SUPREME COURT OF THE UNITED STATES

No. 02–1824

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, PETITIONER *v.* MICHAEL WAYNE HALEY

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

[May 3, 2004]

JUSTICE O'CONNOR delivered the opinion of the Court.

Out of respect for finality, comity, and the orderly administration of justice, a federal court will not entertain a procedurally defaulted constitutional claim in a petition for habeas corpus absent a showing of cause and prejudice to excuse the default. We have recognized a narrow exception to the general rule when the habeas applicant can demonstrate that the alleged constitutional error has resulted in the conviction of one who is actually innocent of the underlying offense or, in the capital sentencing context, of the aggravating circumstances rendering the inmate eligible for the death penalty. *Murray* v. *Carrier*, 477 U. S. 478 (1986); *Sawyer* v. *Whitley*, 505 U. S. 333 (1992). The question before us is whether this exception applies where an applicant asserts "actual innocence" of a noncapital sentence. Because the District Court failed first to consider alternative grounds for relief urged by respondent, grounds that might obviate any need to reach the actual innocence question, we vacate the judgment and remand.

I

In 1997, respondent Michael Wayne Haley was arrested after stealing a calculator from a local Wal-Mart and attempting to exchange it for other merchandise. Respondent was charged with, and found guilty at trial of, theft of property valued at less than $1,500, which, because respondent already had two prior theft convictions, was a "state jail felony" punishable by a maximum of two years in prison. App. 8; Tex. Penal Code Ann. §31.03(e)(4)(D) (Supp. 2004). The State also charged respondent as a habitual felony offender. The indictment alleged that respondent had two prior felony convictions and that the first—a 1991 conviction for delivery of amphetamine—"became final prior to the commission" of the second—a 1992 robbery. App. 9. The timing of the first conviction and the second offense is significant: Under Texas' habitual offender statute, only a defendant convicted of a felony who "has previously been finally convicted of two felonies, *and* the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, . . . shall be punished for a second-degree felony." §12.42(a)(2) (emphasis added). A second degree felony carries a minimum sentence of 2 and a maximum sentence of 20 years in prison. §12.33(a).

Texas provides for bifurcated trials in habitual offender cases. Tex. Code Crim. Proc. Ann., Art. 37.07, §3 (Vernon Supp. 2004). If a defendant is found guilty of the substantive offense, the State, at a separate penalty hearing, must prove the habitual offender allegations beyond a reasonable doubt. *Ibid.* During the penalty phase of respondent's trial, the State introduced records showing that respondent had been convicted of delivery of amphetamine on October 18, 1991, and attempted robbery on September 9, 1992. The record of the second conviction, however, showed that respondent had committed the robbery on October 15, 1991—three days *before* his first conviction

became final. Neither the prosecutor, nor the defense attorney, nor the witness tendered by the State to authenticate the records, nor the trial judge, nor the jury, noticed the 3-day discrepancy. Indeed, the defense attorney chose not to cross-examine the State's witness or to put on any evidence.

The jury returned a verdict of guilty on the habitual offender charge and recommended a sentence of 16½ years; the court followed the recommendation. Respondent appealed. Appellate counsel did not mention the 3-day discrepancy nor challenge the sufficiency of the penalty-phase evidence to support the habitual offender enhancement. The State Court of Appeals affirmed respondent's conviction and sentence; the Texas Court of Criminal Appeals refused respondent's petition for discretionary review.

Respondent thereafter sought state postconviction relief, arguing for the first time that he was ineligible for the habitual offender enhancement based on the timing of his second conviction. App. 83, 87–88. The state habeas court refused to consider the merits of that claim because respondent had not raised it, as required by state procedural law, either at trial or on direct appeal. *Id.*, at 107, 108. The state habeas court rejected respondent's related ineffective assistance of counsel claim, saying only that "counsel was not ineffective" for failing to object to or to appeal the enhancement. *Id.*, at 108. The Texas Court of Criminal Appeals summarily denied respondent's state habeas application. *Id.*, at 109.

In August 2000, respondent filed a timely *pro se* application for a federal writ of habeas corpus pursuant to 28 U. S. C. §2254, renewing his sufficiency of the evidence and ineffective assistance of counsel claims. App. 110, 118–119; *id.*, at 122, 124, 126–127. The State conceded that respondent was "correct in his assertion that the enhancement paragraphs as alleged in the indictment do

not satisfy section 12.42(a)(2) of the Texas Penal Code." *Id.*, at 132, 140. Rather than agree to resentencing, however, the State argued that respondent had procedurally defaulted the sufficiency of the evidence claim by failing to raise it before the state trial court or on direct appeal. *Id.*, at 142–144. The Magistrate Judge, to whom the habeas application had been referred, recommended excusing the procedural default and granting the sufficiency of the evidence claim because respondent was "'actually innocent' of a sentence for a second-degree felony." *Haley* v. *Director, Texas Dept. of Criminal Justice, Institutions Div.*, Civ. No. 6:00cv518 (ED Tex., Sept. 13, 2001) p. 10, App. to Pet. for Cert. 49a (quoting *Sones* v. *Hargett*, 61 F. 3d 410, 419 (CA5 1995)). Because she recommended relief on the erroneous enhancement claim, the Magistrate Judge did not address respondent's related ineffective assistance of counsel challenges. App. to Pet. for Cert. 50a–52a. The District Court adopted the Magistrate Judge's report, granted the application, and ordered the State to resentence respondent "without the improper enhancement." *Id.*, at 36a–37a (Oct. 27, 2001).

The Court of Appeals for the Fifth Circuit affirmed, holding narrowly that the actual innocence exception "applies to noncapital sentencing procedures involving a career offender or habitual felony offender." *Haley* v. *Cockrell*, 306 F. 3d 257, 264 (2002). The Fifth Circuit thus joined the Fourth Circuit in holding that the exception should not extend beyond allegedly erroneous recidivist enhancements to other claims of noncapital factual sentencing error: "[T]o broaden the exception further would 'swallow' the 'cause portion of the cause and prejudice requirement' and it 'would conflict squarely with Supreme Court authority indicating that generally more than prejudice must exist to excuse procedural default.'" *Id.*, at 266 (quoting *United States* v. *Mikalajunas*, 186 F. 3d 490, 494–495 (CA4 1999)). Finding the exception satisfied, the

panel then granted relief on the merits of respondent's otherwise defaulted sufficiency of the evidence claim. In so doing, the panel assumed that challenges to the sufficiency of noncapital sentencing evidence are cognizable on federal habeas under *Jackson* v. *Virginia*, 443 U. S. 307 (1979). 306 F. 3d, at 266–267 (citing *French* v. *Estelle*, 692 F. 2d 1021, 1024–1025 (CA5 1982)).

The Fifth Circuit's decision exacerbated a growing divergence of opinion in the Courts of Appeals regarding the availability and scope of the actual innocence exception in the noncapital sentencing context. Compare *Embrey* v. *Hershberger*, 131 F. 3d 739 (CA8 1997) (en banc) (no actual innocence exception for noncapital sentencing error); *Reid* v. *Oklahoma*, 101 F. 3d 628 (CA10 1996) (same), with *Spence* v. *Superintendent, Great Meadow Correctional Facility*, 219 F. 3d 162 (CA2 2000) (actual innocence exception applies in noncapital sentencing context when error is related to finding of predicate act forming the basis for enhancement), and *Mikalajunas*, *supra* (actual innocence exception applies in noncapital sentencing context where error relates to a recidivist enhancement). We granted the State's request for a writ of certiorari, 540 U. S. ___ (2003), and now vacate and remand.

II

The procedural default doctrine, like the abuse of writ doctrine, "refers to a complex and evolving body of equitable principles informed and controlled by historical usage, statutory developments, and judicial decisions." *McCleskey* v. *Zant*, 499 U. S. 467, 489 (1991). A corollary to the habeas statute's exhaustion requirement, the doctrine has its roots in the general principle that federal courts will not disturb state court judgments based on adequate and independent state law procedural grounds. *Wainwright* v. *Sykes*, 433 U. S. 72, 81 (1977); *Brown* v.

Allen, 344 U. S. 443, 486–487 (1953). But, while an adequate and independent state procedural disposition strips this Court of certiorari jurisdiction to review a state court's judgment, it provides only a strong prudential reason, grounded in "considerations of comity and concerns for the orderly administration of justice," not to pass upon a defaulted constitutional claim presented for federal habeas review. *Francis* v. *Henderson*, 425 U. S. 536, 538–539 (1976); see also *Fay* v. *Noia*, 372 U. S. 391, 399 (1963) ("[T]he doctrine under which state procedural defaults are held to constitute an adequate and independent state law ground barring direct Supreme Court review is not to be extended to limit the power granted the federal courts under the federal habeas statute"). That being the case, we have recognized an equitable exception to the bar when a habeas applicant can demonstrate cause and prejudice for the procedural default. *Wainwright*, *supra*, at 87. The cause and prejudice requirement shows due regard for States' finality and comity interests while ensuring that "fundamental fairness [remains] the central concern of the writ of habeas corpus." *Strickland* v. *Washington*, 466 U. S. 668, 697 (1984).

The cause and prejudice standard is not a perfect safeguard against fundamental miscarriages of justice. *Murray* v. *Carrier*, 477 U. S. 478 (1986), thus recognized a narrow exception to the cause requirement where a constitutional violation has "probably resulted" in the conviction of one who is "actually innocent" of the substantive offense. *Id.*, at 496; accord, *Schlup* v. *Delo*, 513 U. S. 298 (1995). We subsequently extended this exception to claims of capital sentencing error in *Sawyer* v. *Whitley*, 505 U. S. 333 (1992). Acknowledging that the concept of "actual innocence" did not translate neatly into the capital sentencing context, we limited the exception to cases in which the applicant could show "by clear and convincing evidence that, but for constitutional error, no reasonable

juror would have found the petitioner eligible for the death penalty under the applicable state law." *Id.*, at 336.

We are asked in the present case to extend the actual innocence exception to procedural default of constitutional claims challenging noncapital sentencing error. We decline to answer the question in the posture of this case and instead hold that a federal court faced with allegations of actual innocence, whether of the sentence or of the crime charged, must first address all nondefaulted claims for comparable relief and other grounds for cause to excuse the procedural default.

This avoidance principle was implicit in *Carrier* itself, where we expressed confidence that, "for the most part, 'victims of fundamental miscarriage of justice will meet the cause-and-prejudice standard.'" 477 U. S., at 495–496 (quoting *Engle* v. *Isaac*, 456 U. S. 107, 135 (1982)). Our confidence was bolstered by the availability of ineffective assistance of counsel claims—either as a ground for cause or as a free-standing claim for relief—to safeguard against miscarriages of justice. The existence of such safeguards, we observed, "may properly inform this Court's judgment in determining '[w]hat standards should govern the exercise of the habeas court's equitable discretion' with respect to procedurally defaulted claims." *Carrier*, *supra*, at 496 (quoting *Reed* v. *Ross,* 468 U. S. 1, 9 (1984)).

Petitioner here conceded at oral argument that respondent has a viable and "significant" ineffective assistance of counsel claim. Tr. of Oral Arg. 18 ("[W]e agree at this point there is a very significant argument of ineffective assistance of counsel"); see also *id.*, at 7 (agreeing "not [to] raise any procedural impediment" to consideration of the merits of respondent's ineffective assistance claim on remand). Success on the merits would give respondent all of the relief that he seeks—*i.e.*, resentencing. It would also provide cause to excuse the procedural default of his sufficiency of the evidence claim. *Carrier*, *supra*, at 488.

Contrary to the dissent's view, see *post*, at 2 (opinion of STEVENS, J.), it is precisely because the various exceptions to the procedural default doctrine are judge-made rules that courts as their stewards must exercise restraint, adding to or expanding them only when necessary. To hold otherwise would be to license district courts to riddle the cause and prejudice standard with ad hoc exceptions whenever they perceive an error to be "clear" or departure from the rules expedient. Such an approach, not the rule of restraint adopted here, would have the unhappy effect of prolonging the pendency of federal habeas applications as each new exception is tested in the courts of appeals. And because petitioner has assured us that it will not seek to reincarcerate respondent during the pendency of his ineffective assistance claim, Tr. of Oral Arg., at 52 ("[T]he state is willing to allow the ineffective assistance claim to be litigated before proceeding to reincarcerate [respondent]"), the negative consequences for respondent of our judgment to vacate and remand in this case are minimal.

While availability of other remedies alone would be sufficient justification for a general rule of avoidance, the many threshold legal questions often accompanying claims of actual innocence provide additional reason for restraint. For instance, citing *Jackson* v. *Virginia*, 443 U. S. 307 (1979), respondent here seeks to bring through the actual innocence gateway his constitutional claim that the State's penalty-phase evidence was insufficient to support the recidivist enhancement. But the constitutional hook in *Jackson* was *In re Winship*, 397 U. S. 358 (1970), in which we held that due process requires proof of each element of a criminal offense beyond a reasonable doubt. We have not extended *Winship*'s protections to proof of prior convictions used to support recidivist enhancements. *Almendarez-Torres* v. *United States*, 523 U. S. 224 (1998); see also *Apprendi* v. *New Jersey*, 530 U. S. 466, 488–490 (2000) (reserving judgment as to the validity of *Almendarez-*

Torres); *Monge* v. *California*, 524 U. S. 721, 734 (1998) (Double Jeopardy Clause does not preclude retrial on a prior conviction used to support recidivist enhancement). Respondent contends that *Almendarez-Torres* should be overruled or, in the alternative, that it does not apply because the recidivist statute at issue required the jury to find not only the existence of his prior convictions but also the additional fact that they were sequential. Brief for Respondent 30–31. These difficult constitutional questions, simply assumed away by the dissent, see *post*, at 2 (citing *Jackson*, *supra*, and *Thompson* v. *Louisville*, 362 U. S. 199 (1960)), are to be avoided if possible.

To be sure, not all claims of actual innocence will involve threshold constitutional issues. Even so, as this case and the briefing illustrate, such claims are likely to present equally difficult questions regarding the scope of the actual innocence exception itself. Whether and to what extent the exception extends to noncapital sentencing error is just one example. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.