

http://www.leagle.com/decision/19851852470So2d1382_11703.xml/REED%20v.%20STATE

http://law.justia.com/cases/florida/supreme-court/1985/65323-0.html

***ANTONACCI v. STATE (No. 86-1247) 504 So.2d 521 (1987)*, as cited here**

http://www.leagle.com/decision/19871025504So2d521_2860 holds:

This is an appeal of an order issued by the County Court for Marion County, Florida, denying defendant Antonacci's demand for jury trial. The county court has certified three questions to be of great public importance. We have accepted jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(b)(4)(A) and 9.160.

We restate the county court's three certified questions as follows:

> Whether a defendant who has been charged with assault in violation of section 784.011, Florida Statutes, is entitled to trial by jury.

Article I, section 16 of the Florida Constitution, and the Sixth Amendment of the United States Constitution, both bestow upon defendants the right to a jury trial in all criminal prosecutions. Similarly, Florida Rule of Criminal Procedure 3.251 tracks the language of Article I, section 16 of the Florida Constitution, and provides that "[i]n all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury... ." However, a defendant's right to a trial by jury has been judicially limited to only those crimes which are considered to be "serious" as opposed to crimes considered to be "petty." The Florida Supreme Court in *Whirley v. State,* 450 So.2d 836 (Fla. 1984), has enumerated four classes of serious crimes as to which a defendant is entitled to trial by jury:

> crimes that were indictable at common law, *Callan v. Wilson,* 127 U.S. 540, 8 S.Ct. 1301, 32 L.Ed. 223 (1888); crimes that involve moral turpitude, *Schick v. United States,* 195 U.S. 65, 24 S.Ct. 826,

> 49 L.Ed. 99 (1904); crimes that are malum in se, or inherently evil at common law, *District of Columbia v. Colts,* 282 U.S. 63, 51 S.Ct. 52, 75 L.Ed. 177 (1930); and crimes that carry a maximum penalty of more than six months in prison. *Baldwin v. New York,* 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970)...According to section 784.011(2), Florida Statutes, a defendant convicted of committing an assault is guilty of a second degree misdemeanor. Under section 775.082, Florida Statutes, a defendant so convicted can receive a maximum punishment of a term of imprisonment not exceeding 60 days and, pursuant to section 775.083, Florida Statutes, a $500 fine. On its face, this maximum authorized penalty is not sufficiently severe to classify assault as a "serious" crime such that a defendant would be entitled to trial by jury. The question remains, however, whether assault can be classified as a "serious" offense under the other three categories enumerated in *Whirley.*

No Florida case decision has addressed this question. However, it is noted in 6A C.J.S. Assault and Battery § 62 (1975) that at common law, assault was an indictable offense. *See also Smith v. Smith,* 194 S.C. 247, 9 S.E.2d 584 (1940). This conclusion finds support in Blackstone's Commentaries, which notes that "assault ... is also indictable and punishable with fines and imprisonment... ." 4 W. Blackstone, Commentaries *26. We conclude that because the crime of assault was indeed indictable at common law, it is an offense for which a defendant is entitled to trial by jury under *Whirley.*

The trial judge below was concerned that because the common law crime of assault was abrogated by section 784.011, Florida Statutes, the fact assault *was* indictable at common law is not applicable to the question. Though statutory assault1 has replaced common law assault, this does not affect the dispositive question of whether the crime of assault was an offense indictable at common law. *Cf. Reed v. State,* 470 So.2d 1382 (Fla. 1985) (though the common law crime of malicious mischief was abrogated by section 806.13(2)(a), Florida Statutes, which created the crime of "criminal mischief," because malicious mischief is malum in se and was, thus, indictable at common law, the statutory offense of criminal mischief is still an offense for which a defendant is entitled to trial by jury). Furthermore, the crime of assault is malum in se. *See generally* 1 W. Burdick, *Law of Crime* §§ 86-95 (1946). *See also People v. Washburn,* 197 Colo. 419, 593 P.2d 962 (1979). This also entitles a defendant charged with assault to trial by jury under *Whirley.*

We find that the commission of an assault in violation of section 784.011, Florida Statutes, is an offense for which a defendant is entitled to trial by jury. The above certified question is answered in the affirmative and the cause remanded for proceedings consistent with this opinion.

DAUKSCH, SHARP and COWART, JJ., concur.

ANTONACCI v. STATE (No. 86-1247) 504 So.2d 521 (1987)

District Court of Appeal of Florida,Fifth District.

Wayne Eugene RACINE, Appellant, v. STATE of Florida, Appellee.
No. 5D08-1502.
Decided: August 21, 2009

James S. Purdy, Public Defender, and Anne Moorman Reeves, Assistant Public Defender, Daytona Beach, for Appellant.
Bill McCollum, Attorney General, Tallahassee, and Allison Leigh Morris, Assistant Attorney General, Daytona Beach, for Appellee.

The defendant, Wayne Racine, was convicted after a bench trial of the crimes of battery of a person sixty-five years old or older and battery. His attorney apparently filed a written motion waiving a jury trial, and the trial court entered an order

granting that motion. Racine complains, and properly so, that he did not waive his right to a jury trial and seeks reversal of his convictions and a new trial.

The Florida Constitution guarantees to each citizen that the "[t]he right of trial by jury shall be secure to all and remain inviolate." Art. I, § 22, Fla. Const.; see also Art. I, § 16, Fla. Const. (providing that the accused shall "have a speedy and public trial by impartial jury"). "[A] defendant's right to a jury trial is indisputably one of the most basic rights guaranteed by our constitution" State v. Griffith, 561 So.2d 528, 530 (Fla.1990).1 This guarantee is also contained in the United States Constitution.2

The error committed by the trial court is that it conducted a bench trial without obtaining a proper waiver from Racine of his right to trial by jury. For a waiver of the right to jury trial to be valid, a waiver form must be signed by the defendant or the defendant must orally waive that right after a proper colloquy with the trial court. Johnson v. State, 994 So.2d 960 (Fla.2008); Smith v. State, 9 So.3d 702, 704 (Fla. 2d DCA 2009) ("A valid waiver of a criminal defendant's right to a jury trial requires either a written waiver signed by the defendant or the defendant's oral waiver after a proper colloquy with the trial judge.").

The record before us contains neither a written waiver form nor a transcript showing that Racine orally waived his right to a jury trial before the trial court. The motion signed by Racine's attorney does not constitute a proper and valid waiver by Racine. See State v. Upton, 658 So.2d 86 (Fla.1995). We note, parenthetically, that the State concedes the error. Accordingly, we reverse Racine's convictions and sentences.

REVERSED and REMANDED.

FOOTNOTES

1. In Johnson v. State, 994 So.2d 960 (Fla.2008), the court recently explained thatcriminal defendants have a right to a jury trial for serious crimes-i.e., those that "have a maximum penalty of more than six months' imprisonment or more than a $500 fine"-but not petty offenses-i.e., those that "have a maximum penalty of six months' or less imprisonment or a $500 or less fine." Reed v. State, 470 So.2d 1382, 1383 (Fla.1985); see also Whirley v. State, 450 So.2d 836, 839 (Fla.1984) ("[T]he federal petty crime exception to the jury trial requirement in criminal prosecutions is also an exception under our own constitutional provision.") (citing Aaron v. State, 345 So.2d 641 (Fla.1977); Aaron v. State, 284 So.2d 673 (Fla.1973)).Id. at 962-63. Clearly, Racine had a right to a trial by jury for both crimes he was charged with.

2. U.S. Const. art. III, § 2, cl. 3 ("The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."); U.S. Const., amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law")

SAWAYA, J.

PALMER and EVANDER, JJ., concur.

Cite: http://caselaw.findlaw.com/fl-district-court-of-appeal/1362597.html

COLLATERAL ESTOPPEL/RES JUDICATA

"Collateral estoppel, like the related doctrine of res judicata, has the dual purpose of protecting litigants from the burden of re-litigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 326, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979) (citations omitted). Application of both doctrines is central to the purpose for which civil courts have been established-the conclusive resolution of disputes within their jurisdictions.*Montana v. United States,* 440 U.S. 147, 154, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979).

Res Adjudicata and Collateral Estoppel

The judge, upon the motion for summary judgment, held that all matters undertaken to be presented in the later, trover, action could have been litigated in the former, replevin, action and that the judgment, therefore, constituted res judicata. We agree with the judge's ultimate decision, although we think the situation is one bringing into play the doctrine of estoppel by judgment. The distinction between the two has recently received the attention of the Court, in Gordon v. Gordon, Fla., 59 So.2d 40; Donahue v. Davis, Fla., 68 So.2d 163, and Universal Const. Co. v. City of Fort Lauderdale, Fla., 68 So.2d 366. As was pointed out in the second cited case, there are four conditions peculiar to res judicata: identity of the thing, the cause of action, the parties, and the quality in the person for or against whom the claim is made. The purpose of both principles is the same, to bring litigation to an end. In the first cited case we said that res judicata barred a later suit between the same parties upon the same cause of action, the first adjudication being final **as to matters that were or could have been presented**, while estoppel by judgment would be applied to prevent a party from re-litigating questions common to two causes of action when those questions were *actually* decided in the first.

AVANT v. JONES, 79 So.2d 423 (1955)

Collateral estoppel should be narrowly applied since the doctrine "poses a danger of placing termination of the litigation ahead of the correct result." Chartier v. Marlin Mgmt., LLC, 202 F.3d 89, 94 (2d Cir. 2000).

"The doctrine of collateral estoppel promotes important goals...Nevertheless, since the doctrine of collateral estoppel poses a danger of placing termination of the litigation ahead of the correct result, it is narrowly applied." Chartier v. Marlin Mgmt., 202 F.3d 89 (2d Cir. 2000)

The Rooker-Feldman doctrine is a rule of civil procedure enunciated by the United States Supreme Court in two cases, Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine holds that lower United States federal courts—i.e., federal courts other than the Supreme Court—should not sit in direct review of state court decisions unless Congress has specifically authorized such relief.[1] In short, federal courts below the Supreme Court must not become a court of appeals for state court decisions. The state court plaintiff has to find a state court remedy, or obtain relief from the U.S. Supreme Court.

Cool quote:

The element of collateral estoppel that requires that the identical issue have been “fully litigated” does bear some discussion, however, because in this case, the State Court Judgment was entered by consent and in fact was not “litigated” in an adversarial sense. In this regard, this Court must determine to what extent a Florida court would be bound to give preclusive effect to a consent judgment .

THE ELEMENTS OF RES JUDICATA

A claim of res judicata under Texas law consists of three elements:

(1) a final judgment on the merits by a court of competent jurisdiction;

(2) identity of parties or those in privity with them; and

(3) a second suit based on claims actually litigated in the first suit or claims which should have been litigated in the first suit.

THE ELEMENTS OF COLLATERAL ESTOPPEL

Courts have stated the elements of collateral estoppel differently in different situations.

Generally, collateral estoppel bars a claim only if:

"(1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action;

(2) those facts were essential to the judgment in the first action; and

(3) the parties were cast as adversaries in the first action."

When applying collateral estoppel in a criminal context, the Court of Criminal Appeals stated the elements thusly:

(1) a "full hearing" at which the parties had an opportunity to thoroughly and fairly litigate the relevant fact issue;

(2) the fact issue must be the same in both proceedings; and

(3) the fact finder must have acted in a judicial capacity.

State v. Aguilar, 947 S.W.2d 257, 259-60 (Tex. Crim. App. 1997); Ex parte Tarver, 725 S.W.2d 195, 199

(Tex. Crim. App. 1986)

The collateral estoppel bar is inapplicable when the claimant did not have a "full and fair opportunity to litigate" the issue decided by the state court. {Allen v. McCurry, 449 U.S. 90, at 101 (1980)} Thus, a claimant can file a federal suit to challenge the adequacy of state procedures.

"[O]ne general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the earlier case. Montana v. United States,

supra, at 440 U. S. 153; Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, supra, at 402 U. S. 328-329. [Footnote 7]"

Cool holding: Held: "The Court of Appeals erred in holding that respondent's inability to obtain federal habeas corpus relief upon his Fourth Amendment claim renders the doctrine of collateral estoppel inapplicable to his § 1983 suit."

The US Supreme Court, in Angel v. Bullington - 330 U.S. 183, at 203 (1947), held:

"The effect of the [res judicata] rule qualifies its scope. It is not every case in which a litigant has had "one bite at the cherry" that the law forbids another. In other words, it is not every such case in which the policy of stopping litigation outweighs that of showing the truth. This is so not only where the first suit actually gives no real chance to secure a substantial determination, [Footnote 7] but also, though less generally, of others in which the litigant has such a chance, and foregoes or misses it. [Footnote 8]"

[Footnote 7]

See Walden v. Bodley, 14 Pet. 156, 39 U. S. 161; Hughes v.United States, 4 Wall. 232, 71 U. S. 237; Restatement, Judgments (1942) § 49.

[Footnote 8]

"Judgments of nonsuit, of non prosequitur, of nolle prosequi, of discontinuance, and of dismissal generally are exceptions to the general rule that, when the pleadings, the court, and the parties are such as to permit of a trial on the merits, the judgment will be considered as final and conclusive of all matters which could have been so tried."

2 Freeman, Judgments (5th Ed.) 1579, 1580. And,

"generally speaking, judgments merely of dismissal, whether voluntary or involuntary, in actions at law are not on the merits, and do not operate as a bar or estoppel is subsequent proceedings involving the same matters."

Id. at 1582. See Haldeman v. United States, 91 U. S. 584; Jacobs v. Marks, 182 U. S. 583; Manhattan Life Ins. Co. v. Broughton, 109 U. S. 121; Restatement, Judgments (1942) §§ 53, 54.

Res Judicata and Collateral Estoppel are inapplicable if the prior action was so deficient that it violates due process:

“Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation. See Restatement (Second) of Judgments § 68.1(c) (Tent. Draft No. 4, Apr. 15, 1977”

Montana v. US, 440 U.S. 147, at 164, Footnote 11 (1979)

cool holding: “Accordingly, because the affidavits of the experts on Polish law do not fully satisfy the Court, the motion to dismiss on grounds of [collateral estoppel or res adjudicata] preclusion is denied without prejudice, subject to a hearing being held if this Court is reversed on the issue of personal jurisdiction.”

HABEAS CORPUS and 3.850 MOTION might offer post conviction relief or other relief from deprivation of liberties...