SUPREME COURT OF THE UNITED STATES

No. 00–5961

MELVIN TYLER, PETITIONER *v.* BURL CAIN, WARDEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 28, 2001]

JUSTICE O'CONNOR, concurring.

I join the Court's opinion and write separately to explain more fully the circumstances in which a new rule is "made retroactive to cases on collateral review by the Supreme Court." 28 U. S. C. §2244(b)(2)(A) (1994 ed., Supp. V).

It is only through the holdings of this Court, as opposed to this Court's dicta and as opposed to the decisions of any other court, that a new rule is "made retroactive . . . by the Supreme Court" within the meaning of §2244(b)(2)(A). See *ante,* at 5–6; cf. *Williams* v. *Taylor,* 529 U. S. 362, 412 (2000). The clearest instance, of course, in which we can be said to have "made" a new rule retroactive is where we expressly have held the new rule to be retroactive in a case on collateral review and applied the rule to that case. But, as the Court recognizes, a single case that expressly holds a rule to be retroactive is not a *sine qua non* for the satisfaction of this statutory provision. *Ante,* at 9. This Court instead may "ma[k]e" a new rule retroactive through multiple holdings that logically dictate the retroactivity of the new rule. *Ibid.* To apply the syllogistic relationship described by JUSTICE BREYER, *post,* at 3 (dissenting opinion), if we hold in Case One that a particular type of rule applies retroactively to cases on collateral review and hold in Case Two that a given rule is of that particular type, then it necessarily follows that the

given rule applies retroactively to cases on collateral review. In such circumstances, we can be said to have "made" the given rule retroactive to cases on collateral review.

The relationship between the conclusion that a new rule is retroactive and the holdings that "ma[k]e" this rule retroactive, however, must be strictly logical— *i.e.,* the holdings must *dictate* the conclusion and not merely provide principles from which one *may* conclude that the rule applies retroactively. As the Court observes, "[t]he Supreme Court does not 'ma[k]e' a rule retroactive when it merely establishes principles of retroactivity and leaves the application of those principles to lower courts." *Ante,* at 6. The Court instead can be said to have "made" a rule retroactive within the meaning of §2244(b)(2)(A) only where the Court's holdings logically permit no other conclusion than that the rule is retroactive.

It is relatively easy to demonstrate the required logical relationship with respect to the first exception articulated in *Teague* v. *Lane,* 489 U. S. 288 (1989). Under this exception, "a new rule should be applied retroactively if it places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.'" *Id.,* at 307 (plurality opinion) (quoting *Mackey* v. *United States,* 401 U. S. 667, 692 (1971) (Harlan, J., concurring in judgments in part and dissenting in part)). When the Court holds as a new rule in a subsequent case that a particular species of primary, private individual conduct is beyond the power of the criminal lawmaking authority to proscribe, it necessarily follows that this Court has "made" that new rule retroactive to cases on collateral review. The Court has done so through its holdings alone, without resort to dicta and without any application of principles by lower courts.

The matter is less straightforward with respect to the second *Teague* exception, which is reserved for "watershed

rules of criminal procedure," 489 U. S., at 311 (plurality opinion). A case announcing a new rule could conceivably hold that infringement of the rule "seriously diminish[es] the likelihood of obtaining an accurate conviction," *id.,* at 315, and that the rule "'alter[s] our understanding of the *bedrock procedural elements* essential to the fairness of a proceeding,'" *id.,* at 311 (plurality opinion) (quoting *Mackey, supra,* at 693 (Harlan, J., concurring in judgments in part and dissenting in part)); see also *Sawyer* v. *Smith,* 497 U. S. 227, 242 (1990), without holding in so many words that the rule "applies retroactively" and without actually applying that rule retroactively to a case on collateral review. The "precise contours" of this *Teague* exception, of course, "may be difficult to discern," *Saffle* v. *Parks,* 494 U. S. 484, 495 (1990), and the judgment involved in our "ma[king]" a new rule retroactive under this exception is likely to be more subjective and self-conscious than is the case with *Teague*'s first exception. But the relevant inquiry is not whether the new rule comes within the *Teague* exception at all, but the more narrow and manageable inquiry of whether this Court's holdings, by strict logical necessity, "ma[k]e" the new rule retroactive within the meaning of §2244(b)(2)(A). While such logical necessity does not obtain in this particular case, *ante,* at 8–10, this Court could "ma[k]e" a new rule retroactive under *Teague*'s second exception in this manner.