Q. EXTRAORDINARY REMEDIES

Q.1. State habeas corpus (Ind. Code 34-1-57-1 et seq.)

TITLE: Willett v. State
INDEX NO.: Q.1.
CITE: (7/31/2020), 151 N.E.3d 1274 (Ind. Ct. App. 2020)
SUBJECT: Pro Se D's Motion to Dismiss Sentence Time Served treated as habeas corpus motion rather than PCR petition
HOLDING: Where record revealed on its face that Defendant was not entitled to release because his 15-year sentence had not expired, trial court did not err in summarily denying his Motion to Dismiss Sentence Time Served, which Court of Appeals treated as a petition for habeas corpus. Construing Defendant's motion as a petition for post-conviction relief was problematic because the proper procedure in post-conviction proceedings was not followed in this case. Judge Vaidik issued a concurring opinion to express her belief that the matter should have been treated as petition for post-conviction relief, as the State argued, rather than as a petition for habeas corpus. A claim that a sentence has expired is explicitly authorized by Post-Conviction Rule 1(1)(a)(5) and can be instituted at any time to secure relief.

Q. EXTRAORDINARY REMEDIES

Q.1. State habeas corpus (Ind. Code 34-1-57-1 et seq.)

Q.1.a. Jurisdiction

TITLE: Manley v. Butts

INDEX NO.: Q.1.a.

CITE: (3/10/2017), 71 N.E.3d 1153 (Ind. Ct. App 2017)

SUBJECT: Petition for writ of state habeas corpus should be transferred to court where D was convicted

HOLDING: Henry County Circuit Court erroneously dismissed Defendant's petition for writ of state habeas corpus as an unauthorized successive petition for post-conviction relief. Pursuant to Ind. Post-Conviction Rule 1(1)(c), "if a person applies for a writ of habeas corpus in the county where the person is incarcerated and challenges the validity of his conviction or sentence, that court shall transfer the cause to the court in which the conviction took place, and the latter court shall treat it as a petition for relief." There is no exception for unauthorized successive PCR petitions. Thus, rather than denying Defendant's petition for habeas corpus, Henry County Circuit Court should have transferred cause to court where Defendant was convicted and sentenced (Monroe County). Held, denial of petition for writ of habeas corpus reversed and remanded with instructions to transfer to Monroe County Court, where Defendant was convicted and sentenced. The Court instructed the Monroe Court to treat his petition as a post-conviction petition pursuant to PC Rule 1(12), which governs successive PCR petitions. Held, judgment reversed and remanded.

TITLE: Miller v. Lowrance
INDEX NO: Q.1.a.
CITE: (02-24-94), 629 N.E.2d 846 (Ind. 1994)
SUBJECT: Jurisdiction for state habeas corpus
HOLDING: Madison Circuit Ct. lacked jurisdiction to grant D's petition for habeas corpus, because it was mandated by statute & Post-Conviction Rule (PCR) 1(1)(c) to transfer petition to original Ct. entering D's conviction, Lash v. Wright, App., 287 N.E.2d 255. PCR 1(1)(c) states that if petitioner applies for writ in Ct. having personal jurisdiction over him, attacking validity of conviction or sentence, that Ct. is to transfer cause to Ct. where petitioner was convicted or sentenced. Courts in counties where prisons are located have no jurisdiction to examine or review final judgments, regular on their faces, issued by Courts of competent jurisdiction.

RELATED CASES: Richardson, 15 N.E.3d 592 (Ind. Ct. App 2014) (as D's petition for habeas corpus attacks the validity of his conviction and sentence, it falls within Indiana Post-Conviction Rule 1(1)(c) and must be transferred to the sentencing court); Martin, App., 901 N.E.2d 645 (rather than denying D's petition for habeas corpus, Tr. Ct. should have transferred cause to ct. where D was convicted and sentenced); Wickliffe, App., 719 N.E.2d 822 (Tr. Ct. properly transferred petitioner's Writ of Habeas Corpus to Marion Sup. Ct., pursuant to Ind. P.C.R. 1, ' 1).

TITLE: State ex rel. Smith v. Marion Circuit Ct.

INDEX NO.: Q.1.a.

CITE: (10/26/51), Ind., 101 N.E.2d 272

SUBJECT: Extraordinary remedies -- state haveas corpuss; jurisdiction over writ of habeas corpus for purpose of bail

HOLDING: D was indicted for murder and case was assigned to Division Two of Criminal Ct. of Marion County. D was arrested and held without bail. He applied for bail and application was denied. D then filed application for writ of habeas corpus to be let to bail in Marion Circuit Ct. after being denied bail by Criminal Ct. Circuit Ct. admitted D to bail and D was released. In addition, D took charge of judge who ordered D to be arrested and held without bail. Sheriff who had released D and then arrested him was asked by Circuit Ct. to show cause why he should not be punished for contempt of that Ct.'s order by taking D into custody. On sheriff's application, Ct. issued temporary writ of prohibition commanding Marion Circuit Ct. to refrain from making any further errors or exercising any further jurisdiction in connection with matter, pending further order of Ct. Ct. held that motion to be admitted to bail or petition for writ of habeas corpus for purpose of letting prisoner to bail must be filed, and question must be determined, in Ct. in which indictment is pending. In addition, Circuit Ct. has no authority to review decisions of Criminal Ct. Ct. held that Circuit Ct. had acted and was seeking to act further outside its jurisdiction. Held, writ of prohibition made permanent.

Q. EXTRAORDINARY REMEDIES

Q.1. State habeas corpus (Ind. Code 34-1-57-1 et seq.)

Q.1.b. Exhaustion/inadequacy of appellate remedies

TITLE: Van Meter v. Heath

INDEX NO.: Q.1.b.

CITE: (11-10-92), Ind., 602 N.E.2d 143

SUBJECT: Interaction of habeas corpus proceeding & appeal

HOLDING: Writ of habeas corpus cannot be used as substitute for appeal, & where proceedings leading to detention are not void because of matters apparent on face of record, sole remedy is by way of appeal. D was charged & convicted of attempted theft & burglary & appeal was currently pending. While appeal was pending, D filed habeas corpus petition alleging errors in conduct of initial hearing, particularly failure to advise of right to speedy trial. Ct. first noted that "valid commitment under a Ct. judgment is an unanswerable return to a writ of habeas corpus," relying on Bangs v. Johnson (1937), 211 Ind. 314, 6 N.E.2d 944, & Smith v. Hess (1884), 91 Ind. 424. If Ct.'s order is illegal on its face, however, habeas relief will still be available, Miller v. Snyder (1854), 6 Ind. 1. Issues relating to validity of commitment which is not invalid on its face may be raised through appeal or post-conviction relief. Because judgment detaining D was not invalid on its face, & issues raised could be asserted on appeal, Tr. Ct. did not err in denying petition for writ.

Q. EXTRAORDINARY REMEDIES

Q.1. State habeas corpus (Ind. Code 34-1-57-1 et seq.)

Q.1.c. Procedure

TITLE: Hendrix v. Duckworth

INDEX NO.: Q.1.c.

CITE: (12/21/82), Ind., 442 N.E.2d 1058

SUBJECT: Extraordinary remedies -- state habeas corpus; need to be entitled to immediate discharge

HOLDING: D was convicted of first-degree murder and sentenced to term of life imprisonment in 1973. In 1982, he filed pro se petition for writ of habeas corpus. Petition was denied for failure to state cause of action. D filed motion to correct errors which was also denied. D claimed it was unconstitutional to deny good time credit as provided by Ind. Code 11-1-1-9.1(a) to prisoner serving term of life imprisonment for first degree murder. Ct. held that no Ct. has jurisdiction to entertain habeas corpus petition unless such petition alleges that petitioning prisoner is entitled to immediate discharge. Dunn, 377 N.E.2d 868. Here, D did not show or even allege that he was presently entitled to immediate discharge as matter of law. Held, denial of motion to correct errors in habeas corpus petition affirmed.

Q. EXTRAORDINARY REMEDIES

Q.1. State habeas corpus (Ind. Code 34-1-57-1 et seq.)

Q.1.d. Specific situations

Q.1.d.1. Parole revocation

TITLE: Hardley v. State
INDEX NO.: Q.1.d.1.
CITE: (2nd Dist., 09-19-08), Ind. App., 893 N.E.2d 740
SUBJECT: Challenging parole violation - habeas petition treated as PCR
HOLDING: Trial court abused its discretion when it denied Defendant's habeas petition. A petitioner must file a petition for post-conviction relief in the court of conviction (rather than a petition for a writ of habeas corpus in the court in the county of incarceration) when he attacks the validity of his conviction or sentence and/or does not allege that he is entitled to immediate discharge. Nevertheless, if a petitioner erroneously captions his action as petition for a writ of habeas corpus rather than post-conviction relief, courts will frequently and properly treat the petition as one for post-conviction relief, based on the content of the petition, rather than the caption.

Here, Defendant filed a habeas petition alleging that his parole revocation violated the constitution because he was not given notice of the parole conditions he allegedly violated. If there was no notice, the parole revocation did violate due process. Because Defendant's request is an attack on the validity of the parole revocation, and not an allegation that his sentence has expired, it should have been styled as a petition for post-conviction relief. The proper remedy for the dilemma was for trial court to recognize substance over form and treat the petition as one for post-conviction relief. However, instead of taking that action, trial court abused its discretion by dismissing the petition altogether. Held, judgment reversed and remanded for proceedings not inconsistent with this opinion.

TITLE: Majors v. Broglin
INDEX NO.: Q.1.d.1.
CITE: (12/6/88), Ind., 531 N.E.2d 189
SUBJECT: State habeas corpus - parole revocation; credit time does not reduce fixed time
HOLDING: Tr. Ct. did not err in denying D's petition for writ of habeas corpus. D was released from prison after serving half of felony sentence. Three months later, D was charged with parole violation & parole was revoked. D was ordered to serve additional year of original fixed term. D filed petition for writ of habeas corpus, which Tr. Ct. denied for failure to state cause of action. Person serving sentence for felony, who receives parole under Ind. Code 35-50-6-1, is released on parole after service of fixed term less credit term earned. Legislative intent is clear that credit time is applied only toward date of release on parole for felons, & does not affect fixed term. Felon who has served fixed time less credit time is by operation of law on parole until Parole Board acts to discharge him/her. Discharge must occur within 1 year of release unless parole is revoked. Ind. Code 35-50-6-1(b). Here, Parole Board revoked D's parole within 1 year of his release. D was properly within custody of DOC & is not entitled to immediate release by way of habeas corpus. See Boyd v. Broglin 519 N.E.2d 541. Held, affirmed. DeBruler, J., CONCURS IN RESULT.

TITLE: Raines v. Madison County Superior Ct.
INDEX NO.: Q.1.d.1.
CITE: (7/7/78), Ind., 377 N.E.2d 1343
SUBJECT: Extraordinary remedies -- state habeas corpus; parole revocation
HOLDING: Relator was convicted of armed robbery and sentenced to determinate term of 15 years. He was paroled and then Indiana Department of Correction discovered that documents relating to his time served had been altered and that Relator had served approximately one thousand days less on his conviction than his records indicated. Warrant was issued to retake Relator and he was remanded to Indiana Reformatory. Before Parole Board hearing, Relator filed petition for writ of habeas corpus. Ct. ruled in his favor, and then State, on learning of ruling, sought emergency writ of mandate and prohibition from Ct. Emergency writ was granted. Then after oral argument, temporary writ was issued. Relator contended that Tr. Ct. had no jurisdiction over this cause under P.C. 1(c) which requires writ of habeas corpus attacking validity of sentence to be transferred to Ct. where D was sentenced. However, Ct. held that Tr. Ct. properly assumed jurisdiction and was under no duty to transfer cause to Ct. of conviction because Relator was not collaterally attacking his conviction or sentence but rather attacking actions of Parole Board in revoking his parole. Held, temporary writ of mandate and prohibition made permanent; DeBruler, J., dissenting.

Q. EXTRAORDINARY REMEDIES

Q.1. State habeas corpus (Ind. Code 34-1-57-1 et seq.)

Q.1.d.4. Bail

TITLE: Hobbs v. Lindsey
INDEX NO.: Q.1.d.4.
CITE: (10/29/59), Ind., 162 N.E.2d 85
SUBJECT: Extraordinary remedies -- state habeas corpus; excessive bail
HOLDING: D was charged with twenty-one separate indictments for alleged embezzlement and Tr. Ct. set his bond at $171,400.00. D claimed that this was excessive and prohibitive to him and asked for relief by way of habeas corpus in that his bail be reduced to amount more consistent with both nature of offenses and his financial ability. Issue was whether or not D, under facts presented, was denied his constitutional right to be let to bail and corresponding right that amount of such bail shall not be excessive. Ct. held that where accused had no money or property of his own with which to provide bail, bail set at $171,400.00 was prima facie excessive. In addition, in this habeas corpus proceeding which was brought to procure reduction of bail to amount more consistent with both nature of embezzlement offenses with which accused was charged and his financial ability, burden was on State to show necessity or justification for unusual amount of bail required. Held, denial of habeas corpus reversed, remanded with instructions to sustain D's motion for new trial.

Q. EXTRAORDINARY REMEDIES

Q.1. State habeas corpus (Ind. Code 34-1-57-1 et seq.)

Q.1.d.5. Credit time

TITLE: Hendrix v. Duckworth
INDEX NO.: Q.1.d.5.
CITE: (12/21/82), Ind., 442 N.E.2d 1058
SUBJECT: Extraordinary remedies -- state habeas corpus; credit time
HOLDING: D was convicted of first-degree murder and sentenced to term of life imprisonment in 1973. In 1982, he filed pro se petition for writ of habeas corpus. Petition was denied for failure to state cause of action. D filed motion to correct errors which was also denied. D claimed it was unconstitutional to deny good time credit as provided by Ind. Code 11-1-1- 9.1(a) to prisoner serving term of life imprisonment for first degree murder. Ct. held that no Ct. has jurisdiction to entertain habeas corpus petition unless such petition alleges that petitioning prisoner is entitled to immediate discharge. Dunn, 377 N.E.2d 868. Ct. also held that Ind. Code 11-1-1-9.1(a), which had been repealed, had never mandated good time credit to any group but rather had established parole eligibilities for various categories of felons. In addition, statute now pertinent to D, Ind. Code 11-13-3-2, did not apply to D because D had never been, and was not currently, entitled to good time credit because he had been sentenced to term of life imprisonment. Held, denial of motion to correct errors in habeas corpus petition affirmed.

RELATED CASES: Hale, 992 N.E.2d 848 (Ind. Ct. App 2013) (Tr. Ct. did not follow relevant procedures for habeas corpus petitions, but Tr. Ct.'s error did not affect eventual outcome of D's challenge; see full review at E.13).

Q. EXTRAORDINARY REMEDIES

Q.1. State habeas corpus (Ind. Code 34-1-57-1 et seq.)

Q.1.d.6. Extradition

TITLE: Knoche v. State
INDEX NO.: Q.1.d.6.
CITE: (1/27/93), Ind., 607 N.E.2d 972
SUBJECT: Extraordinary remedies -- state habeas corpus; extradition
HOLDING: D was arrested pursuant to arrest warrant issued by Governor of Indiana on behalf of Governor of South Dakota who issued extradition papers. D's counsel filed petition for writ of habeas corpus challenging extradition, but Tr. Ct. denied petition. D claimed that Tr. Ct. erred in denying his petition for habeas corpus because State of South Dakota did not comply with Uniform Extradition Statute. Ct. held that both extradition request from Governor of South Dakota and warrant issued by Governor of Indiana pursuant to that request were in order at time Indiana Circuit Ct. considered accused's petition for habeas corpus because complaint for forgery had been filed in Circuit Ct. in South Dakota; complaint set forth details under which forgery was committed, including copy of alleged instrument; complaint was presented to magistrate Ct. which ordered arrest warrant issued; and all those papers were certified by clerk of Ct. Held, remanded to Tr. Ct. so that it may order D delivered to South Dakota authorities pursuant to extradition request.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

TITLE: Bell v. Cone

INDEX NO.: Q.2.

CITE: 543 U.S. 447, 125 S. Ct. 847; 160 L.Ed.2d 821 (2005)

SUBJECT: federal habeas, deferential standard of review, AEDPA

HOLDING: The 6th Circuit granted habeas relief to the petitioner in a capital case, holding that Tennessee's "especially heinous, atrocious or cruel" aggravating circumstance was unconstitutionally vague and that the state courts had not cured the deficiency in the statute by giving it a narrower interpretation. The U.S. Supreme Court held that the state court's narrowing construction of the statute did satisfy the federal constitutional requirement that a D not be sentenced to death arbitrarily or capriciously, that the state court's decision was not "contrary to clearly established Federal law", and that the 6th Circuit therefore erred by granting habeas relief.

RELATED CASES: Cash v. Maxwell, 132 S. Ct. 611 (2012) (where "avalanche" of evidence showed informant habitually lied about purported confessions of fellow inmates, Ninth Circuit's granting of habeas relief was in accord with strict standard for granting such relief).

TITLE: Brecht v. Abrahamson
INDEX NO.: Q.2.
CITE: 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993)
SUBJECT: Habeas review - harmless error standard
HOLDING: Appropriate standard on federal habeas review for determining whether trial type constitutional error was harmless is whether error had substantial and injurious effect or influence in determining verdict, rather than whether it was harmless beyond a reasonable doubt. Violation of Doyle v. OH (1976), 426 U.S. 610, which prohibits use of post-arrest silence for impeachment, is constitutional error of trial type.

RELATED CASES: O'Neal v. McAninch, 513 U.S. 432, 115 S.Ct. 992 (1995) (when a federal constitutional trial error is found by a federal habeas corpus court, the error is not harmless if the judge is in "grave doubt" whether the error had a substantial and injurious effect on the verdict. If in the judge's mind the question is evenly balanced, then the error is not harmless. This seems to put the burden on the prosecution contrary to language in Brecht which the Court says is not determinative and did not receive a majority). It is unclear whether the holdings in Brecht and O'Neal have survived the passage of AEDPA.

TITLE: Brown v. Payton

INDEX NO.: Q.2.

CITE: 544 U.S. 133; 125 S.Ct. 1432; 161 L.Ed. 2d 334 (2005)

SUBJECT: Death penalty, AEDPA, jury instructions, mitigation

HOLDING: Payton's mitigation evidence in his capital murder trial focused on his post-crime religious conversion and good behavior in prison. The 8th Amendment requires that a capital sentencing jury be permitted to consider a defendant's post-crime conduct when deciding whether to impose a death sentence. Lockett v. Ohio, 438 U.S. 586, 602-609 (1978). The prosecutor argued that the statutory language of California Penal Code ' 190.3 did not permit the jury to consider evidence of Payton's post-crime conduct as mitigation. Defense counsel objected, but instead of giving the jury a clarifying instruction, the trial court admonished them only that the statements of counsel were not evidence. The state supreme court affirmed the conviction, applying Boyde v. California, 494 U.S. 370 (1990), and holding that it was unlikely that Payton's jury believed that it was required to disregard his mitigating evidence.

The AEDPA permits federal habeas relief from state court opinions only if the state court decision is contrary to, or involves an unreasonable application of, clearly established federal precedent. The federal district court granted habeas relief, applying the pre-AEDPA standard because Payton had filed a request for counsel before the effective date of the AEDPA. The 9th Circuit affirmed. When the case was later remanded for review under the deferential AEDPA standard in light of Williams v. Taylor, 529 U.S. 362 (2000), the 9th Circuit again granted habeas relief, finding that the state court had unreasonably applied U.S. Supreme Court precedent by holding that the California sentencing statutes were not unconstitutionally ambiguous as applied in Payton's case.

The U.S. Supreme Court reversed the 9th Circuit's grant of habeas relief, holding that the state court's application of precedent was not unreasonable or contrary to federal precedent.

TITLE: Boumediene, et al. v. Bush

INDEX NO.: Q.2.

CITE: 128 S.Ct. 2229, 171 L.Ed.2d 41 (2008)

SUBJECT: Habeas corpus applies to Guantanamo detainees

HOLDING: In 5-4 decision, Majority held that aliens designated as enemy combatants and detained at Guantanamo Bay, Cuba, have a constitutional privilege of habeas corpus, which cannot be withdrawn except in conformance with the Suspension Clause, Art. I, ' 9, cl.2. Finding that the Detainee Treatment Act of 2005, which provides certain procedures for reviewing the detainee's status, is not an adequate and effective substitute for habeas review, Majority struck down ' 7 of the Military Commissions Act of 2006, which was intended to strip the federal courts of jurisdiction to review all such claims, as an unconstitutional suspension of the writ. Majority provided a detailed history of the writ and the Suspension Clause as an essential mechanism in the separation-of-powers scheme, both generally and as applied to foreign nationals. Majority found at least three factors relevant to determining the Suspension Clause's reach: (1) the citizenship and status of the detainee and the adequacy of the process through which the status determination is made; (2) the nature of the sites where apprehension and detention took place; and (3) the practical obstacles inherent in resolving the petitioner's entitlement to the writ. Majority found that the procedures afforded those accused of being enemy combatants - which include a "personal representative" who is not a lawyer or advocate, a presumption of validity for the government's evidence, the ability to present only reasonably available evidence that can be obtained while in custody and without legal assistance, and an inadequate review process - "fall well short of the procedures and adversarial mechanisms that would eliminate the need for habeas review." Majority also noted that "in every practical sense, Guantanamo is not abroad; it is within the constant jurisdiction of the United States" for purposes of the second factor, and that, with respect to the third, the government had presented "no credible arguments that the military mission at Guantanamo would be compromised if habeas corpus courts had jurisdiction to hear the detainees' claims." Without attempting to define what would constitute an adequate substitute for habeas relief, Majority considered it "uncontroversial" that the privilege at least "entitles the prisoner to meaningful opportunity to demonstrate that he is being held pursuant to the erroneous application or interpretation of relevant law;" and that the court "must have the power to order the conditional release of an individual unlawfully detained." Moreover, "where a person is detained by executive order, rather than, say, being tried and convicted in a court, the need for collateral review is more pressing." Here, Defendant's lack of counsel, his limited means to find or present evidence, his inability to access the government's "classified" evidence, and the admissibility of potentially unreliable hearsay in the government's case meant that there exists a "considerable risk of error in the tribunal's findings of fact." Souter, J., joined the majority opinion and filed a concurrence, in which Ginsburg and Breyer, JJ., joined; Roberts, C.J., filed a dissent, in which Scalia, Thomas, and Alito, JJ. joined; Scalia, J., filed a dissent, in which the rest of the dissenters joined.

TITLE: Butler v. Curry
INDEX NO.: Q.2.
CITE: 528 F.3d 624 (9th Cir. 2008)
SUBJECT: California v. Cunningham did not announce new rule and applies to habeas review
HOLDING: Ninth Circuit Court of Appeals held the U.S. Supreme Court's rejection in California v. Cunningham, 80 CrL 399 (U.S. 2007) of state courts' attempts to distinguish their sentencing schemes from the one struck down in Blakely v. Washington, 542 U.S. 296 (2004) did not announce a "new" rule and, therefore, the ruling applies on federal habeas corpus review to state sentences that were final when Cunningham was handed down. Court also held, in same case, that the fact that a defendant was on probation when he committed his offense does not fall within the "prior-conviction exception" to the jury-trial rule established in Apprendi v. New Jersey, 530 U.S. 466 (2000).

TITLE: Calderon v. Coleman
INDEX NO.: Q.2.
CITE: 525 U.S. 141; 119 S.Ct. 500; 142 L.Ed.2d 521 (1998)
SUBJECT: Federal Habeas -- Harmless Error Analysis
HOLDING: Lower Court erred in granting habeas relief based on misleading jury instruction, without finding that the instruction had "a substantial & injurious effect or influence" on the jury's sentence of death, as required by Brecht v. Abrahamson, 507 U.S. 619 (1993). Petitioner was convicted of rape, sodomy, & murder, & proceeded to jury penalty phase. Tr. Ct. instructed jury that if petitioner were sentenced to life without parole, the governor had power to commute his sentence to some lesser one that included a possibility of parole. Tr. Ct. also instructed jury not to consider possibility of commutation in determining appropriate sentence. In fact, because petitioner was twice-convicted felon, governor did not have power to commute his sentence without approval of four state supreme court justices. Federal district court granted habeas relief, concluding that commutation instruction was inaccurate & misleading & may have diverted the jury's attention from & prevented it from giving full effect to petitioner's mitigation evidence, in violation of 8th Amendment. Ninth Circuit Court of Appeals affirmed habeas grant. U.S.S.Ct. reverses, per curiam, holding that lower courts failed to apply harmless error analysis set out in Brecht v. Abrahamson, 507 U.S. 619 (1993). In Brecht, the Court held that habeas relief could be granted on basis of trial error only if that error "had substantial & injurious effect on the jury's verdict." Stevens, Souter, Ginsburg, & Breyer, JJ., DISSENT, arguing that the lower courts did in fact apply Brecht standard & found that instruction was not harmless error.

TITLE: Calderon v. Ashmus

INDEX NO.: Q.2.

CITE: 523 U.S. 740, 118 S.Ct. 1694 (1998)

SUBJECT: Habeas Corpus -- Declaratory Judgment Unavailable to Determine Whether State Is Entitled to Procedural Benefits of AEDPA as "Opt-In" State

HOLDING: Class action seeking declaratory judgment on behalf of California death row inmates to determine whether California is "opt-in" state entitled to procedural benefits, including 180-day statute of limitations, contained in Ch. 154 of Antiterrorism & Effective Death Penalty Act (AEDPA), does not present justiciable issue. California Attorney General's office had publicly stated that it would invoke the protections of Ch. 154 with regard to any habeas petitions filed by death row inmates. Inmates sought declaratory relief, arguing that by stating its intention to invoke Ch. 154, California forced death row inmates to make untenable choice between filing pro se petition, which may fail to raise substantial claims, within 180 days, or waiting until counsel is appointed, which may be outside 180 day period. District Court granted declaratory judgment, and 9th Cir. Court of Appeals affirmed. U.S. Supreme Court reverses, finding that petition for declaratory judgment does not present justiciable issue. Actual "controversy" between petitioners and respondents is whether they are entitled to federal habeas relief, and issue of whether provisions of Ch. 154 apply will necessarily be decided in the course of a habeas action. Declaratory judgment sought here is as to validity of defense the State may, or may not, raise in course of habeas proceeding. Declaratory judgment would not resolve entire case or controversy in alternate format, but would merely resolve collateral legal issue and those seeking declaratory judgment a litigation advantage. Choice they are forced to make is no different from choices often forced upon litigants. Breyer & Souter, JJ., CONCUR separately, with understanding that some habeas petitioners will be able to obtain relatively quick judicial answer to question of applicability of Ch. 154, thus providing guidance for other litigants. That is because litigants will choose to amend "bare bones" petitions filed within 180-day period, and standard to be applied in determining whether they are entitled to amend is governed by whether Ch. 154 applies or not.

TITLE: Castro v. United States, 02-6683
INDEX NO.: Q.2.
CITE: 540 U.S. 375, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003)
SUBJECT: Habeas corpus, recharacterization, pro se petitioners
HOLDING: Federal courts sometimes "recharacterize" pro se prisoner filings, treating them as petitions for habeas relief. This can have adverse consequences for the petitioner because 28 U.S.C. § 2255 places restrictions on a prisoner's second and subsequent habeas petitions.

In 1994, Castro filed a pro se motion attacking his conviction, labeling it a motion for a new trial. The District Court considered and denied Castro's petition, referring to it both as a motion for a new trial and as a § 2255 motion. The 11th Circuit Court of Appeals affirmed. In 1997, Castro filed another pro se motion which he labeled a § 2255 motion, and included claims not raised earlier (including an ineffective assistance of counsel claim). The District Court denied the motion. The 11th Circuit remanded for further consideration of the IAC claim but also asked the district court to consider whether the 1997 motion was Castro's first or second under § 2255. At this point, the District Court appointed counsel for Castro and dismissed the motion for failure to obtain permission to file a "second or successive" petition under § 2255. The 11th Circuit affirmed the dismissal.

The U.S. Supreme Court held that federal courts may not recharacterize a pro se motion unless they first warn the litigant about the consequences and give him the opportunity to contest recharacterization or to withdraw or amend the motion.

TITLE: Cavazos v. Smith
INDEX NO.: Q.2.
CITE: (10-31-11), 132 S. Ct. 2 (S.Ct. 2011)
SUBJECT: Deference to state court determinations of sufficiency of evidence
HOLDING: In a 6-3 per curiam decision, the Supreme Court reversed the Ninth Circuit's granting of Shirley Smith's petition for writ of habeas corpus because the Ninth Circuit improperly substituted its judgment about the sufficiency of evidence for the judgment of the California state courts.

Here, Smith was charged with the death of her 7-week-old grandson. According to five dueling experts, the grandson died of either Sudden Infant Death Syndrome, Shaken Baby Syndrome, or some unidentified "old trauma."

Jackson v. Virginia, 443 U.S. 307 (1979) makes clear that it is the responsibility of the jury - not the court - to decide what conclusions to draw from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. . . . Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believed to be mistaken, but they must nonetheless uphold." Justices Ginsburg, Breyer, and Sotomayor would have denied certiorari, believing this is the sort of fact-bound decision on which Supreme Court review is usually denied.

RELATED CASES: Coleman, 132 S.Ct. 2060 (2012) (in granting petition for writ of habeas corpus on sufficiency grounds, Third Circuit Court of Appeals unduly impinged on the jury's role as factfinder, contravening standard set forth in Jackson v. Virginia, 443 U.S. 307 (1979)); Parker, 132 S.Ct. 2148 (2012) (in granting petition for writ of habeas corpus, Sixth Circuit substituted its judgment for Kentucky state courts on issues related to Matthews' alleged extreme emotional disturbance when he murdered his wife and mother-in-law and the alleged due process violation resulting from prosecutor's comments during closing argument about Matthews' efforts to concoct the emotional-disturbance defense).

TITLE: Christeson v. Roper
INDEX NO.: Q.2.
CITE: (1/20/2015), 135 S. Ct. 891 (U.S. Supreme Court 2015)
SUBJECT: Substitute habeas counsel necessary to avoid conflict of interest
HOLDING: In denying Petitioner's motion for substitute counsel to seek tolling of the 1-year statute of limitations for his petition for writ of habeas corpus, the District Court failed to properly apply the "interests of justice" standard from Martel v. Clair, 132 S. Ct. 1276 (2012), which should have compelled the District Court to find that allowing Petitioner's original attorneys to seek equitable tolling would have created a serious conflict of interest. The conflict would have arisen because the basis for seeking equitable tolling was the first attorneys' failure to timely file the petition for writ of habeas corpus; they missed the deadline by 117 days. This would make the first attorneys "denigrate their own performance." Counsel cannot be expected to so argue; doing so threatens their professional reputation and livelihood, thus putting their own interests at odds with the Petitioner's best argument. See Maples v. Thomas, 132 S. Ct. 912, 925 n.8 (2012). The reality of this conflict became especially apparent when, in opposing the motion for substitute counsel, Petitioner's first attorneys argued that Petitioner's arguments for equitably tolling were "ludicrous" and that they had a "legal basis and rationale for the [erroneous] calculation of the filing date." This argument was directly contrary to Petitioner's interests and manifestly served the first attorneys' own professional and personal interests." Clair makes clear that this sort of conflict is grounds for substitution. Held, petition for cert. granted, judgment of Eighth Circuit Court of Appeals reversed, and remanded. Per curiam; Alito, Thomas, J.J., dissenting.

TITLE: Coleman v. Thompson

INDEX NO.: Q.2.

CITE: 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991)

SUBJECT: Standard for determining when state decision rests upon independent/adequate state grounds

HOLDING: In habeas corpus proceedings, if decision of last state court to review federal claim appears to rest decision primarily on resolution of federal claim or is interwoven with federal claim, & did not clearly & expressly rely on independent & adequate state ground, federal court may review federal issue. Harris v. Reed (1989), 489 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308. Here, Coleman filed notice of appeal from denial of state PCR 3 days late. State moved to dismiss based upon late filing. Numerous motions/memorandums filed addressing late filing as well as merits of appeal & state court ultimately granted motion to dismiss appeal. Coleman then presented defaulted claims to federal court via habeas proceeding arguing that "procedural default does not bar consideration of a federal claim on ... habeas review unless the last state court rendering a judgment in the case clearly & expressly states that its judgment rests on a state procedural bar." Harris, supra, at 263. Coleman asserts that because state court's one sentence order fails to state the grounds on which it relied in dismissing appeal Harris presumption applies. Court rejects argument holding that Harris presumption applies only in those cases where federal court has good reason to question whether there is independent & adequate state ground for decision. Held, Harris presumption does not apply here. State court's dismissal order fairly appears to rest primarily on state law because it granted state's dismissal motion which was based solely on Coleman's failure to meet state imposed time deadlines. White, CONCURRING IN JUDGMENT; Blackmun, joined by Marshall & Stevens, DISSENTING.

TITLE: Cone v. Bell
INDEX NO.: Q.2.
CITE: 129 S.Ct. 1769 (2009)
SUBJECT: Habeas corpus - death row didn't default Brady claims
HOLDING: A state death-row prisoner is entitled to federal habeas corpus review of his claim that the state withheld material exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963), in the absence of an independent and adequate state ground for denying review. Although the suppressed evidence of Petitioner's heavy drug use around the time of the murders was not material to his convictions, it may have been material to the jury's determination of the appropriate punishment. Thus, a full review of that evidence and its effect on the sentencing verdict is warranted.

State argued that Petitioner's claim was barred because it was decided by Tennessee Supreme Court on direct review and that Petitioner waived claim by never properly raising it in state court. U.S. Supreme Court disagreed and concluded that state courts' rejection of Petitioner's Brady claim did not rest on the type of independent state ground that will bar federal habeas review. The state court's denial of the Brady claim on the ground it had been previously determined in state court rested on a false premise: Petitioner had not presented the claim in earlier proceedings and, consequently, the state courts had not passed on it. The Sixth Circuit's rejection of the claim as procedurally defaulted because it had been twice presented to the Tennessee courts was thus erroneous.

Supreme Court also found unpersuasive the State's alternative argument that federal review is barred because the Brady claim was properly dismissed by the state courts as waived. Those courts held only that the claim had been previously determined, and the Supreme Court would not second-guess their judgment. Because the claim was properly preserved and exhausted in state court, it is not defaulted. Held, denial of habeas corpus reversed and remanded to allow district court to fully review the withheld evidence and its effect on verdict of death. Roberts, C.J., CONCURRING, wrote separately to stress fact-specific nature of holding and to emphasize that Court was leaving it to district court to decide merits in the first instance, despite opining on the materiality of the suppressed evidence. Thomas, J., joined by Scalia, J., DISSENTING, stressed brutality of Petitioner's crimes, judicial resources that have already been expended on his case, and withheld evidence was not material to Petitioner's punishment. Alito, J., DISSENTING IN PART, believes case should be remanded because circuit court's decision on procedural default rested on a mistaken factual premise, but that Petitioner's claim cannot go forward because it either was not exhausted in state courts or was procedurally defaulted.

TITLE: Cullen v. Pinholster

INDEX NO.: Q.2.

CITE: (04-04-11), 131 S.Ct. 1388 (2011)

SUBJECT: Limits on new evidence in federal habeas proceedings

HOLDING: A federal habeas court may not overturn as Aunreasonable@ a state court determination that trial counsel was effective by relying on evidence that was never presented to the state court. Federal court review of state court decisions is limited by the AEDPA to evidence that was presented to the state court that first heard the claim. In divided opinion, Court first held (by a vote of 7-2) that Federal courts must not consider new evidence first presented in federal court, and instead may grant habeas relief pursuant to ' 2254(d)(1) only if the state court decision was unreasonable in light of the evidence it had before it at the time of a petitioner=s claim. Court then held (in a 5-4 vote) that D was not entitled to habeas relief from his death sentence under this framework because the state court's rejection of his claim was reasonable in light of the evidence it had before it at the time. After exhausting state collateral proceedings, D sought federal habeas relief on ground that his trial counsel was ineffective for failing to introduce important mental health mitigating evidence during penalty phase. After an evidentiary hearing, federal district court granted relief on basis of mental health evidence that had been developed at that hearing but which had never been presented to the state courts. Ninth Circuit erroneously affirmed district court, which granted relief in part on the basis of evidence first adduced in federal court. Held, Ninth Circuit Court of Appeals' opinion at 590 F.3d 651 reversed; Alito, J., CONCURRING, disagrees with the broad rule, but believes that in this case petitioner had not diligently presented the evidence in state court. Breyer, J., CONCURRING in part and DISSENTING in part, agrees with Courts' conclusion that Section 2254(d)(1) inquiry should be limited to the evidence that was before the state court, but he would have remanded the case to the Ninth Circuit for it to apply the standards outlined in Court's opinion. Sotomayor, J., joined in part by Ginsburg and Kagan, JJ., DISSENTING from both of Court's holdings.

TITLE: Felkner v. Jackson
INDEX NO.: Q.2.
CITE: (03-21-11), 562 U.S. 594, 131 S.Ct. 1305 (U.S. 2011)
SUBJECT: "Inexplicable" appellate decision in Batson challenge
HOLDING: Per Curiam. Ninth Circuit had no basis to award habeas relief to a state inmate alleging that prosecutors had peremptorily struck jurors at his trial on the basis of race. Court determined that Ninth Circuit's three-paragraph decision finding that prosecutor wrongfully dismissed two African Americans from jury panel is "as inexplicable as it is unexplained." One of the dismissed jurors had said he believed California police officers had frequently stopped his car because of his race and young age. The other was a social worker who had interned at the county jail. The prosecutor said he feared the first juror may still harbor police animosity and he struck the second because he does not Alike to keep social workers.@ A third black member of the panel was seated as a juror. The Ninth Circuit should have deferred to state court rulings that upheld the prosecutor's explanations to justify his challenges to two African American jurors. Held, Ninth Circuit Court of Appeals' opinion at 389 Fed.Appx. 640 reversed.

TITLE: Greene v. Fisher
INDEX NO.: Q.2.
CITE: (11-08-11), 132 S.Ct. 38 (U.S. 2011)
SUBJECT: Habeas - law at time of state court decision is what matters
HOLDING: The Antiterrorism and Effective Death Penalty Act (AEDPA) requires that, to be set aside, a state court judgment must have been "contrary to, or involved an unreasonable application of, clearly established Federal law" as determined by the U.S. Supreme Court. For purposes of the AEDPA, "clearly established federal law" is limited to the Supreme Court's decisions "as of the time of the relevant state-court adjudication on the merits." Thus, federal judges reviewing a state court decision under 28 U.S.C. § 2254(d) may not consider Supreme Court precedent that appeared only after that state court decision.

Here, in murder and robbery prosecution, State used redacted versions of co-Ds' pretrial statements linking D to robbery, but because the co-Ds did not testify at trial, D could not use cross-examination to challenge the statements. Pennsylvania Superior Court affirmed the convictions, holding that the co-Ds' statements as redacted did not so clearly implicate D as to violate the confrontation clause. Pennsylvania Supreme Court dismissed D's appeal, and about three months later, the U.S. Supreme Court held in Gray v. Maryland, 118 S.Ct. 1151 (1998) that the constitution forbids prosecutors from using redacted statements like those of co-Ds in this case. Since Pennsylvania Supreme Court's decision dismissing D's appeal predated U.S. Supreme Court's decision in Gray v. Maryland by three months, the Third Circuit correctly held that Gray was not "clearly established Federal law" that would allow the federal court to grant D's application for a writ of habeas corpus. Moreover, D could have sought cert with U.S. Supreme Court after the Pennsylvania Supreme Court dismissed his appeal, "which would almost certainly have produced a remand" in light of the 1998 decision. Nor did D *cite* Gray in a petition for post-conviction relief. Held, Third Circuit Court of Appeals' opinion at 606 F.3d 85 affirmed.

TITLE: Herrera v. Collins
INDEX NO.: Q.2.
CITE: 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993)
SUBJECT: Federal habeas - capital punishment; eighth amendment; innocence
HOLDING: Newly discovered evidence allegedly demonstrating actual innocence does not, as general rule, provide basis for federal habeas relief absent independent constitutional error in underlying state proceedings. Neither does state's failure to provide review of such claims many years after original trial violate due process. Federal habeas courts sit to ensure that individuals are not imprisoned in violation of constitution, not to correct errors of fact. While actual innocence serves as gateway through which habeas petitioner must pass to have otherwise barred constitutional claim considered on merits, it is not constitutional claim itself. Cases holding that 8th amend. requires heightened standard of reliability in capital sentencing procedures do not apply because petitioner is challenging reliability of guilt/innocence determination, not sentencing. Further, it is not clear that review of evidence in federal court ten years after conviction would add any reliability to process. Petitioner also argued that state's failure to provide procedure to review newly discovered evidence outside 30-day time limit violates due process, but majority pointed out that all but nine states have time limits for such proceedings, and this cannot be said to offend any fundamental principle of justice. Petitioner argued that federal habeas should provide safety valve for capitally sentenced, innocent individuals, but majority points to executive clemency as filling this role. Finally, majority points out that, even assuming for sake of argument that truly persuasive claim of actual innocence may constitute to cognizable constitutional claim warranting federal habeas relief, petitioner's claim does not rise to this level.

RELATED CASES: McQuiggin v. Perkins, 133 S. Ct. 1924 (2013) (a showing of actual innocence allows habeas petitioner to bypass procedural default that normally results from failure to meet AEDPA statute of limitations; see full review, this section).

TITLE: Holland v. Florida
INDEX NO.: Q.2.
CITE: (06-14-10), U.S., 130 S.Ct. 2549
SUBJECT: Equitable Tolling of AEDPA Limitation Period Due to Misconduct of Counsel
HOLDING: The 1996 revision of the federal habeas corpus statute, which included the one-year requirement for filing a habeas petition after a final state court ruling, is not "jurisdictional" but rather a limitation upon federal courts' power to review state court rulings. Congress did not, therefore, intend to close the federal courthouse doors "that a strong equitable claim would ordinarily keep open." A showing of "extraordinary circumstances" can support a claim for equitable tolling of the one- year limitations period.

Here, Court reversed the Eleventh Circuit's decision that the petitioner's case did not constitute "extraordinary circumstances" for purposes of equitable tolling under the AEDPA. This was not a claim of "garden variety" attorney negligence, but attorney misconduct. In this case, the attorney missed the filing deadline and failed to communicate. Supreme Court rejected the district court's finding that the petitioner had not acted diligently, as the record showed that he had diligently pursued his rights by writing his attorney, providing research, repeatedly asking that the attorney be removed from his case, and finally filing his own federal habeas petition on the day he found out the filing period had expired. It also rejected the Eleventh Circuit's rigid per se rule for "extraordinary circumstances," which it found to be difficult to reconcile with general equitable principles and because it fails to recognize that sometimes an attorney's unprofessional conduct can be so egregious that it constitutes extraordinary circumstances warranting equitable tolling. Because the Eleventh Circuit had relied on an erroneous test, the Court remanded the case for further proceedings but did not indicate whether petitioner's claim of his lawyer's gross negligence would suffice to constitute an "extraordinary circumstance" that would support equitable tolling of the habeas statute of limitations. Alito, J., filed an opinion CONCURRING IN PART and CONCURRING IN THE JUDGMENT. Scalia, J., joined in part by Thomas, J., DISSENTING, argued that Congress did not include equitable tolling in its recognition of specific instances in which the statute of limitations would be applicable. He also criticized the majority for "smuggling" in the Strickland v. Washington IAC standard in equitable clothing.

RELATED CASES: Christeson v. Roper, 135 S. Ct. 891 (U.S. Supreme Court 2015) (District court erred in denying Petitioner's motion for substitute counsel to seek equitable tolling of statute of limitations as it failed to acknowledge conflict of interest that would have occurred if first attorneys - who missed deadline for Petitioner's habeas filing by 117 days - filed motion for equitable tolling as they would be forced to "denigrate their own performance"; see full review, this section); Maples v. Thomas, 132 S.Ct. 912 (U.S. 2012) (procedural default excused where attorneys abandoned D).

TITLE: Hutson v. Quarterman
INDEX NO.: Q.2.
CITE: 508 F.3d 236 (5th Cir. 2007)
SUBJECT: DNA testing for state PCR tolls federal habeas relief
HOLDING: Fifth Circuit Court of Appeals held the limitations period for filing an application for federal habeas corpus relief is tolled for prisoners during the pendency of state motions for post-conviction DNA testing. Court decided that such a motion qualifies as what the federal tolling provision refers to as an "application for state post-conviction or other collateral review," 28 U.S.C. 2244(d)(2). Emphasizing that such review goes to the heart of the judgment of conviction, Court decided that a contrary rule would encourage prisoners to forgo state-law remedies to preserve their federal habeas options and would thereby disserve the interests in comity, finality of state judgments, and federalism that the tolling provision was designed to protect. Court further held that it makes no difference whether the defendant's motion for DNA testing was ultimately granted.

TITLE: Jimenez v. Quarterman

INDEX NO.: Q.2.

CITE: (U.S.), (01-13-09 2009), 129 S.Ct. 681

SUBJECT: Reinstatement of appeal restarts one-year deadline to file habeas petition

HOLDING: If a state prisoner is allowed by a state court to file a belated appeal, that will delay the start of the one-year filing period for pursuing a habeas corpus challenge until after the state appeal is resolved. 28 U.S.C. ' 2244(d)(1)(A) provides that the one-year limitations period for seeking review under the Antiterrorism and Effective Death Penalty Act of 1996 begins on "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." A State conviction is not "final" for federal habeas corpus purposes where, as here, State has allowed an out-of-time, direct appeal of a conviction. Thus, district court erred in dismissing Defendant's petition for habeas corpus as time barred. Held, judgment reversed and remanded.

TITLE: Lee v. Kemna

INDEX NO.: Q.2.

CITE: 534 U.S. 362; 122 S. Ct. 877; 151 L. Ed. 2d 820 (2002)

SUBJECT: Adequacy of state grounds to bar federal habeas review

HOLDING: Where D made an oral motion, midtrial, for an overnight continuance to locate his absent witnesses, a state trial rule requiring motions for continuance to be made in writing did not constitute adequate state grounds to bar federal habeas review.

D, on trial for murder, planned to use an alibi defense and told the jury so during opening statements. His three alibi witnesses came to court for the first three days of the trial but vanished shortly before the state rested its case. D's counsel made an oral motion for an overnight continuance to locate the witnesses. The trial court denied the motion on the grounds that the judge would be unavailable the next day and a new trial was starting the day after that; the judge stated that it was apparent that D's witnesses had abandoned him. The defense rested its case and D was convicted.

The Missouri Court of Appeals held that the denial of continuance was proper because D's motion did not conform to Missouri Rule 24.09, requiring continuance motions to be in writing and accompanied by affidavit, and 24.10, setting forth the showings a movant must make to gain a continuance based on the absence of a witness.

The U.S. Supreme Court held that D's failure to comply with the state procedural rules in this situation was not "adequate state grounds" to bar federal habeas review. The adequacy of state procedural bars to the assertion of federal questions is not within the State's prerogative to decide, it is itself a federal question. Douglas v. Alabama, 380 U.S. 415 (1965).

TITLE: Lindh v. Murphy

INDEX NO.: Q.2.

CITE: 521 U.S. 320, 117 S.Ct. 2059; 138 L.Ed.2d 481 (1997)

SUBJECT: Habeas Amendment -- Not Retroactively Applicable to Pending Petitions

HOLDING: New standard, embodied in 28 U.S.C. 2254(d), as amended by 1996 Antiterrorism and Effective Death Penalty Act (AEDPA), generally governing federal habeas corpus review of claims brought by state prisoners, does not apply to habeas petitions that were filed before AEDPA became effective on 4/24/96. AEDPA amended Chapter 153 of Title 28, which covers all federal habeas actions, and added new Chapter 154 providing special treatment of capital cases from states meeting certain requirements chiefly regarding provision of post-conviction counsel. New Chapter 154 contains provision expressly making that chapter applicable to cases pending at time of its enactment; no similar provision is contained in amendments to Chapter 153. Five member majority holds that amendment to Chapter 153 changing standard of review of state claims does not apply to cases pending at time it was enacted. First, Congress' explicit statement regarding retroactive application of Chapter 154 indicates implicitly that other provisions were not intended to apply retroactively. Both sections are generally substantive rather than procedural, so that presumption is against retroactive application. Inclusion of express statement regarding retroactive application in Chapter 154 but not in section amending Chapter 153 indicates intent that latter amendments not be applied to pending cases. Rehnquist, C.J., and Scalia, Kennedy, and Thomas, JJ., DISSENT.

TITLE: Maples v. Thomas
INDEX NO.: Q.2.
CITE: (01-18-12), 132 S.Ct. 912 (U.S. 2012)
SUBJECT: Equitable Tolling of AEDPA Limitation Period Due to Abandonment by Counsel
HOLDING: Death row inmate Cory Maples showed requisite "cause" to excuse his procedural default, which occurred when his lawyer failed to file a timely appeal in the state courts. Maples' attorneys abandoned him without notice. Maples cannot be faulted for failing to act on his own when he has no reason to believe he is, in fact, unrepresented. See Coleman v. Thompson, 501 U. S. 722, 750 (1991).

Holland v. Florida, 130 S. Ct. 2549 (2010) found that the one-year deadline for filing a federal habeas petition can be tolled for equitable reasons, and that an attorney=s unprofessional conduct may sometimes be an "extraordinary circumstance" justifying equitable tolling. Further, under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him.

Here, two attorneys from a law firm in New York filed a pro bono petition for state post-conviction relief and hired an Alabama lawyer to move for their admission pro hac vice. Local counsel did not agree to any substantive involvement in the case. While the state post-conviction action was pending, both New York lawyers moved on to other positions, where they were unable to continue representing Maples. However, neither attorney moved to withdraw from Maples' case. When Tr. Ct. denied the petition, the clerk sent copies of the order to the New York firm, but the firm returned them unopened. Local counsel also received a copy of the order, but took no action. Maples' 42-day deadline to file a notice of appeal expired. The case was remanded to the District Court and Eleventh Circuit to address the question of whether Maples was prejudiced. GINSBURG, J.; SCALIA, J., DISSENTING, joined by THOMAS, J. Cert. granted, Eleventh Circuit and District Court reversed.

TITLE: McQuiggin v. Perkins
INDEX NO.: Q.2.
CITE: (5/28/2013), 133 S. Ct. 1924 (US Sup.Ct. 2013)
SUBJECT: Showing of actual innocence sufficient to circumvent AEDPA statute of limitations
HOLDING: Actual innocence, if shown, allows a habeas petitioner to circumvent the AEDPA one-year statute of limitations and receive review of a petitioner's claim on the merits. Herrera v. Collins, 506 U.S. 390, 404 (1993). The Court created this miscarriage-of-justice exception well before Congress enacted AEDPA in 1996, and the exception is presumed to apply absent explicit rejection by Congress. The exception strikes the proper balance between a state's interest in comity and finality and the interest in seeing that federal constitutional errors do not lead to incarceration of innocent persons. Nonetheless, unjustifiable delay by a habeas petitioner, here six years, might bear on the strength of a petitioner's showing of actual innocence. Further, the Court essentially directed the Sixth Circuit on remand to affirm the District Court's finding that petitioner failed to demonstrate actual innocence.

The dissenters accused the majority of rewriting the habeas statute. Held, cert. granted, and remanded to Sixth Circuit. Ginsburg, J., joined by Kennedy, Breyer, Sotomayor, and Kagan, J.J. Scalia, J., dissenting, joined by Roberts, C.J., and Thomas and Alito, J.J.

TITLE: Miller-El v. Cockrell

INDEX NO.: Q.2.

CITE: 537 U.S. 322 (2003)

SUBJECT: Federal habeas corpus, AEDPA, certificate of appealability, Batson, racial bias, peremptory challenges

HOLDING: At Miller-El's capital murder trial (in Texas), at the conclusion of voir dire, the defense moved to strike the jury, claiming that the State had violated the Equal Protection Clause of the 14th Amendment by using peremptory challenges to exclude African-American jurors. The trial court denied the motion under the controlling standard at the time as set forth in Swain v. Alabama, 380 U.S. 202 (1965), and the defendant was later convicted. While the case was on direct appeal, the U.S. Supreme Court decided Batson v. Kentucky, 476 U.S. 79 (1986), establishing a three-part test for evaluating claims like the defendant's. The Texas appellate court remanded the case to the trial court for new findings in light of Batson.

On remand, the trial court admitted all the evidence from the original Swain hearing and additional evidence and testimony from the attorneys in the original trial, but concluded that Miller-El's evidence failed to even establish a prima facie case of racial motivation in the State's use of peremptory challenges (as required by step one of the Batson test). The federal district court denied habeas relief and the 5th Circuit Court of Appeals denied Miller-El a certificate of appealability (COA), concluding that the state court's adjudication was not unreasonable nor resulted in a decision contrary to clearly established federal law.

The U.S. Supreme Court reversed the 5th Circuit's denial of a COA and remanded for further proceedings, noting that the Court of Appeals had mistakenly confused the standard for habeas relief on the merits with the less stringent standard for the issuance of a COA, and holding that a COA should issue when a District Court's decision to deny habeas relief is debatable.

The U.S. Supreme Court also questioned the lower courts' "dismissive and strained interpretation of petitioner's evidence," noting inter alia that African-American venire members were generally asked different questions than white venire members, and that "the differences in the questions posed by the prosecutors are some evidence of purposeful discrimination," *citing* Batson. The Court also noted that the State's use of a peculiar Texas procedure known as a 'jury shuffle' "when a predominate number of African-Americans were seated in the front of the panel ... raise[d] a suspicion that the State sought to exclude African-Americans from the jury."

TITLE: Mitchell v. Esparza
INDEX NO.: Q.2.
CITE: 540 U.S. 1142, 124 S.Ct. 1124, 157 L.Ed.2d 956 (2003)
SUBJECT: Habeas corpus, AEDPA, harmless error analysis, Apprendi
HOLDING: Esparza was convicted of felony murder and the jury recommended a death sentence. The defendant argued on state post-conviction review that under Ohio's death penalty statute, he was not eligible for death because he had not been charged as a "principal offender." The Ohio Court of Appeals applied harmless error analysis, holding that literal compliance with the statute was not required, because the defendant was the only one named in the indictment.

On federal habeas review, the district court granted relief and the 6th Circuit affirmed, holding that the Ohio court's decision was an unreasonable application of clearly established federal law because after Apprendi v. New Jersey, the trial court's failure to instruct the jury on an element of a capital sentencing enhancement was not subject to harmless error analysis.

The U.S. Supreme Court reversed the 6th Circuit, holding that the state court's decision was not contrary to, nor an unreasonable application of, clearly established federal law, and that federal habeas relief was therefore barred by 28 U.S.C. §2254(d), the AEDPA. The U.S. Supreme Court has held that harmless error review is feasible when a non-capital jury is precluded from determining one element of an offense, Neder v. U.S., 527 U.S. 1, 19 (1999), and has never held that harmless error analysis is unavailable when a capital sentencing jury is similarly precluded from determining one element of the offense. Therefore, the state court's application of harmless error analysis was not unreasonable or contrary to clearly established federal law.

In this opinion, the Court did not squarely hold that the failure to instruct a capital sentencing jury about one element of the offense is subject to harmless error analysis (a question left open in Ring v. Arizona, 536 U.S. 584, 609 n.7 (2002). Instead, the holding rests on the AEDPA's limitation on federal habeas relief. However, after this opinion there is little doubt that in the future the Court will apply harmless error analysis when a capital sentencing jury is precluded from considering one element of the offense.

TITLE: Munaf, et al. v. Geren

INDEX NO.: Q.2.

CITE: 129 S.Ct. 19, 171 L.Ed.2d 922 (2008)

SUBJECT: Habeas cannot prevent American citizens' transfer for foreign sovereign prosecution

HOLDING: Unanimous Court held the habeas statute, 28 U.S.C. ' 2241(c)(1), extends to American citizens held overseas by American forces operating subject to an American chain of command. Court rejected government's argument that the federal courts lack jurisdiction over the detainees' habeas petitions in such circumstances because the American forces holding them operate as part of a multinational force. The statute applies to persons held "in custody under or by color of the authority of the United States." The disjunctive "or" makes clear that actual government custody suffices for jurisdiction, even if that custody could be viewed as "under . . . color of" another authority such as a multinational entity. Court distinguished from Hirota v. MacArthur, 338 U.S. 197 (1948) in that present cases involved American citizens and that Hirota court may have found it significant that government in that case argued that General MacArthur's duty was to obey the Far Eastern Commission and not the U.S. War Department, whereas here government acknowledged that U.S. military commanders answer to the President. However, Court determined that federal courts may not exercise their habeas jurisdiction to enjoin the United States from transferring individuals alleged to have committed crimes and detained within the territory of a foreign sovereign to that sovereign for criminal prosecution. Because Petitioners stated no claim for which relief could be granted, their habeas petitions should have been promptly dismissed, and no injunction should have been entered. A preliminary injunction is an "extraordinary and drastic remedy." It should never be awarded as of right, and requires a demonstration of "a likelihood of success on the merits." There are occasions when it is appropriate for a court reviewing a preliminary injunction to proceed to the merits; given that the present cases implicate sensitive foreign policy issues in the context of ongoing military operations, this is one of them. Court rejected Petitioners' claims of entitlement to habeas relief because they have a legally enforceable right not to be transferred to Iraqi authorities for criminal proceedings and because they are innocent civilians unlawfully detained by the government, seeking injunction in the first case and release in the second. Because both requests would interfere with Iraq's sovereign right to "punish offenses against its laws committed within its borders," Petitioners' claims do not state grounds upon which habeas relief may be granted. Habeas corpus does not bar the government from transferring a prisoner to the sovereign authority he concedes has a right to prosecute him. Petitioners' allegations that their transfer to Iraqi custody is likely to result in torture are a matter of serious concern but those allegations generally must be addressed by the political branches, not the judiciary. Souter, J., filed a concurring opinion, in which Ginsburg and Breyer, JJ., joined.

TITLE: Nevada v. Jackson
INDEX NO.: Q.2.
CITE: (6/3/2013), 133 S. Ct. 1990 (US Sup. Ct. 2013)
SUBJECT: Clearly established federal law gives no right to impeach witness with extrinsic evidence
HOLDING: Ninth Circuit exceeded its authority under the AEDPA by granting habeas relief on ground that Nevada Supreme Court unreasonably applied "clearly established Federal law when it held that respondent's right to present a defense was not violated by exclusion of extrinsic evidence through which he sought to impeach a prosecution witness.

At his rape trial, petitioner sought to introduce victim's past allegations that police could not corroborate. Nevada case law allows a D to introduce extrinsic that victim made fabricated allegations in past but only upon giving timely notice, which petitioner failed to do. None of the Court's decisions state that such a notice requirement is constitutional. Petitioner's Confrontation Clause rights were not violated because the Court has never held that a D has a right to impeach a witness with extrinsic evidence. Per Curiam.

TITLE: Pace v. DiGulielmo
INDEX NO.: Q.2.
CITE: 544 U.S. 408, 125 S.Ct. 1807; 161 L.Ed.2d 669 (2005)
SUBJECT: AEDPA, properly filed applications, tolling, federal habeas
HOLDING: The AEDPA, 28 U.S.C. § 2244(d)(2), sets a one-year time limit for filing a federal habeas corpus petition. The limitations period is tolled while a "properly filed" state post-conviction application is pending. The Court held 5-4 that a state post-conviction relief petition is not "properly filed" if it is eventually rejected by the state court as untimely.

TITLE: Saffle v. Parks

INDEX NO.: Q.2.

CITE: 494 U.S. 483, 110 S.Ct. 1257, 108 L.Ed.2d 415 (1990)

SUBJECT: "New rule" not announced in habeas cases

HOLDING: "New rules" will not be applied or announced in cases on federal habeas unless rule falls within 1 of 2 narrowly drawn exceptions. Teague v. Lane (1989), 489 U.S. 289, 109 S.Ct. 1060, 103 L.Ed.2d 334. Here, D asks court to hold instruction that jury "must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factor when imposing sentence" violates precedent requiring jury to consider all mitigating evidence. See Lockett v. Ohio (1978), 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (jury may not be precluded from considering, as mitigating factor, any aspect of D's character/record & any circumstances of offense that D proffers as basis for sentence less than death); Eddings v. Oklahoma (1982), 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (sentencer may not refuse to consider as a matter of law any relevant mitigating evidence). Here, however, D asks for rule relating, not to what mitigating evidence jury must be permitted to consider, but to how it must consider mitigating evidence. Rule D seeks is not dictated by Lockett/Eddings. Nothing in Lockett/Eddings prevents State from attempting to ensure reliability & non-arbitrariness by requiring that jury consider & give effect to D's mitigating evidence in form of "reasoned moral response" rather than emotional one. Nor does rule fall under either of 2 exceptions to prohibition on announcing new rules in habeas cases. Proposed new rule does not decriminalize class of conduct nor prohibit imposition of death penalty on particular class of persons. Nor does proposed new rule a "watershed" rule of procedure implicating fundamental fairness & accuracy of criminal proceeding. Brennan, joined by Marshall, Blackmun & Stevens, DISSENTING.

TITLE: Solomon v. United States
INDEX NO.: Q.2.
CITE: 467 F.3d 928 (6th Cir. 2006)
SUBJECT: Federal habeas corpus deadline tolled due to impediments to legal materials
HOLDING: The Sixth Circuit U.S. Court of Appeals held that a federal habeas corpus petitioner who was convicted in 1992 but ran into trouble meeting the 1997 deadline enacted in the 1996 Antiterrorism and Effective Death Penalty Act on account of a bad prison library and transfers to other prisons is entitled to equitable tolling of the limitations period. The Court's decision focused on two of the five factors that the Court has said should be considered when evaluating a prisoner's request for equitable tolling: the prisoner's "diligence in pursuing his rights" and the prisoner's "reasonableness in remaining ignorant of the legal requirement for filing his claim." Petitioner said he did not learn of the AEDPA's April 24, 1997, deadline until the beginning of 1997 because of the poor circulation of changing laws to inmates at his maximum-security facility. He also said he was impeded in his attempts at research by the prison's rotation system for allowing prisoners to use the library, and by the crush of prisoners seeking access to the library leading up to the deadline. Majority found the prisoner's explanations not to be unreasonable and noted that his transfers to other prisons kept his legal materials out of reach for the month before and month after the April deadline. Judge Richard Allen Griffin dissented on grounds that the Sixth Circuit's equitable tolling precedent was inconsistent with the plain language of the AEDPA. Acknowledging being bound by this precedent he still felt the Petitioner's other explanations would not have kept him from timely submitting "the fill-in-the blank habeas form" that he filed.

TITLE: Gonzalez v. Thayer
INDEX NO.: Q.2.
CITE: (01-10-12), 132 S.Ct. 641 (U.S. 2012)
SUBJECT: Adequate "certificate of appealability" mandatory but not jurisdictional
HOLDING: The requirement of U.S.C. § 2253(c)(3) to file a “certificate of appealability” is a mandatory rule but not a non-jurisdictional rule. The failure of a certificate to list constitutional issues for the appeal does not deprive a court of appeals of jurisdiction to adjudicate the appeal.
SOTOMAYOR, J., SCALIA, J., DISSENTING. Cert. Granted, Fifth Circuit reversed and judgment reversed.

TITLE: Gonzalez v. Thayer
INDEX NO.: Q.2.
CITE: (01-10-12), 132 S.Ct. 641 (U.S. 2012)
SUBJECT: One-year deadline for AEDPA begins on conclusion of state direct review
HOLDING: The event that triggers the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") deadline of one year for a state prisoner to file a petition for writ of habeas corpus in federal district court is the Athe date on which the judgment became final . . . "by the conclusion of direct review or the expiration of time to seek such review." SOTOMAYOR, J., (Per Curiam). Certiorari granted and Fifth Circuit Court of Appeals reversed and judgment reversed.

TITLE: Wall v. Kholi
INDEX NO.: Q.2.
CITE: (03-07-11), 131 S.Ct. 1278 (U.S. 2011)
SUBJECT: Tolling AEDPA time with sentence-reduction motion
HOLDING: The Antiterrorism and Effective Death Penalty Act (AEDPA) provides a one-year limitations period for the filing of a federal habeas petition, but that clock is paused by "a properly filed application for State post-conviction or other collateral review." Resolving a circuit split, Court held that the term "collateral review" means "judicial review of a judgment in a proceeding that is not part of direct review." Here, Defendant's federal habeas petition was timely because his motion in state court to reduce his sentence qualified as "collateral review" and thus tolled the federal statute of limitations period. The Court relied, inter alia, on its own use of the words, "collateral" and "review" in prior opinions. Held, First Circuit Court of Appeals' opinion at 582 F.3d 147 affirmed; Scalia, J., CONCURRING IN PART.

TITLE: White v. Woodall
INDEX NO.: Q.2.
CITE: (4/23/2014), 134 S.Ct. 1697 (U.S. 2014)
SUBJECT: AEDPA - Unreasonable Application of Clearly Established Precedent
HOLDING: While the AEDPA provides federal habeas relief where a state court unreasonably applies clearly established federal law, it does not allow relief where a state court "unreasonably refuses" to extend clearly established federal law to a new situation.

D pled guilty to murder. The Tr. Ct. refused to instruct the jury to not draw an adverse inference from D's decision to not testify at the penalty phase. The jury imposed the death penalty. The Kentucky Supreme Court affirmed, finding the 5th Amendment's requirement of a no-adverse-inference instruction protects a nontestifying D at the guilt phase, not the penalty phase. See Carter v. Kentucky, 450 U.S. 288 (1981); cf. Estelle v. Smith,451 U.S. 454 (1981) and Mitchell v. United States, 526 U.S. 314 (1999).

The Tr. Ct. did not refuse to apply clearly established precedent; instead, it refused to extend that precedent to a new situation, which § 2254 does not require. Federal precedent on requiring a no-adverse inference instruction during a penalty phase is hardly clear; the issue is not "beyond any possibility for fair-minded disagreement," as required by Harrington v. Richter, 131 S.Ct. 770 (2011). Held, cert. granted, 6th Circuit opinion at 685 F.3d 574 vacated, and denial of habeas corpus relief affirmed. Scalia, J., joined by Roberts, C.J., and Kennedy, Thomas, Alito, and Kagan, J.J., Breyer, J., dissenting, joined by Ginsburg and Sotomayor, J.J.

TITLE: Withrow v. Williams

INDEX NO.: Q.2.

CITE: 507 U.S. 680, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993)

SUBJECT: Habeas review - Stone v. Powell; not extended to Miranda

HOLDING: Prudential rule of Stone v. Powell, which bars federal habeas review of 4th Amend. exclusionary rule claims if petitioner had full and fair opportunity to litigate claim in state court, is not applicable to Miranda claims. Miranda differs from Stone exclusionary rule claims in two crucial respects: (1) it protects fundamental "trial" right -- privilege against compulsory self-incrimination; and (2) it protects against admission of unreliable evidence.

TITLE: Wright v. Van Patten

INDEX NO.: Q.2.

CITE: 128 S.Ct. 743, 169 L.Ed.2d 583 (2008)

SUBJECT: Counsel's hearing participation by speaker phone not clearly denial of counsel under federal habeas review

HOLDING: In *per curiam* decision, Majority reversed Seventh Circuit Court of Appeals and reinstated state court's denial of an ineffective assistance of counsel claim. Majority noted no decision of the Court squarely addressing whether trial counsel's participation by speaker phone during a guilty plea hearing should be treated as a "complete denial of counsel" on par with total absence. Neither could the majority point to a decision by the Court that clearly establishes that United States v. Cronic, 466 U.S. 648 (1984) should replace Strickland v. Washington, 466 U.S. 668 (1984) in this novel factual context. "Because our cases give no clear answer to the question presented, let alone one in [Petitioner's] favor, 'it cannot be said that the state court 'unreasonabl[y] appli[ed] clearly established Federal law.'" Carey v. Musladin, 549 U.S. 70 (2006). Under the explicit terms of 28 U.S.C. ' 2254(d)(1), relief is unauthorized. Majority noted the merits of the telephone practice for presence in court is for "another day." Stevens, J., filed concurrence, noting that "regrettably, Cronic did not 'clearly establish' the full scope of the defendant's right to the presence of an attorney." The Court of Appeals "apparently read 'the presence of counsel' in Cronic to mean 'the presence of counsel *in open court*." Stevens believed this reading to be correct. However, the question in relation to habeas relief and "clearly established federal law" centers on whether the state court's narrower reading of that opinion is "objectively unreasonable."

RELATED CASES: Woods, 136 S. Ct. 1149 (U.S. 2016) (6th Circuit applied wrong standard of review in finding appellate counsel ineffective for failing to raise 6th Amendment confrontation challenge to trial court's admission of an anonymous tip).

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.a. Jurisdiction

TITLE: Ayestas v. Davis

INDEX NO.: Q.2.a.

CITE: (3/21/2018), 138 S. Ct. 1080 (2018)

SUBJECT: Denial of habeas expert funds reviewabe on appeal; proper standard for request for funds

HOLDING: The District Court's denial of D's request for funding to develop claims that trial and state habeas counsel were ineffective was a judicial decision subject to appellate review. And in affirming the District Court, the 5th Circuit applied the wrong standard.

On the jurisdictional issue, the Court rejected the Respondent's claim that the ruling denying funding was merely "administrative" and thus was not subject to the Court's review. See Hohn v. United States, 524 U.S. 236, 245 (1998). Administrative decisions concern matters such as facilities, personnel, equipment, supplies, and rules of procedure. The Court observed that the ruling on funding does not remotely resemble such matters; the ruling occurred within an unmistakably judicial proceeding, a federal habeas corpus action, and required application of a legal standard, thus making it subject to appellate review.

In affirming the District Court, the 5th Circuit found that D failed to show that there was a "substantial need" for funding. This is the wrong standard; the correct one is whether a reasonable attorney would regard expert services as "sufficiently important." The 5th Circuit's test suggests a heavier burden. Held, cert. granted, 5th Circuit opinion at 817 F.3d 888 vacated, and remanded to 5th Circuit to consider Respondent's alternative argument for affirming the District Court. Alito, J., for the unanimous Court; Sotomayor, J., concurring, joined by Ginsburg, J.

TITLE: Bowles v. Russell
INDEX NO.: Q.2.a.
CITE: 551 U.S. 205, 127 S.Ct. 2360 (2007)
SUBJECT: Statutory time limit forecloses habeas action despite judge's contrary order
HOLDING: Court, in 5-4 decision, agreed with Sixth Circuit Court of Appeals that habeas Petitioner's notice was untimely and therefore it lacked jurisdiction to hear the case. Petitioner had failed to file a timely notice of appeal from the district court's denial of habeas relief and moved to reopen the filing period pursuant to FRAP 4(a)(6), which allows a district court to grant a 14-day extension under certain conditions. See 28 U.S.C. ' 2107(c). The district court granted Petitioner's motion but gave him 17 days to file his notice of appeal, and Petitioner filed it within the 17-day period but not within 14. Court held that the untimely notice of appeal - though filed in reliance upon the district court's order - deprived the Sixth Circuit of jurisdiction. Majority noted a significant distinction between time limits set out legislatively by statute and those based on court rules. Since Congress decides, within constitutional bounds, whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear cases. Court added that because Petitioner's error is one of jurisdictional magnitude he cannot rely on forfeiture or waiver to excuse his lack of compliance. Majority also rejected Petitioner's reliance on the "unique circumstances" doctrine rooted in Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc., 371 U.S. 215 (1962) and applied in Thompson v. INS, 375 U.S. 384 (1964). Because the Court has no authority to create equitable exceptions to jurisdictional requirements, use of the doctrine is illegitimate and the cases are overruled to the extent they purport to authorize an exception to a jurisdictional rule. Souter, J., filed a dissenting opinion, in which Stevens, Ginsburg, and Breyer, JJ., joined.

TITLE: Garlotte v. Fordice
INDEX NO.: Q.2.a.
CITE: 515 U.S. 39, 115 S.Ct. 1948, 132 L.Ed.2d 36 (1995)
SUBJECT: Habeas Corpus - In Custody; Consecutive Sentences
HOLDING: A prisoner serving consecutive terms remains "in custody" on all of those sentences, for purpose of challenging conviction in habeas corpus proceedings, even if he has served sentence for conviction he is challenging. In Peyton v. Rowe (1968), 391 U.S. 54, the Court held that prisoner serving consecutive sentences could apply for habeas relief from sentences they had not yet begun to serve. For purposes of habeas relief, Peyton Court reasoned that consecutive sentences should be treated as continuous series. Instant case is similar to Peyton, in that challenged conviction adversely affects release date. Only difference is timing, in that sentence for challenged conviction here is in past rather than future. Majority sees no reason to "disaggregate" sentences simply because of that. Held, any of a series of consecutive sentences may be challenged at any time short of release, as long as it has consequences for release date. Thomas, J., and Rehnquist, C.J., DISSENT, arguing that concern in Peyton for allowing claims to be brought before they grow stale is not present here.

TITLE: Spencer v. Kemna
INDEX NO.: Q.2.a.
CITE: 534 U.S. 362, 118 S.Ct. 978 (1998)
SUBJECT: Habeas Corpus -- Jurisdiction; Case or Controversy
HOLDING: Federal habeas corpus petition challenging an order revoking parole, filed by petitioner who has already completed the term of imprisonment underlying parole revocation, presents no case or controversy and is thus moot. Presumption that a criminal conviction continues to have collateral consequences sufficient to establish an injury in fact for purposes of habeas action even after release from imprisonment will not apply to parole revocation. Unlike the collateral consequences attending a conviction, such as disenfranchisement, professional licensing restrictions, etc., the possibility that the parole revocation may be used to petitioner's detriment in a future parole or sentencing proceeding, to impeach him in future litigation, or as direct evidence against him in a criminal prosecution, are too speculative to state a case or controversy.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.b. Procedure

TITLE: Calderon v. Thompson
INDEX NO.: Q.2.b.
CITE: 523 U.S. 538, 118 S. Ct. 1489 (1998)
SUBJECT: Federal Habeas -- *Sua Sponte* Recall of Mandate
HOLDING: A federal appellate court's *sua sponte* decision to recall an earlier mandate denying habeas corpus relief to a state prisoner, in order to reexamine the merits of the earlier decision, was an abuse of discretion because the court was not acting to avoid a "miscarriage of justice," as defined in Schlup v. Delo, 513 U.S. 298 (1995), and Sawyer v. Whitley, 505 U.S. 333 (1992). Here, the 9th Circuit Court of Appeals had reversed a district court's granting of federal habeas relief, denied a petition for rehearing and suggestion for rehearing en banc, after which the state court ruled on petitioner's fourth state post-conviction petition. The Court then denied petitioner's motion to recall the mandate, and the governor reviewed and denied a clemency petition. One day later, two days before petitioner's scheduled execution, the Court *sua sponte* recalled its mandate, asserting that procedural misunderstandings within the Court had caused it to erroneously issue the mandate, and that the decision of the original panel with result in a miscarriage of justice. Federal appellate court's inherent power to recall their mandates is subject to review for abuse of discretion, and should be reserved for grave, unforeseen circumstances. Here, even if procedural misunderstandings caused the Court's en banc process to malfunction, the delay and timing of its recall of the mandate call into question whether it was justified. Although the AEDPA's restrictions on successive habeas petitions do not control here, because the Court acted on the basis of petitioner's first petition, the principles of the AEDPA should inform the federal courts' exercise of federal habeas corpus powers. There are significant limits on the federal court's discretion to grant habeas relief, which reflect the courts' enduring respect for the states' interest in finality of convictions which have survived state appellate review. A state's finality interests are compelling when a federal court of appeals issues a mandate denying habeas relief. Unsettling these expectations inflicts a serious injury on the interest of both the state and the victims of crime in punishing the guilty. Unless it acts to prevent a miscarriage of justice, as defined by this Court's habeas jurisprudence, it abuses its discretion in *sua sponte* recalling its mandate to revisit the merits of an earlier decision denying habeas relief. The miscarriage of justice standard can be met only by a claim of actual innocence of the underlying crime, supported by evidence that it is more likely than not that no reasonable juror would have convicted him in light of new evidence presented in his federal habeas petition, Schlup, *supra*; or by a claim of innocence of the death penalty, established by clear and convincing evidence that no reasonable juror would have found him eligible for the death penalty in light of the new evidence. Sawyer, supra. Petitioner here attacked only his sentence and failed to meet the Sawyer standard. Souter, Stevens, Ginsburg, and Breyer, JJ., DISSENT, arguing that while the timing of the 9th Circuit's decision was unfortunate, the majority's adoption of a tough new standard for abuse of discretion in light of AEDPA is misguided.

RELATED CASES: Jenkins, 137 S.Ct. 1769 (2017) (6th Circuit erred in holding it could review the merits of D's procedurally defaulted claim regarding an instruction to prevent a fundamental miscarriage of justice).

TITLE: Dodd v. U.S.
INDEX NO.: Q.2.b
CITE: 545 U.S. 353 (2005)
SUBJECT: Federal sentencing, statute of limitations, newly-recognized rights
HOLDING: The one-year statute of limitations for a federal prisoner to file a motion to vacate, set aside or correct his sentence under 28 U.S.C. '2255 &6(3) is counted from the date on which the U.S. Supreme Court initially recognized the new constitutional right. Dodd alleged that his conviction for knowingly engaging in a continuing criminal enterprise violated Richardson v. United States, 526 U.S. 813 (1999) which held that the jury must agree unanimously on each of the offenses that make up the continuing criminal enterprise. His motion was filed more than one year after the Court decided Richardson but less than one year after the 11th Circuit recognized Richardson's retroactive application. Because Dodd's motion was filed after the one-year deadline in '2255 &6(3), it was untimely.

TITLE: Gonzalez v. Crosby
INDEX NO.: Q.2.b.
CITE: 545 U.S. 524 (2005)
SUBJECT: Habeas corpus, AEDPA, Federal Rule 60(b) motions
HOLDING: A state prisoner's Rule 60(b) motion challenging the denial of federal habeas corpus relief is subject to the AEDPA's gatekeeping requirements only if it challenges the merits of the district court's denial of the petition or seeks to advance new grounds for relief. If the motion merely challenges the integrity of the proceedings in the district court, it should be treated the same as in a civil case.

TITLE: Hilton v. Braunskill
INDEX NO.: Q.2.b.
CITE: 481 U.S. 770, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987)
SUBJECT: Release pending state's appeal of order granting habeas relief
HOLDING: When government appeals decision granting writ of habeas corpus, habeas petitioner shall be released from custody unless court rendering decision or court of appeals or Supreme Court otherwise orders. Fed.R.App.P. 23(C). Court finds that in determining whether successful habeas petitioner should be released pending state's appeal, court should follow general standards for staying civil judgment. Following factors should be considered: (1) whether stay applicant has made strong showing of likely success on merits; (2) whether applicant will be irreparably injured absent stay; (3) whether issuance of stay will substantially injure other parties interested in proceeding; & (4) public interest. In applying these factors, it is appropriate for court to consider possibility of flight & risk D will pose danger to public if released. State' interest in continuing custody & rehabilitation pending final determination should be considered; it will be strongest where remaining portion of sentence to be served is long. Where state establishes it has strong likelihood of success on appeal or substantial case on merits, continued custody is permissible if 2d & 4th factors in traditional stay analysis militate against release. Where state's showing on merits falls below this level, preference for release should control. Marshall, joined by Brennan & Blackmun, DISSENTS.

TITLE: In re Davenport
INDEX NO.: Q.2.b.
CITE: 147 F.3d 605 (7th Cir. 1998)
SUBJECT: Habeas Corpus -- Inmate Must Have Opportunity to Raise Bailey Claim
HOLDING: A federal prisoner who is blocked by new restrictions on successive federal habeas petitions from raising challenge to firearms conviction based on Bailey v. U.S., 516 U.S. 137, in §2255 habeas petition, may raise Bailey challenge in traditional habeas corpus petition under §2241. Although Antiterrorism and Effective Death Penalty Act (AEDPA) placed restrictions on successive §2255 habeas petitions, it did not remove language allowing inmate to file traditional §2241 petition when relief available under 2255 is "inadequate or ineffective to test the legality of his detention." Essential function of this escape clause is to afford prisoner reasonable opportunity to obtain reliable judicial determination of fundamental legality of his conviction and sentence. Because Bailey was decided after this prisoner's first habeas petition was litigated, and 7th Circuit law at time of his first petition was squarely against him, §2255 relief was inadequate.

TITLE: O'Neal v. McAninch
INDEX NO.: Q.2.b.
CITE: 513 U.S. 432, 115 S.Ct. 992, 130 L.Ed.2d 947 (1995)
SUBJECT: Habeas Corpus - Harmless Error Review; Burden of Proof
HOLDING: Where federal court on habeas corpus review finds itself in "grave doubt" or "virtual equipoise" about harmlessness of constitutional trial error, it must grant writ. Majority rejects state's argument that, because of civil nature of habeas corpus review, habeas petitioner bears burden of proving that error was not harmless. Majority begins with explanation that where, as here, evidence is no longer being received, focus should not be on shifting "burdens of proof," but on how court resolves close cases involving "grave doubt." Majority points to three bases for its decision. First, precedent dictates finding for petitioner in case of grave doubt. Language in Brecht v. Abramson (1993), 113 S.Ct. 1710, which seems to put burden on petitioner to prove actual prejudice was aberration not supported by majority. Further, although habeas proceedings are civil in nature, stakes are much higher: individual liberty v. civil liability. Second, basic purposes of habeas review, protecting against unconstitutional convictions and guaranteeing integrity of criminal process by ensuring that trials are fundamentally fair, are served by resolving grave doubts in favor of petitioner. State's interests in finality and comity must give way to these purposes, particularly since state normally bears responsibility for constitutional error. Finally, majority's rule has "administrative virtues," since it would promote consistency in case law and relieve habeas courts of duty of reviewing lengthy evidentiary records for prejudice. Thomas, Rehnquist, & Scalia, JJ., DISSENT.

TITLE: Wilson v. Sellers
INDEX NO.: Q.2.b.
CITE: (4/17/2018), 138 S. Ct. 118 (U.S. Supreme Court 2018)
SUBJECT: Habeas "look through" procedure to review state court summary ruling
HOLDING: A federal habeas court reviewing an unexplained state-court decision on the merits should “look through” that decision to the last related state-court decision that provides a relevant rationale and presume that the unexplained decision adopted the same reasoning; the State may rebut the presumption by showing that the unexplained decision most likely relied on different grounds than the reasoned decision below.

D was convicted of murder and sentenced to death. He sought habeas relief in Georgia Superior Court, claiming that his counsel’s ineffectiveness during sentencing violated the Sixth Amendment. The court denied the petition, concluding that counsel’s performance was not deficient and had not prejudiced D. The Georgia Supreme Court summarily denied his application for a certificate of probable cause to appeal. D then filed a federal habeas petition, raising the same ineffective-assistance claim. The District Court assumed that his counsel was deficient but deferred to the State habeas court’s conclusion that any deficiencies did not prejudice D. The 11th Circuit affirmed; however, it concluded the District Court was wrong to “look though” the State Supreme Court’s unexplained decision and assume that it rested on the grounds given in the state habeas court’s opinion.

The Court ruled that the 11th Circuit erred in finding that the District Court should not have “looked through” the State Supreme Court’s summary ruling. Held, cert. granted, 11th Circuit opinion at 834 F.3d 1227 reversed, and case remanded.Breyer, J., joined by Roberts, C.J., and Kennedy, Ginsburg, Sotomayor and Kagan, JJ.; Gorsuch, J., dissenting, joined by Thomas and Alito, JJ.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.c. Exhaustion of state remedies (Rose v. Lundy)

TITLE: Baldwin v. Reese
INDEX NO.: Q.2.c.
CITE: 541 U.S. 27 (2004)
SUBJECT: Federal Habeas, Exhaustion of State Remedies
HOLDING: A federal court may not grant habeas relief from a state conviction unless the claimed violation of federal rights was "fairly presented" to the state courts on appeal. A claim is not fairly presented unless the petitioner alleges, in the state courts, that his federal rights were violated.

In state post-conviction proceedings, Reese alleged ineffective assistance of counsel by his trial counsel and appellate counsel. The petition for relief alleged that his trial counsel's conduct violated the federal constitution but did not allege that appellate counsel's conduct violated federal law. The lower state court dealt with Reese's claims as a matter of federal law in a written opinion, and the Oregon Supreme Court denied discretionary review. The 9th Circuit held that although Reese's petition had failed to alert the state supreme court to the federal ineffective assistance of counsel claim, the issue was "fairly presented" to the state courts because it was discussed and rejected in the lower state court opinion, which the Oregon Supreme Court had had the opportunity to read.

The U.S. Supreme Court held that because the federal claim of ineffective assistance of appellate counsel was not raised in the petition, the issue was not "fairly presented" to the state courts. Therefore, Reese was barred from federal habeas relief on the claim, for having failed to exhaust available state remedies.

TITLE: Dretke v. Haley
INDEX NO.: Q.2.c.
CITE: 541 U.S. 386 (2004)
SUBJECT: Sentencing enhancements, actual innocence
HOLDING: The petitioner was convicted of felony theft and his sentence was enhanced as a habitual offender. No one noticed at the trial that based on the evidence presented, the defendant was not habitual-eligible under Texas law because the conviction for his first prior felony was not final until after the commission of the second felony. Counsel also failed to raise the issue on direct appeal. In state post-conviction proceedings, Haley alleged for the first time that the evidence at trial did not support his habitual offender status, but the state habeas court refused to consider the merits because the issue had not been raised at trial or on direct appeal. The state habeas court also rejected Haley's ineffective assistance of counsel claim, saying only that "counsel was not ineffective" for failing to object to the enhancement at trial and failing to raise the issue on direct appeal.

Haley sought federal habeas relief, claiming insufficiency of the evidence and ineffective assistance of counsel. The state conceded that the evidence at trial did not support the habitual offender enhancement, but argued that relief was barred by procedural default. The Magistrate Judge recommended relief on the sufficiency claim because Haley was "actually innocent" of the sentence enhancement, but did not address the ineffective assistance of counsel claim. The 5th Circuit affirmed. Normally a federal court will not entertain a procedurally defaulted constitutional claim in a habeas petition without a showing of cause and prejudice to excuse the default. One exception is when an appellant can demonstrate actual innocence of the substantive offense, or in a death penalty case, innocence of the aggravating circumstances supporting the death sentence. The 5th Circuit held that the 'actual innocence exception' also applies to habitual offender enhancements. The federal circuit courts are divided on this issue, and the U.S. Supreme Court granted certiorari to consider it, but instead vacated the 5th Circuit and remanded the case, holding that "a federal court faced with allegations of actual innocence ... must first address all nondefaulted claims for comparable relief and other grounds for cause to excuse the procedural default."

Haley, in the meantime, continues to serve the 16-year sentence for a habitual offender enhancement of which the State concedes he is not guilty. Three justices dissented, with Justices Stevens calling this an 'unusually simple case,' and Justice Kennedy suggesting that the state officials were ignoring injustice: "In a society devoted to the rule of law, the difference between violating or not violating a criminal statute cannot be shrugged off as a minor detail."

TITLE: Dye v. Hofbauer
INDEX NO.: Q.2.c.
CITE: 546 U.S. 1, 126 S.Ct. 5; 163 L.Ed.2d 1 (2005)
SUBJECT: federal claims, habeas corpus
HOLDING: *Per curiam.* The 6th Circuit erred in holding that petitioner failed to properly raise his federal claims in state court. Dye claimed that prosecutorial misconduct at his state trial for murder denied his due process rights. His brief in the state appellate court referred to due process of law, cited the 5th and 14th Amendments to the U.S. Constitution, and cited several federal cases Awhich concern[ed] alleged violations of federal due process rights in the context of prosecutorial misconduct[.]@ The 6th Circuit also erred in holding that Dye's federal habeas petition Apresented the prosecutorial misconduct claim in too vague and general a form.@ Remanded to the 6th Circuit for consideration of petitioner's federal claims.

TITLE: Granberry v. Greer

INDEX NO.: Q.2.c.

CITE: 381 U.S. 129, 107 S.Ct. 1671, 95 L.Ed.2d 119 (1987)

SUBJECT: Exhaustion - state's failure to raise available defense in district court

HOLDING: Failure to exhaust state remedies does not deprive appellate court of jurisdiction to consider merits of habeas application. Failure to exhaust is not absolute bar to appellate consideration of claim. Here, habeas petitioner filed petition in district court. Court dismissed petition on merits. On petitioner's appeal, state for first time interposed nonexhaustion defense. State's failure to raise defense was inadvertent not tactical. Although state is required in its answer to advise court whether petitioner has fully exhausted state remedies, there are exceptional cases in which state fails to raise arguably meritorious nonexhaustion defense. In such cases, appellate court should determine whether interests of comity/federalism will be better served by addressing merits or by requiring series of additional state & district court proceedings before reviewing merits. If case presents issue on which unresolved question of fact or of state law might have important bearing, comity & judicial efficiency require complete exhaustion. If petitioner does not raise even colorable federal claim, appellate court should affirm district court's denial of habeas petition without further proceedings in state courts. Conversely, if full trial has been held in district court & it is evident that miscarriage of justice has occurred, it may be appropriate for court of appeals to hold non-exhaustion defense waived in order to avoid unnecessary delay in granting relief that is plainly warranted. Held, where state fails to raise available defense until appeal, court of appeals should exercise discretion in each case to determine whether administration of justice would be better served by insisting on exhaustion or by reaching merits of petition forthwith. All justices join.

RELATED CASES: Wood v. Milyard, 132 S.Ct. 1826 (S.Ct. 2012) (circuit court of appeals abused its discretion in sua sponte dismissing belated habeas petition where State intentionally waived timeliness defense).

TITLE: Harrington v. Richter
INDEX NO.: Q.2.c.
CITE: (01-19-11), 131 S.Ct. 770 (U.S. 2010)
SUBJECT: Failure to investigate blood evidence; deference due to summary state court rulings
HOLDING: State court decisions summarily disposing of federal claims without explanation are entitled to federal courts' deference under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. 2254. Nothing in the text of § 2254(d)(1)--which refers to a "decision" resulting from an adjudication"--requires a statement of reasons. Where the state court decision has no explanation, the habeas petitioner must still show there was no reasonable basis for that state court to deny relief. Here, Ninth Circuit failed to accord deference due to state court's summary denial of petitioner's claim that his trial attorney provided ineffective assistance by failing to present expert testimony on blood evidence that might have bolstered the defense case. Held, Ninth Circuit Court of Appeals' opinion at 578 F.3d 944 reversed and remanded; Ginsburg, J., CONCURRING; Kagan, J., RECUSED.

RELATED CASES: Bobby, 132 S.Ct. 26 (U.S. 2011) (underscoring Harrington's broad holding that a habeas court may not grant relief unless the state court's allegedly erroneous ruling "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility of fairminded disagreement").

TITLE: Howell v. Mississippi,
INDEX NO.: Q.2.c.
CITE: 543 U.S. 440, 125 S.Ct. 856; 160 L.Ed.2d 873 (2005)
SUBJECT: exhaustion of state remedies, Federalizing constitutional arguments
HOLDING: Howell was convicted of capital murder. On direct appeal, he cited three state cases in support of his argument that the trial court erred by failing to instruct his jury on lesser included offenses. The state supreme court denied relief. The U.S. Supreme Court initially granted his petition for certiorari but later dismissed the writ, holding that the federal claim was not properly raised at the state court level.

To properly raise a federal issue, a litigant may cite the federal source of law on which he relies, or a case deciding such a claim on federal grounds, or by simply labeling the claim >federal.= In his appeal in state court, on this issue, Howell did not cite the federal constitution, any federal cases, or any state case deciding the issue on federal grounds. Howell argued that he fairly presented his federal claim on direct appeal by citing a state case, Harveston v. State, 493 So.2d 365 (Miss. 1986) which cited another state case, Fairchild v. State, 459 So.2d 793 (Miss. 1984), which in turn cited Beck v. Alabama, 447 U.S. 625 (1980). The Court rejected this argument, calling it a "daisy chain - which depends upon a case that was cited by one of the cases that was cited by one of the cases that petitioner *cited* - [too] lengthy to meet this Court's standards for proper presentation of a federal claim." Howell also argued that he raised his federal claim by implication because the state-law rule he raised was "identical" to the rule in Beck v. Alabama. The Court rejected this argument because of differences between the state standard and the state courts' reading of Beck.

TITLE: Middleton v. McNeil
INDEX NO.: Q.2.c.
CITE: 542 U.S. 946 (2004)
SUBJECT: Federal habeas corpus, deference to state courts
HOLDING: McNeil offered an "imperfect self-defense" theory at trial for shooting her husband, claiming that he had been abusive, and that her fear of him was genuine, but not necessarily reasonable. Under California law, the element of malice in a murder case is negated if one kills out of fear of imminent peril. If that fear is unreasonable but genuine, the crime is reduced from murder to voluntary manslaughter. At trial, however, one of the jury instructions defined "imminent peril" as "one that is apparent, present, immediate, and must be instantly dealt with, or must so appear at the time to the slayer as a reasonable person" (emphasis added). Viewed in isolation, this instruction would have erroneously applied the objective "reasonable person" standard to the D's subjective belief that deadly force was necessary.

The California Court of Appeals upheld the conviction despite the erroneous jury instruction, holding that reversal was not required because the jury was not reasonably likely to misunderstand the imperfect self-defense rule in light of the total effect of all of the jury instructions, and the prosecutor's correct statement of the law in closing argument. The 9th Circuit held that the erroneous instruction required reversal of the conviction because the instruction 'eliminated' respondent's imperfect self-defense claim.

The U.S. Supreme Court held that the 9th Circuit failed to give appropriate deference to the state court. The state court's holding was not an unreasonable application of federal law, therefore, habeas relief was barred by 28 U.S.C. §2254(d)(1).

RELATED CASES: Premo v. Moore, 131 S.Ct. 733 (a D who accepts a plea bargain on counsel's advice does not necessarily suffer prejudice when his counsel fails to seek suppression of evidence; deference to the state court's prejudice determination is significant, given the uncertainty inherent in plea negotiations).

TITLE: O'Sullivan v. Boerckel
INDEX NO.: Q.2.c.
CITE: 526 U.S. 838, 119 S. Ct. 1728 (1999)
SUBJECT: Exhaustion of state remedies, transfer
HOLDING: A D must have sought discretionary review, where available, in a state's highest court, in order to properly exhaust an issue for purposes of seeking federal habeas relief, even if the chances of discretionary review being granted are slim & even if the state court discourages filing of petitions for discretionary review except on issues of sweeping importance. This was a 7th Circuit case from Illinois.

Note: See also Hogan v. McBride, 74 F3d 144 (7th Cir. 1996), for the 7th Circuit's discussion of this issue as it relates to Indiana's appellate rules.

TITLE: Pliler v. Ford
INDEX NO.: Q.2.c.
CITE: 542 U.S. 225 (2004)
SUBJECT: Federal habeas, exhaustion of state remedies, advisements, pro se petitioners
HOLDING: Federal district courts must dismiss "mixed" habeas corpus petitions, which include both unexhausted and exhausted claims. Rose v. Lundy, 455 U.S. 509 (1982). The 9th Circuit has required district courts to warn pro se petitioners that the courts will not have the power to consider a prisoner's motions to stay a mixed petition unless to petition is amended to withdraw the unexhausted claims, and also to warn that a prisoner's federal claims will be time- barred if he opts to dismiss the petitions 'without prejudice' and return to state court to exhaust all of his claims.

The U.S. Supreme Court held that district courts are not required to give pro se petitioners those warnings. Ford's case was remanded to the 9th Circuit for further proceedings on the issue of whether the pro se litigant Ford was affirmatively misled in other respects.

TITLE: Rose v. Lundy

INDEX NO.: Q.2.c.

CITE: 455 U.S. 509 (1982)

SUBJECT: Federal habeas corpus -- exhaustion; all claims in petition must be exhausted in State Cts. of state remedies

HOLDING: 28 U.S.C. 2254(b) & (c) provide that State prisoner's application for writ of habeas corpus in federal district Ct. based on alleged federal constitutional violation will not be granted unless applicant has exhausted remedies available in State Cts. Here, after D was convicted of certain charges in Tennessee State Ct. & his convictions were affirmed, he unsuccessfully sought post-conviction relief in State Ct. He then filed petition in Federal District Ct. for writ of habeas corpus under section 2254, alleging four specified grounds of relief. District Ct. granted writ, notwithstanding fact that petition included both claims that had not been exhausted in State Cts. & those that had been. Ct. of Appeals affirmed. However, Supreme Ct. held that because total exhaustion rule promotes comity & does not unreasonably impair prisoner's right to relief, District Ct. must dismiss habeas petitions containing both unexhausted & exhausted claims. Held, reversed & remanded; Blackmun, J., concurring; White, J., concurring in part & dissenting in part.

TITLE: Vasquez v. Hillery
INDEX NO.: Q.2.c.
CITE: 474 U.S. 254, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986)
SUBJECT: Federal habeas corpus - exhaustion; presentation of additional facts to habeas court
HOLDING: Exhaustion doctrine seeks to afford state courts meaningful opportunity to consider allegations of legal error without interference from federal judiciary. Rose v. Lundy (1982), 455 U.S. 509, 515, 102 S.Ct. 1198, 1201, 71 L.Ed.2d 379. Once federal claim has been fairly presented to state courts, exhaustion requirement is satisfied. Picard v. Connor (1971), 404 U.S. 270, 92 S.Ct. 509, 30 L.Ed.2d 438. Supplemental evidence may be presented to habeas court at its direction. See 28 U.S.C. section 2254, Rule 7(b). Where supplemental evidence does not alter legal claim already considered by state courts, exhaustion doctrine does not require petitioner to be remitted to state court for consideration of that evidence. Here, petitioner alleged systematic exclusion of blacks from grand jury that indicted him. State court had found total absence of blacks from grand juries in history of county where petitioner was indicted. Habeas court directed parties to submit additional evidence consisting of affidavits & a computer analysis assessing mathematical possibility that chance or accident could have accounted for lack of blacks on grand jury. This supplemental evidence did not fundamentally alter legal claim originally presented to state courts. Held, exhaustion doctrine satisfied. O'Connor CONCURS IN JUDGMENT; Powell, joined by Burger, & Rehnquist, DISSENTS (on the merits).

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.d. Procedural default/waiver

TITLE: Coleman v. Thompson
INDEX NO.: Q.2.d.
CITE: 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991)
SUBJECT: Independent state grounds
HOLDING: A state court procedural rule is not "independent" of federal claim & thus does not bar federal direct review of claim where state makes application of procedural bar depend on antecedent ruling on federal law. Ake v. Oklahoma (1985), 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53. Here, Coleman filed notice of appeal from denial of state PCR 3 days late, & state court ultimately granted state's motion to dismiss appeal in one-sentence order. Court notes that Ake, supra, was direct appeal case rather than habeas but finds that in any case state court decision rested on independent state grounds. Coleman argues that when state court announced it would no longer allow extensions for filing petitions for appeal, it created exception for those cases where denial "would abridge a constitutional right," thus establishing practice of reviewing merits of all underlying constitutional claims before denying petition for appeal as time barred. Court finds that state court intended to grant extensions only if denial itself would abridge constitutional right. Further, Coleman failed to timely file notice of appeal (in Tr. Ct.) not petition for appeal in appellate court. Coleman cites state case involving alleged denial of constitutional property rights wherein appellant failed to file timely notice of appeal, & state court addressed & rejected claim on merits, before dismissing appeal as untimely. However, state court did not announce practice of reviewing merits in deciding whether to permit late filing, & Coleman cites no other cases. Nor does state court order indicating that it "considered" all papers filed (which included briefs on merits) here, provide sufficient support for Coleman's position because state court unambiguously granted state's dismissal motion based on failure to comply with state time requirements. Held, state court finding of procedural default was independent state ground which bars federal review on merits. White, CONCURRING IN JUDGMENT; Blackmun, joined by Marshall & Stevens, DISSENTING.

RELATED CASES: Davila, 137 S.Ct. 2058 (2017) (Martinez exception re: IAC claims applies only to trial IAC claims, not appellate IAC claims), Trevino v. Thaler, 133 S. Ct. 1911 (2013) (in states where procedural rules allow but, practically speaking, make it nearly impossible to challenge trial counsel's effectiveness on direct review, habeas petitioner can challenge trial counsel's effectiveness for the first time on habeas review if post-conviction counsel fails to challenge trial counsel's effectiveness; see Martinez v. Ryan, 132 S. Ct. 1309 (2012)); Martinez, 132 S.CT. 1309 (U.S. 2012) (in states where ineffective assistance claim cannot be raised until collateral review, no habeas procedural default if claim not raised in initial collateral review proceeding).

TITLE: Martinez v. Ryan

INDEX NO.: Q.2.d.

CITE: (03-20-12), 132 S.CT. 1309 (U.S. 2012)

SUBJECT: In states where IAC claim cannot be raised until collateral review, there is no habeas procedural default if IAC claim not raised in initial collateral proceeding

HOLDING: Where state law does not allow a person to raise ineffective assistance of trial counsel until collateral review, the claim will not be procedurally defaulted for federal habeas review if: a) the person was not represented in the state collateral review proceeding or b) if the person was represented but counsel was ineffective. The claim of ineffectiveness must be a "substantial one," meaning that the person must demonstrate that the claim has "some merit." This remedy is *equitable*, not *constitutional*.

Arizona did not allow Martinez' direct appeal lawyer to argue that trial counsel was ineffective, so while the direct appeal was pending, the same lawyer initiated a state collateral review action. However, she did not allege that trial counsel was ineffective and, in fact, said there were no colorable claims.

The right to effective trial counsel is a "bedrock principle" in our justice system. In states like Arizona, the collateral proceeding is in many ways the equivalent of a direct appeal. By choosing to move ineffective assistance claims outside the scope of direct appeals, where effective counsel is required by the Constitution, Arizona diminishes a person's ability to file and pursue such a claim.

On remand, the court shall determine if counsel for initial collateral review was ineffective and whether the claim of ineffective trial counsel was substantial. It shall also address the issue of prejudice, if need be. KENNEDY, J., joined by ROBERTS, C.J., and BREYER, GINSBURG, ALITO, KAGAN, SOTOMAYOR, J.J.; SCALIA, J., DISSENTING, joined by THOMAS, J. Cert. granted, Ninth Circuit and District Court affirmed.

RELATED CASES: Davila, 137 S.Ct. 2058 (2017) (Martinez exception re IAC claims applies only to trial IAC claims, not appellate IAC claims).

TITLE: Schlup v. Delo
INDEX NO.: Q.2.d.
CITE: 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995)
SUBJECT: Habeas corpus - actual innocence; constitutional violation
HOLDING: Death-sentenced habeas petitioner who claims to be actually innocent of crime may avoid procedural bar to consideration of claim by showing that constitutional violation "probably resulted" in conviction of one who is actually innocent. Habeas petitioners can avoid procedural bar if it would result in "miscarriage of justice." Court has defined standard for those claiming "actual innocence" of death penalty. Sawyer v. Whitley (1992), 112 S.Ct. 2514. Such petitioners must show "by clear and convincing evidence that but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty." Court below applied modified Sawyer standard to petitioner here, finding that he must show by clear and convincing evidence that, but for constitutional error, no reasonable juror would have convicted him. Majority begins analysis by distinguishing this case from Herrera-type claim of innocence. See Herrera v. Collins (1994), 113 S.Ct. 853. Herrera claimed no constitutional error at trial, so that he was in position of having to show that his execution would be constitutionally intolerable even if his conviction was product of fair trial. Petitioner here is in different position -- needing to raise only sufficient doubt about his guilt to justify conclusion that his execution would be miscarriage of justice unless his conviction was product of fair trial. Majority goes on to reason that Sawyer standard does not apply because of different interests involved. Miscarriage of justice exception seeks to balance societal interests in finality, comity, and conservation of judicial resources with individual interest in justice. Claims of actual innocence pose less threat to scarce judicial resources and to principles of finality and comity than do claims that focus solely on erroneous imposition of death penalty. Although such challenges to imposition of death penalty occur regularly in capital cases, claims of constitutional error resulting in conviction of the innocent are rare. More important, individual interest in avoiding injustice is most compelling in context of actual innocence. Quintessential miscarriage of justice is execution of one who is actually innocent. Overriding importance of this individual interest warrants imposing somewhat less exacting standard of proof than that imposed in case of one challenging severity of sentence. Proper standard comes from Murray v. Carrier (1986), 477 U.S. 478, 106 S.Ct. 2639 -- that constitutional error "probably resulted" in conviction of innocent person. To satisfy this standard, petitioner must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond reasonable doubt. This standard is more stringent than simple showing of prejudice. It focuses inquiry on actual innocence of petitioner, and draws line between guilt and innocence with reference to reasonable doubt. Rehnquist, Kennedy, Scalia & Thomas, JJ., DISSENT.

TITLE: Tharp v. Sellers
INDEX NO.: Q.2.d.
CITE: (1/8/2018), (2018)
SUBJECT: D established prejudice from juror's racist comments
HOLDING: In a per curiam opinion, the U.S. Supreme Court ruled the Eleventh Circuit Court of Appeals erred in finding that D, an African-American facing the death penalty, failed to show prejudice from a white juror's post-verdict affidavit containing racially inflammatory statements. D was convicted of capital murder for the 1990 killing of his ex-wife's friend. On collateral review, D produced an affidavit from juror Barney Gattie, in which Gattie said: 1) "there are two types of black people . . . Black folks . . . and N***ers" and 2) "after studying the Bible, I have wondered if Black people even have souls." D sought collateral review in Georgia state court, which ruled, in part, that D could not establish prejudice. In support, the court noted: 1) Gattie later executed a second affidavit, claiming he was drunk the day he made the statements contained in the first affidavit and that race played no role in his decision to impose the death penalty and 2) depositions from 10 jurors and an affidavit from the 11th juror, all stating D's race was never discussed during their deliberations. D sought habeas relief, but the District Court found his claims were procedurally defaulted. He filed a motion for relief from judgment, asking for a certificate of appealabilty. The District Court denied the request on several grounds, including D failed to show by clear and convincing evidence that the state court's determination was erroneous. Addressing only the prejudice issue, the Eleventh Circuit affirmed. After granting certiorari, the U.S. Supreme Court reversed the Eleventh Circuit, concluding that its prejudice finding was erroneous. It therefore remanded to the Eleventh Circuit, directing it to address the other grounds the District Court cited for denying the request for a certificate of appealabilty. Held, cert. granted, Eleventh Circuit decision at 2017 WL 4250413 (September 21, 2017) reversed and remanded to the Eleventh Circuit. Thomas, J., dissenting, joined by Alito and Gorsuch, JJ, arguing, in part, that the majority ignored: 1) "the deference that appellate courts must give to Tr. Ct.s' findings on questions of juror bias" and 2) the evidence that amply supported the state court's decision.

TITLE: Walker v. Martin
INDEX NO.: Q.2.d.
CITE: (02-23-11), 131 S.Ct. 1120 (U.S. 2011)
SUBJECT: Indeterminate time period is adequate state ground to deny federal habeas review
HOLDING: California's timeliness rule, which requires habeas petitioners to seek relief without "substantial delay," is an independent and adequate state ground for denying federal habeas review. Unlike most states, California does not have a specific time limit for collaterally attacking a conviction. Under California state law, a prisoner may be barred from collaterally attacking his conviction when the prisoner "substantially delayed" filing his habeas petition. Generally, when a state court rejects an untimely federal claim, the habeas petitioner cannot then raise those claims in federal court, because the state timeliness rules are usually an independent and adequate state ground for denying the claim. To qualify as an "adequate" ground, the state rule must be "firmly established and regularly followed."

Here, the Ninth Circuit held that California's undefined standard of "substantial delay" - used to evaluate the timeliness of a non-capital habeas corpus petition - is so vague that it is inevitably applied in a fundamentally inconsistent manner and is therefore inadequate to serve as a procedural bar to federal review, and that the state failed to prove a consistent application of the rule in other cases. The Supreme Court reversed, holding that California's indeterminate timeliness requirement does qualify as an independent state ground adequate to bar habeas corpus relief in federal court. Implicit in Court's reasoning is that a habeas petitioner need not have prior notice of the precise day on which his claims will become untimely. Court also found that California's timeliness rule is "regularly followed," because it is employed hundreds of times each year. Alleged inconsistencies in the application of the rule do not establish that California's courts are applying the rule arbitrarily, because state courts are free to deny a claim on the merits, notwithstanding the possible applicability of the timeliness rule. On this record, Court found no basis to conclude that California's rule operates to the particular disadvantage of federal habeas petitioners. Despite its holding, Court cautioned that the ruling leaves unaltered the Court=s repeated recognition that federal courts must carefully examine state procedural requirements to ensure that they do not operate to discriminate against claims of federal rights. Held, Ninth Circuit opinion at 357 Fed.Appx. 793 reversed.

TITLE: Ylst v. Nunnemaker
INDEX NO.: Q.2.d.
CITE: 501 U.S. 797, 111 S.Ct. 2590, 115 L.Ed.2d 706 (1991)
SUBJECT: Independent state grounds
HOLDING: Where there has been one reasoned state judgment rejecting federal claim, later unexplained orders upholding that judgment or rejecting same claim will be presumed to have done so on same grounds. Here, D raised Miranda claim on direct appeal. Court of appeals rejected claim finding procedural default based upon failure to raise claim in Tr. Ct. State S.Ct. denied discretionary review. D then filed PCR in Tr. Ct. which was denied without opinion, as was subsequent appeal from denial. Here, D argues that court of appeals decision defaulting claim on merits does not bar federal review because federal court must look to last state court to pass on issue. It is presumed that when federal claim is denied without explicit reliance upon state grounds, merits of federal claim are basis for opinion & federal court review is not foreclosed. Harris v. Reed (1989), 489 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308. However, Harris presumption applies only after it is determined that "the relevant state court decision ... fairly appear[s] to rest primarily on federal law or [is] interwoven with federal law." Coleman v. Thompson (1991), U.S., 111 S.Ct. 2546, 115 L.Ed.2d 640. Court establishes presumption that where last reasoned decision on claim explicitly imposes procedural default, later decisions rejecting claim did not silently disregard that bar & consider merits. Presumption is rebuttable; strong evidence can refute it. Held, subsequent state courts that rejected claim without opinion did so on basis of lower court's finding of procedural default. Procedural default is independent & adequate state ground which forecloses habeas review unless petitioner can establish good cause & actual prejudice. Remanded for determination of cause & prejudice. White, CONCURRING; Blackmun, joined by Marshall & Stevens, DISSENTING.

TITLE: Keeney v. Tamayo-Reyes

INDEX NO.: Q.2.d.

CITE: 504 U.S. 1, 112 S.Ct. 1715, 118 L.Ed.2d 318 (1992), superseded by statute on other grounds as stated in Williams v. Taylor, 529 U.S. 362 (2000)

SUBJECT: Federal habeas — failure to develop factual claim in state court; cause & prejudice standard

HOLDING: Federal habeas petitioner seeking evidentiary hearing on claim he presented in state court but failed to develop factually there must satisfy "cause & prejudice" standard rather than easier to meet "deliberate bypass" standard in order to excuse this procedural default. Petitioner entered nolo contendere plea to manslaughter in state court. He later attempted to collaterally attack this plea in state court, arguing that he understood very little English & court translator had not properly translated mens rea element of offense. State courts rejected this argument, & petitioner sought writ of federal habeas. Asserting that material facts regarding translation were insufficiently developed in state court, petitioner requested federal evidentiary hearing. District Court denied hearing, but Ct. App. reversed, holding that deliberate bypass standard in favor of a standard of cause & prejudice for cases in which petitioners have commit ted procedural default, reasoning that cause & prejudice standard best accommodates competing concerns implicated in federal court's habeas power, including finality, comity, & judicial economy. See, e.g., Wainwright v. Sykes (1977), 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (failure to comply with state's contemporaneous objection rule); McClesky v. Zant (1991), 499 U.S. 467, 111 S.Ct. 1454, 113 L.Ed.2d 517 (failure to raise claim in prior federal habeas petition); Coleman v. Thompson (1991), 501 U.S. 722 (failure to meet appellate filing deadline for raising any claims). In these cases, the Court has applied cause & prejudice standard uniformly to state procedural defaults, & Majority here sees no reason to distinguish between failure to raise federal claim in state court & failure to adequately develop such claim. O'Connor, Blackmun, Stevens, & Kennedy, JJ., DISSENT.

TITLE: Ford v. Georgia
INDEX NO.: Q.2.d.
CITE: 498 U.S. 411, 111 S.Ct. 850, 12 L.Ed.2d 935 (1991)
SUBJECT: Assertion of Swain claim adequate to preserve Batson claim
HOLDING: Where D filed pretrial request that state not be permitted to use peremptory challenges in racially biased manner & asserted that prosecutor had "over a long period of time excluded members of the black race" from petit juries an equal protection claim was raised under Swain v. Alabama (1965), 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759. While case was pending on certiorari from direct appeal, Batson v. Kentucky (1986), 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69, was decided. Batson reaffirmed rule that peremptory challenges could not be used in racially discriminatory manner & modified Swain, supra, to permit D to make out claim of equal protection violation in D's case alone, without requirement that D establish pattern of racial discrimination over period of time. (See Batson card at D.9.d.5.) Batson standard is applied retroactively to cases pending on direct appeal or not yet final when Batson was decided, Griffith v. Kentucky (1978), 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (see card at G.6.d) provided issue is property raised. Batson did not change nature of violation recognized in Swain, but merely quantum of proof necessary to substantiate claim. Therefore, D alleging violation of equal protection under Swain necessarily states equal protection violation subject to proof under Batson standard. Held, D entitled to review on merits. Case remanded. All justices join.

TITLE: Ford v. Georgia
INDEX NO.: Q.2.d.
CITE: 498 U.S. 411, 111 S.Ct. 850, 112 L.Ed.2d 935 (1991)
SUBJECT: State grounds inadequate to bar review on merits
HOLDING: State court finding of procedural default not adequate to bar review on merits in federal habeas corpus action where state rule not announced at time of D's trial. Here, D filed pretrial request that state not be permitted to use peremptory challenges in racially discriminatory manner. In separate case, decided two years after D's trial, state S.Ct. held that such claims must be raised prior to time jurors selected to try case are sworn. State v. Sparks (1987), 257 Ga. 97, 355 Se.2d 658. On appeal state S.Ct. applied Sparks rule & held Ford procedurally defaulted claim by failing to contemporaneously object to composition of jury as selected before trial began. Court, here, rejects state court's finding of procedural default as inadequate reason to bar review on merits. Only "firmly established & regularly followed" state procedural rules may operate to bar federal relief on merits. James v. Kentucky (1984), 466 U.S. 341, 104 S.Ct. 1830, 80 L.Ed.2d 346. Retroactive application of Sparks to bar consideration of claim on merits would apply rule unannounced at time of D's trial & is inadequate to serve as independent state ground. Held, case remanded. All justices join.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.d.1. Deliberate bypass (Fay v. Noia)

TITLE: Coleman v. Thompson
INDEX NO.: Q.2.d.1.
CITE: 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991)
SUBJECT: Deliberate bypass standard not applicable where petitioner defaults entire appeal
HOLDING: Habeas petitioner whose federal claims were defaulted in state court for failure to comply with time deadline for filing notice of appeal must establish cause & prejudice in order to obtain federal review on merits. Since petitioner did not seek certiorari review on issue of whether state court grounds were "adequate" to bar federal review, court accepts lower court's opinion that grounds were adequate. Fay v. Noia (1963), 372 U.S. 391, 83 S. Ct. 822, 9 L.Ed.2d 837 which had held that petitioner's failure to appeal state court conviction in state court did not bar federal habeas review unless petitioner deliberately bypassed state procedures by intentionally foregoing opportunity for state review. here, Coleman defaulted entire state collateral appeal by filing notice of appeal three days late. Error was inadvertent & state concedes that Coleman did not "understandingly & knowingly" forego privilege of state collateral appeal. Fay was based upon conception of federal/state relations that undervalued importance of procedural rules. Held, in all cases in which state prisoner has defaulted his federal claims in state court pursuant to independent & adequate state procedural rule, federal habeas review of claims is barred unless prisoner can demonstrate cause for default & actual prejudice, or demonstrate that failure to consider claims will result in fundamental miscarriage of justice. White, CONCURRING IN JUDGMENT; Blackmun, joined by Marshall & Stevens, DISSENTING.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.d.2. Good cause/actual prejudice (Wainwright v. Sykes)

TITLE: Amadeo v. Zant
INDEX NO.: Q.2.d.2.
CITE: 486 U.S. 214, 108 S. Ct. 1771, 100 L.Ed.2d 249 (1988)
SUBJECT: Cause for procedural default
HOLDING: Habeas petitioners who have defaulted on constitutional claims in state court must establish cause & prejudice. Wainwright v. Sykes (1977), 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594. Existence of cause must generally turn on whether some objective factor external to defense impeded counsel's efforts to comply with State's procedural rule. Murray v. Carrier (1986), 477 U.S. 478, 488, 106 S.Ct. 2678, 91 L.Ed.2d 397. Showing that factual or legal basis for claim was not reasonably available to counsel or that some interference by officials made compliance impracticable, would constitute cause. Reed v. Ross (1984), 468 U.S. 1, 104 S. Ct. 2901, 82 L.Ed.2d 1. Here, while D's direct appeal was pending in State supreme court, attorney in separate civil case discovered memorandum from county prosecutor's office which was intentionally designed to result in underrepresentation of blacks/women in master jury list. District court granted habeas relief finding that basis for D's claim was reasonably unknown to D's lawyers because of interference by officials & that there was no deliberate bypass, i.e., D's lawyers made no tactical or intentional decision to forego jury challenge. Court of appeals reversed district court. Held, federal appellate court may set aside district court findings of fact only if they are clearly erroneous & must give due regard to opportunity of district court to judge credibility of witnesses. Here, appellate court failed to properly apply this standard. There is sufficient evidence in record to support district court's factual findings. Those factual findings are sufficient as matter of law to support finding of "cause." All justices join.

TITLE: Murray v. Carrier
INDEX NO.: Q.2.d.2.
CITE: 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986)
SUBJECT: Federal habeas corpus - cause for appellate procedural default
HOLDING: Federal habeas petitioner who has failed to comply with state's contemporaneous objection rule at trial must show cause for procedural default & prejudice attributable thereto in order to obtain review of defaulted constitutional claim. Wainwright v. Sykes (1977), 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594. Cause & prejudice test applies to defaults on appeal as well as to those at trial. Reed v. Ross (1984), 468 U.S.1, 104 S.Ct. 2901, 82 L.Ed.2d 1. Existence of cause for procedural default must ordinarily turn on whether D can show that some objective factor external to defense impeded counsel's efforts to comply with state's procedural rule. U.S. S.Ct. notes that factors constituting cause for procedural default include a showing that factual or legal basis for claim was not reasonably available to counsel or that some interference by officials made compliance impracticable. Additionally, ineffective assistance of counsel (IAC) is cause for procedural default. While IAC constitutes cause for procedural default exhaustion doctrine generally requires that claim be presented to state courts as an independent claim before it may be used to establish cause for procedural default. In extraordinary case, where constitutional violation has probably resulted in conviction of one who is actually innocent, federal habeas court may grant writ even in absence of showing of cause for procedural default. Held, cause for procedural default is not established by showing that competent counsel's failure to raise claim was inadvertent rather than deliberate. Stevens, joined by Blackmun, CONCURS IN JUDGMENT; Brennan, joined by Marshall, DISSENTS.

TITLE: Smith v. Murray
INDEX NO.: Q.2.d.2.
CITE: 477 U.S. 527, 106 S.Ct. 2661, 91 L.Ed.2d 434 (1986)
SUBJECT: Federal habeas corpus - cause for procedural default
HOLDING: Deliberate, tactical decision not to pursue particular claim cannot qualify as "cause" sufficient to excuse procedural default & thus merit review on federal habeas corpus. Reed v. Ross (1984), 468 U.S. 1, 104 S.Ct. 2901, 82 L.Ed.2d 1. Here, petitioner argued that deliberate decision not to pursue allegation of error on state appeal (preserved at trial) was made in ignorance & that had counsel investigated claim more fully, he surely would have included it in his direct appeal to state courts. Mere fact that counsel failed to recognize factual or legal basis for claim, or failed to raise claim despite recognizing it, does not constitute cause for procedural default. Murray v. Carrier (1986), 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397. Nor can it be maintained that decision not to press claim on appeal was error of such magnitude that it rendered counsel's performance constitutionally deficient. Process of "winnowing out weaker arguments on appeal & focusing on" those more likely to prevail, far from being evidence of incompetence, is hallmark of effective appellate advocacy. Jones v. Barnes (1983), 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987. Nor can petitioner rely on novelty of legal claim as "cause" for procedural default. Although cases decided by U.S. S.Ct. after petitioner's direct appeal was decided lent support to his argument, Court finds issue had been "percolating" in lower courts for years at time of D's original appeal. Held, petitioner has not demonstrated "cause" sufficient to excuse his procedural default. Nor has he demonstrated that "a constitutional violation has probably resulted in the conviction of one who is actually innocent" which would excuse his failure to establish "cause" for procedural default. Stevens, joined by Marshall, Blackmun & Brennan (in part), DISSENTS; Brennan, joined by Marshall, DISSENTS.

TITLE: Coleman v. Thompson

INDEX NO.: Q.2.d.2.

CITE: 501 U.S. 722, 111 S.Ct. 2546, 115L.Ed.2d 640 (1991)

SUBJECT: Attorney error not "cause" if no right to counsel exists

HOLDING: Attorney error that constitutes ineffective assistance of counsel under Strickland v. Washington (1984), 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 is "cause excusing procedural default. Murray v. Carrier (1986), 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397. Provided D represented by constitutionally effective counsel, there is no inequity in requiring him to bear risk of attorney error that results in procedural default. Id. Here, attorney filed notice of appeal from denial of state PCR 3 days later & state court dismissed appeal. No constitutional right to attorney in state post-conviction proceedings. Pennsylvania v. Finley (1987), 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539; Murray v. Giarratano (1989), 492 U.S. 1, 109 S.Ct. 2765, 106 L.Ed.2d 1. Consequently, petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings. Where D defaults claim as result of ineffective assistance of counsel, state, which is responsible for denial as constitutional matter, must bear cost of resulting default & harm to state interests that federal habeas review entails. However, where no right to counsel exists, petitioner must bear risk in federal court for all attorney errors made in course of representation. Held, cause for procedural default not established. White, CONCURRING IN JUDGMENT; Blackmun, joined by Marshall & Stevens, DISSENTING.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.e. State court findings of fact/conclusions of law (28 USC 2254(d)(1-8))

TITLE: Burden v. Zant
INDEX NO.: Q.2.e.
CITE: 498 U.S. 433, 111 S. Ct. 862, 112 L.Ed.2d 962 (1991)
SUBJECT: State court fact findings presumed correct
HOLDING: State court finding that primary state's witness testified against D under grant of immunity is historical fact which is presumed correct for purposes of federal *habeas corpus* proceeding. 28 U.S.C. 2254(d). Here, D & co-D were each represented by same lawyer who during joint representation negotiated transactional immunity agreement for co-D based upon his testimony against D. At trial D was represented by another attorney. Co-D admitted on cross examination that he was testifying under immunity grant. Prosecutor also acknowledged immunity agreement in closing argument. Tr. Ct. noted immunity agreement in its mandatory post trial report. On appeal from denial of *habeas* relief court of appeals denied relief finding no documentary evidence that attests to co-D's having received immunity. Thus, court denied D's conflict of interest claim. State court finding that co-D testified in return for immunity is finding of fact which is entitled to presumption of correctness unless it finds one of exceptions enumerated in 28 U.S.C. 2254(d) applicable. Court of Appeals did not mention Tr. Ct's immunity finding much less explain why that finding not entitled to presumption of correctness. Nor did petitioner waive reliance upon 2254(d) presumption of correctness by failing sufficiently to emphasize Tr. Ct.'s finding that co-D received immunity. D adequately raised argument in lower court. Case remanded for consideration of conflict of interest claim free from court's erroneous failure to credit state Tr. Ct.'s finding that co-D testified under immunity grant. All Justices join.

RELATED CASES: White v. Wheeler, 136 S. Ct. 456 (2015) (Sixth Circuit did not properly defer to state court's reasonable finding that trial judge was within her discretion to grant State's motion to strike juror who appeared uncomfortable voting to impose death penalty); Hardy v. Cross, 132 S. Ct. 490 (U.S. 2011) (state court did not unreasonably apply Confrontation Clause when it held that complaining witness was unavailable because, though the state's efforts to find the complaining witness were not "super human," the state court's decision in favor of the state was reasonable).

TITLE: Cabana v. Bullock0
INDEX NO.: Q.2.e.
CITE: 474 U.S. 376, 106 S.Ct. 689, 88 L.Ed.2d 704 (1986)
SUBJECT: Federal habeas corpus - no state findings presented
HOLDING: 8th Amend. forbids imposition of death penalty on one "who aids & abets a felony in the course of which a murder is committed by others, but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed." Enmund v. FL (1982), 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140. This determination can be made by either jury, Tr. Ct. or appellate court. Such a finding by state court is presumed correct when issue is presented to federal habeas court. If federal court is faced with petition for habeas corpus raising Enmund claim in which state courts have failed to make any finding re Enmund criteria, then federal court may either make factual determination or take steps to require state's own judicial system to make factual finding in first instance. Such findings would be presumed correct in any subsequent federal habeas proceedings. U.S. S.Ct. expresses preference for second alternative. Here, neither jury's verdict of guilty nor its imposition of death sentence necessarily reflects finding that D killed, attempted to kill, or intended to kill. State appellate court did not make requisite finding either. Therefore, U.S. S.Ct. orders district court to issue writ of habeas corpus vacating Bullock's death sentence, but leaves to state choice of either imposing sentence of life imprisonment or, within reasonable time, reimposing death sentence upon determination from its own courts re factual Enmund question. Burger CONCURS; Blackmun, joined by Brennan, Stevens & Marshall, DISSENTS.

TITLE: Miller v. Fenton
INDEX NO.: Q.2.e.
CITE: 474 U.S. 104, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985)
SUBJECT: Federal habeas corpus - presumption of correctness; voluntariness of confession
HOLDING: Ultimate issue of voluntariness of confession is legal question requiring independent federal determination; state court determination is not entitled to a "presumption of correctness." Court finds support for this holding in its previous decisions. Mincey v. AZ (1978), 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290; Haynes v. WA (1963), 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513. Additionally, nature of inquiry itself lends support to conclusion that voluntariness is "legal" question. Although sometimes framed as an issue of "psychological fact," admissibility of confession turns as much on whether techniques for extracting statements, as applied to this suspect, are compatible with system that presumes innocence & assures that conviction will not be secured by inquisitorial means as on whether D's will was in fact overborne. Subsidiary questions, such as length & circumstances of interrogation, D's prior experience with legal process, & familiarity with Miranda warnings, are questions of fact entitled to presumption of correctness. But once these issues have been resolved, federal habeas court is in as good a position as state court to determine whether under totality of circumstances, confession was obtained in manner consistent with Constitution. In reaching this conclusion, Court notes critical events surrounding taking of confession do not take place in open court upon full record. Rather, confessions almost invariably occur in secret & inherently more coercive environment. Held, case remanded to federal habeas court for independent evaluation of admissibility of confession. Rehnquist DISSENTS.

TITLE: Sexton v. Beaudreaux
INDEX NO.: Q.2.e.
CITE: (6/28/2018), 138 S.Ct. 2555 (U.S. 2018)
SUBJECT: Granting of habeas corpus reversed
HOLDING: PER CURIAM. In reversing the denial of D's petition for writ of habeas corpus, the Ninth Circuit Court of Appeals erred by not applying the appropriate deferential standard of review; it essentially reviewed the matter de novo in finding that D's trial counsel was ineffective for failing to file a motion to suppress a witness's identification of D as the perpetrator. Under the proper standard of review, a fair-minded jurist could conclude that counsel's performance was not deficient because he reasonably could have determined that a motion to suppress would have failed. See Premo v. Moore, 562 U. S. 115, 124 (2011). This is so because the state court could have reasonably concluded that D failed to prove that, "under the 'totality of the circumstances,'" the identification was not "reliable." Neil v. Biggers, 409 U. S. 188, 199 (1972). Held, cert. granted, 9th Circuit opinion reversed, and remanded. Breyer, J., dissenting

TITLE: Tharp v. Sellers
INDEX NO.: Q.2.e.
CITE: (1/8/2018), (2018)
SUBJECT: D established prejudice from juror's racist comments
HOLDING: In a per curiam opinion, the U.S. Supreme Court ruled the Eleventh Circuit Court of Appeals erred in finding that D, an African-American facing the death penalty, failed to show prejudice from a white juror's post-verdict affidavit containing racially inflammatory statements. D was convicted of capital murder for the 1990 killing of his ex-wife's friend. On collateral review, D produced an affidavit from juror Barney Gattie, in which Gattie said: 1) "there are two types of black people . . . Black folks . . . and N***ers" and 2) "after studying the Bible, I have wondered if Black people even have souls." D sought collateral review in Georgia state court, which ruled, in part, that D could not establish prejudice. In support, the court noted: 1) Gattie later executed a second affidavit, claiming he was drunk the day he made the statements contained in the first affidavit and that race played no role in his decision to impose the death penalty and 2) depositions from 10 jurors and an affidavit from the 11th juror, all stating D's race was never discussed during their deliberations. D sought habeas relief, but the District Court found his claims were procedurally defaulted. He filed a motion for relief from judgment, asking for a certificate of appealabilty. The District Court denied the request on several grounds, including D failed to show by clear and convincing evidence that the state court's determination was erroneous. Addressing only the prejudice issue, the Eleventh Circuit affirmed. After granting certiorari, the U.S. Supreme Court reversed the Eleventh Circuit, concluding that its prejudice finding was erroneous. It therefore remanded to the Eleventh Circuit, directing it to address the other grounds the District Court cited for denying the request for a certificate of appealabilty. Held, cert. granted, Eleventh Circuit decision at 2017 WL 4250413 (September 21, 2017) reversed and remanded to the Eleventh Circuit. Thomas, J., dissenting, joined by Alito and Gorsuch, JJ, arguing, in part, that the majority ignored: 1) "the deference that appellate courts must give to Tr. Ct.s' findings on questions of juror bias" and 2) the evidence that amply supported the state court's decision.

TITLE: Wilson v. Sellers
INDEX NO.: Q.2.e.
CITE: (4/17/2018), 138 S. Ct. 1188 (U.S. Supreme Court 2018)
SUBJECT: Habeas "look through" procedure to review state court summary ruling
HOLDING: A federal habeas court reviewing an unexplained state-court decision on the merits should “look through” that decision to the last related state-court decision that provides a relevant rationale and presume that the unexplained decision adopted the same reasoning; the State may rebut the presumption by showing that the unexplained decision most likely relied on different grounds than the reasoned decision below.

D was convicted of murder and sentenced to death. He sought habeas relief in Georgia Superior Court, claiming that his counsel’s ineffectiveness during sentencing violated the Sixth Amendment. The court denied the petition, concluding that counsel’s performance was not deficient and had not prejudiced D. The Georgia Supreme Court summarily denied his application for a certificate of probable cause to appeal. D then filed a federal habeas petition, raising the same ineffective-assistance claim. The District Court assumed that his counsel was deficient but deferred to the State habeas court’s conclusion that any deficiencies did not prejudice D. The 11th Circuit affirmed; however, it concluded the District Court was wrong to “look though” the State Supreme Court’s unexplained decision and assume that it rested on the grounds given in the state habeas court’s opinion.

The Court ruled that the 11th Circuit erred in finding that the District Court should not have “looked through” the State Supreme Court’s summary ruling. Held, cert. granted, 11th Circuit opinion at 834 F.3d 1227 reversed, and case remanded. Breyer, J., joined by Roberts, C.J., and Kennedy, Ginsburg, Sotomayor and Kagan, JJ.; Gorsuch, J., dissenting, joined by Thomas and Alito, JJ.

TITLE: Wright v. West
INDEX NO.: Q.2.e.
CITE: 505 U.S. 277, 112 S.Ct. 2482, 120 L.Ed.2d 225 (1992)
SUBJECT: Federal habeas — standard of review; mixed questions of law & fact
HOLDING: Evidence was sufficient to support D's conviction under either de novo review or more deferential standard. Court had asked for briefing on question of whether federal courts, reviewing "mixed questions" of law & fact on habeas review, should give deference to state court's application of law to facts, or conduct de novo review. However, all nine justices determined that Court did not need to answer this question, with eight justices finding evidence sufficient under either standard. It is unclear how Court might decide this issue in future. Thomas, Rehnquist, & Scalia, JJ., indicated clear preference for deferential review, noting that Court's recent retroactivity decisions, (e.g., Teague v. Lane (1989), 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334), signal more deferential treatment of state court decisions. White, J., CONCURRED IN JUDGMENT, briefly observing that evidence was sufficient under de novo standard. O'Connor, Blackmun, & Stevens CONCUR IN JUDGMENT, making clear their belief that law currently requires de novo standard. Kennedy, J., CONCURS IN JUDGMENT, writing that Court's Teague & its progeny regarding retroactivity provide grounds for retaining de novo standard, not abandoning it, since they provide proper restrictions on de novo review, assuring that federal habeas proceedings will not use new rule to upset state conviction that conformed to rules then existing. Finally, Souter, J., CONCURS IN JUDGMENT, arguing that D sought application of new rule in arguing insufficiency of evidence, so that Teague in fact barred consideration of D's claim.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.f. Successive petitions/abuse of the writ (Kuhlman v. Wilson)

TITLE: Delo v. Stokes

INDEX NO.: Q.2.f.

CITE: 495 U.S. 320, 110 S. Ct. 1880, 109 L.Ed.2d 325 (1990)

SUBJECT: Abuse of writ - stay of execution

HOLDING: PER CURIAM. Habeas petitioner not entitled to stay of execution on his 4th petition for habeas corpus where issues raised are not novel & could have been raised on his 1st petition. Stay of execution pending disposition of 2nd or successive federal habeas petition should be granted only when there are "substantial grounds upon which relief might be granted." Barefoot v. Estelle (1983), 463 U.S. 880, 895, 103 S. Ct. 3383, 3396, 77 L.Ed.2d 1090. Abuse of writ established where claims in successive petition could & should have been raised in first petition. Woodard v. Hutchins (1984), 464 U.S. 377, 104 S. Ct. 752, 78 L.Ed.2d 541. Held, stay of execution vacated. Kennedy, joined by Rehnquist & Scalia, CONCURRING; Brennan, joined by Marshall & Blackmun, DISSENTING.

TITLE: Felker v. Turpin
INDEX NO.: Q.2.f.
CITE: 518 U.S. 651, 116 S.Ct. 2333 (1996)
SUBJECT: Habeas Corpus -- Restrictions on Successive Petitions
HOLDING: Restrictions on successive petitions contained in Anti-terrorism & Effective Death Penalty Act, enacted April 24, 1996, are not unconstitutional. Under act, new claim raised for first time in successive petition must be dismissed unless one of two conditions is met: (1) claim relies on new, previously unavailable rule of constitutional law which has been made retroactive to cases on collateral appeal; or (2) factual predicate for claim could not have been discovered previously through exercise of due diligence, & underlying facts, if proven & viewed in light of evidence as whole, would establish by clear & convincing evidence that, but for constitutional error, no reasonable factfinder would have found petitioner guilty of underlying offense. Further, before petitioner may file successive petition, he/she must move for permission to do so in Circuit Ct. App., based on standards set out above. (Cf. Ind. Rules for Post- Conviction Relief). Act states that Appeals Ct.'s determination "shall not be appealable & shall not be the subject of ... a writ of certiorari." Petitioner here challenged act on two grounds: (1) that restrictions on appealability deprived S.Ct. of appellate jurisdiction in violation of Art. III, §2, of U.S. Const.; & (2) that restrictions on successive petitions constitute suspension of writ, in violation of Art. I, §9 of U.S. Const. Majority holds that S.Ct. retains jurisdiction to issue original writs of habeas corpus under 28 U.S.C. 2241 & 2254, so that its appellate jurisdiction is not unconstitutionally restrained. However, while Ct. is not "bound" by statute's restrictions on successive petitions, its exercise of original habeas jurisdiction would be "informed" by those restrictions, & it is unlikely that petitioner whose application for filing of successive petition is dismissed would receive original habeas grant from S.Ct. Finally, restrictions do not violate prohibition against suspension of writ of habeas corpus, but rather transfer to Appeals Cts. gatekeeping function which would previously have been performed by district Cts. New restrictions are well within compass of evolutionary development of "abuse-of-writ" doctrine. Stevens, Souter, & Breyer, JJ., CONCUR separately, noting that while the facts here do not represent unconstitutional restraint on Ct.'s appellate jurisdiction, question could arise in future.

RELATED CASES: Magwood v. Patterson, 130 S.Ct. 2788 (when D succeeds in having his original sentence overturned, a later habeas petition challenging his new sentence should be treated as a first petition, not as a “second and successive” petition).

TITLE: Kuhlman v. Wilson
INDEX NO.: Q.2.f.
CITE: 477 U.S. 436, 106 S.Ct. 2616, 91 L.Ed.2d 364 (1986)
SUBJECT: Federal habeas corpus - successive petitions
HOLDING: District courts should dismiss habeas petitions which raise claims determined adversely to D on prior petition if "the ends of justice would not be served by reaching the merits of the subsequent application." Sanders v. U.S. (1963), 373 U.S.1, 83 S.Ct. 1068, 10 L.Ed.2d 148. Burden of proof on this issue rests on habeas petitioner. Id. Federal courts should entertain successive petitions only in "rare instances." "Ends of justice" require federal courts to entertain successive petitions only where D supplements constitutional claim with colorable showing of factual innocence. D must "show a fair probability that, in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) & evidence tenably claimed to have been wrongfully excluded or to have become available only after trial, the trier of facts would have entertained a reasonable doubt of his guilt." fn. 17 at 2627, quoting, Friendly, Is Innocence Irrelevant? Collateral Attack of Criminal Judgments, 38 U.Chi.L.Rev. 142 (1970). BURGER CONCURS; Brennan, joined by Marshall, DISSENTS; Stevens DISSENTS.

TITLE: McClesky v. Zant
INDEX NO.: Q.2.f.
CITE: 499 U.S. 467, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991)
SUBJECT: Abuse of writ
HOLDING: Abuse of writ doctrine defines circumstances in which federal courts decline to entertain claim presented for first time in second/subsequent petition for writ of habeas corpus. Government has burden to clearly & particularly note petitioner's prior writ history, identify claim that appears for first time & allege that petitioner has abused writ. Burden to disprove abuse then shifts to petitioner who must demonstrate "cause" for failure to raise claim earlier together with "actual prejudice". If petitioner cannot demonstrate "cause," failure to raise claim in earlier petition may nonetheless be excused if he/she can make a colorable showing of factual innocence. Here, in second habeas petition, petitioner alleged that inmate deliberately elicited inculpatory statements from McClesky in violation of 6th Amend. & Massiah v. U.S. (1964), 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246. In support of Massiah claim, McClesky presented 21-page statement of inmate which was turned over to McClesky one month before second habeas petition filed. McClesky also presented testimony of jailer that someone at sometime requested that inmate be moved to McClesky's cell. Jailer was discovered during hearing on second petition. Cause requires showing that external impediment prevented counsel from construing/raising claim. Omission of claim will not be excused merely because evidence discovered later might also have supported/strengthened claim. Discovery of inmate's statement does not establish cause because McClesky was party to conversation which statement recounted & therefore had constructive notice of facts contained in document. Discovery of jailer during hearing does not establish cause because claim was filed in second petition prior to his discovery & could have been presented in first petition. Nor can McClesky establish a colorable claim of factual innocence. Habeas relief denied. Marshall, joined by Blackmun & Stevens, DISSENTING.

TITLE: Stewart v. Martinez-Villareal
INDEX NO.: Q.2.f.
CITE: 523 US. 637, 118 S.Ct. 1618 (1998)
SUBJECT: Habeas Corpus -- Successive Petition; Incompetence to be Executed
HOLDING: A state prisoner's constitutional claim that he is incompetent to be executed, which was raised in a petition for federal habeas corpus review, dismissed by that court as premature, and raised again when state set execution date, was not a "second or successive" petition and is not subject to the Antiterrorism and Effective Death Penalty Act's (AEDPA) stringent requirements. Respondent included claim of incompetence to be executed, (see Ford v. Wainwright, 477 U.S. 399 (1986) in previous federal habeas petition, but it was dismissed as premature because he did not face an execution date. After receiving an execution date and pursuing his Ford claim in state court, respondent moved the federal district court to reopen the claim. The state argued that the district court lacked jurisdiction under the AEDPA, because the claim was a second or successive petition. Respondent then moved in the 9th Cir. Court of Appeals for permission to file the successive petition, and the Court of Appeals ruled that a petition which raises only a Ford claim was not a second or successive petition, and that the Court of Appeals' permission was not required for filing the petition. The state then filed a cert. petition in the U.S.S.Ct. challenging this finding. The state argues that, whether the Ford claim is considered to have been previously presented in a habeas petition, or newly presented via the request to reopen it in the district court, it is a second or successive claim under AEDPA and should be dismissed. The U.S. S.Ct. rejects this argument. The Court reasons that respondent's position is similar to that of a petitioner who returns to federal court after exhausting state remedies: such claims are not considered successive. The Court reiterates that AEDPA restrictions represent a modified res judicata or "abuse of the Writ" rule. Respondent brought his claim in a timely fashion, and it has not been ripe until respondent moved the district court to reopen it. Held, respondent's Ford claim was not a second or successive claim and is entitled to be heard in federal court. Scalia & Thomas, JJ., DISSENT. NOTE: The Court specifically reserves the question of whether a Ford claim which was not raised in an initial habeas petition would be a successive claim subject to AEDPA restrictions if raised in a new petition.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.h. Relief Available

TITLE: Bousley v. U.S.
INDEX NO.: Q.2.h.
CITE: 523 U.S. 614 (1998)
SUBJECT: Habeas Corpus -- Guilty Plea Set Aside After New Interpretation of Elements of Offense
HOLDING: Guilty plea to using a firearm during and in relation to a drug trafficking offense, in violation of 18 USC 924(c)(1), is subject to collateral attack following new interpretation of "use" element in Bailey v. U.S., 516 U.S. 137 (1995). Because D was informed of elements of offense as interpreted by caselaw at the time of his plea, he was not accurately informed, and his plea therefore was not made intelligently. Teague v. Lane, 499 U.S. 288 (1989), which held that new constitutional rules of procedure cannot be applied on collateral review, does not apply to a new interpretation of a substantive federal statute.

Q. EXTRAORDINARY REMEDIES

Q.2. Federal habeas corpus (23 USC 2241 to 2255)

Q.2.i. Appeals from denial of writ

TITLE: Hinesley v. Knight
INDEX NO.: Q.2.i.
CITE: (9/13/2016), 837 F.3d 721 (7th Cir. 2015)
SUBJECT: Denial of writ of habeas corpus alleging ineffective assistance of counsel affirmed
HOLDING: D petitioned for a writ of habeas corpus, contending his trial counsel was ineffective for allowing out-of-court statements into evidence, for not objecting to vouching evidence, and for cumulative errors. Court found state court had not unreasonably applied Strickland v. Washington, 466 U.S. 668 (1984) in rejecting the ineffectiveness claim as to the uncontested admission of hearsay and as to the vouching remarks. Trial counsel had testified he intentionally did not object to the out-of-court statements because he wanted to point out the inconsistencies in the witnesses' stories. Regarding the vouching statements, even if there was no plausible strategic reason to allow them, Court found no prejudice.

The allegation of cumulative ineffectiveness was procedurally defaulted because D did not give the state courts a full and fair opportunity to address the claim. The claim was presented to the Indiana Court of Appeals (which rejected it on its merits), but was not fully and fairly presented to Indiana Supreme Court in his petition for transfer, as D made no discernible argument of cumulative ineffectiveness. D's transfer petition not only never used the word "cumulative" to distinguish the cumulative prejudice argument from the arguments of individual ineffectiveness, but said nothing about the multiple other bases for his cumulative argument. Thus, federal review of the cumulative claim was precluded by procedural default.

TITLE: Houston v. Lack
INDEX NO.: Q.2.i.
CITE: 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)
SUBJECT: Notice of appeal; timeliness - pro se litigants
HOLDING: Petition for writ of habeas corpus is civil action. Notice of appeal in civil actions must be filed within 30 days after entry of judgment, order or decree being appealed. 28 U.S.C. section 2107. Here, incarcerated pro se habeas petitioner deposited notice of appeal with prison authorities for mailing to court 27 days after judgment. Notice was stamped "filed" 31 days after judgment - one day after expiration of 30-day filing period. Prisoners seeking to appeal without aid of counsel are unique. Prisoners cannot monitor processing of legal papers & are forced to deposit legal papers with prison authorities who may have incentive to delay mailing. General rule that notice of appeal is "filed" when it is received by district court should not apply here. Held, notice of appeal by pro se habeas petitioner is deemed filed when prisoner delivers it to prison authorities for forwarding to court clerk. Scalia, joined by Rehnquist, O'Connor, & Kennedy, DISSENTS.

TITLE: Lozada v. Deeds

INDEX NO.: Q.2.i.

CITE: 498 U.S. 430, 111 S.Ct. 860, 112 L.Ed.2d 956 (1991)

SUBJECT: Certificate of probable cause prerequisite to appeal denial of federal habeas corpus petition

HOLDING: Per curiam. Certificate of probable cause is prerequisite to appeal from denial of writ of federal habeas corpus. 28 U.S.C. 2253. To obtain certificate of probable cause petitioner must make "substantial showing of denial of a federal right." Barefoot v. Estelle (1983), 463 U.S. 880, 893, 103 S.Ct. 3383, 3394, 77 L.Ed.2d 1090. To make such showing petitioner "must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further." Id. at 893, N.4, 103 S.Ct. at 3394. Here, D filed petition contending that ineffective assistance of counsel had deprived him of opportunity to appeal state court convictions because counsel failed to inform him of right to appeal & right to appointed counsel on appeal. Petition for habeas corpus was dismissed without hearing because petitioner failed to establish prejudice prong of ineffective assistance of counsel claim under Strickland v. Washington (1984), 466 U.S. 668, 104 S.Ct. 25052, 80 L.Ed.2d 674. Specifically petitioner failed to indicate what issues he would have raised on appeal & failed to demonstrate that appeal would have succeeded. District Ct. & Ct. of Appeals denied certificate of probable cause. Held, certificate of probable cause improperly denied. Denial of right to appeal could be resolved in different manner than that of district court. At least 2 courts of appeal have determined that prejudice is presumed in such a situation. (Citations omitted.) Thus, standard for issuance of certificate of probable cause set forth above satisfied. Case remanded. Rehnquist & O'Connor, without opinion, would deny petition for writ of certiorari.

Q. EXTRAORDINARY REMEDIES
Q.3. Mandamus/prohibition (Ind. Code 34-1-58; OAR 1)

TITLE: Petry v. Madison County Superior Ct.
INDEX NO.: Q.3
CITE: (6/24/91), Ind., 573 N.E.2d 884
SUBJECT: Extraordinary remedies -- mandamus; timing
HOLDING: Request for writ of mandate or prohibition is appeal to Ct.'s supervisory and equitable powers. Litigant must seek such relief as soon as he reasonably can. He cannot wait for months or years before pursuing this remedy. State ex rel. Gibson, 214 N.E.2d 655. Here, D waited twenty-two months after Tr. Ct. denied his fist motion for discharge before seeking writ in Ct. Ct. held that delays of lesser magnitude constitute failure to act expeditiously. Id. Held, petition for writ of mandate denied.

TITLE: State ex rel Kindred v. Morgan Superior Ct.
INDEX NO.: Q.3.
CITE: (10/31/83), Ind., 455 N.E.2d 328
SUBJECT: Mandamus/prohibition - special judge
HOLDING: D's motion for change of judge from Judge Harris was granted in open Ct. & Harris named a panel including Mowrer, Chezem & Gifford. Later, a written ruling was made on D's motion & Harris again named a panel, consisting of Mowrer, Chezem & Jones. After D struck Chezem, Harris entered nunc pro tunc order correcting written order to accord with original panel. State then struck Gifford. D sought writ of probation against Mowrer to prevent continuing jurisdiction over proceedings & writ of mandate against Harris to require resubmission of another panel pursuant to CR 13. D contends Harris had no jurisdiction to amend panel after one party struck but before other party struck & act is inconsistent with CR 12 & 13. Ct. finds that because Mowrer was selected & his name was on both panels, D fails to show how Mowrer's appointment put him in a position of substantial harm. Held, denial of writ ratified.

RELATED CASES: Neal, 230 N.E.2d 775 (relator filed verified motion for change of judge with affidavits establishing undisputed case of prejudice; no counter affidavit filed; regardless of statute or rule, Ct. stated that relator was entitled to change of judge).

TITLE: State ex rel. Smith v. Marion Circuit Ct.
INDEX NO.: Q.3
CITE: (10/26/51), Ind., 101 N.E.2d 272
SUBJECT: Extraordinary remedies -- prohibition; jurisdictional conflicts in trial Cts.
HOLDING: D was indicted for murder and case was assigned to Division Two of Criminal Ct. of Marion County. D was arrested and held without bail. He applied for bail and application was denied. D then filed application for writ of habeas corpus to be let to bail in Marion Circuit Ct. after being denied bail by Criminal Ct. Circuit Ct. admitted D to bail and D was released. In addition, D took charge of judge who ordered D to be arrested and held without bail. Sheriff who had released D and then arrested him was asked by Circuit Ct. to show cause why he should not be punished for contempt of that Ct.'s order by taking D into custody. On sheriff's application, Ct. issued temporary writ of prohibition commanding Marion Circuit Ct. to refrain from making any further errors or exercising any further jurisdiction in connection with matter, pending further order of Ct. Ct. held that motion to be admitted to bail or petition for writ of habeas corpus for purpose of letting prisoner to bail must be filed, and question must be determined, in Ct. in which indictment is pending. In addition, Circuit Ct. has no authority to review decisions of Criminal Ct. Ct. held that Circuit Ct. had acted and was seeking to act further outside its jurisdiction. Held, writ of prohibition made permanent.

TITLE: State ex rel. Grecco v. Allen Circuit Ct.
INDEX NO.: Q.3.
CITE: (11/13/58), Ind., 153 N.E.2d 914
SUBJECT: Extraordinary remedies -- mandamus; right to counsel
HOLDING: If accused is not financially able to employ attorney of his own choice, it is Tr. Ct.'s duty to select competent attorney for accused at public expense. Here, D, who was convicted for inflicting physical injury in commission of robbery and sentenced to life imprisonment, could not raise merits of his appeal without transcript because he was pauper. Ct. held that D was entitled to be represented on appeal by counsel at public expense. In addition, D was entitled to compel Circuit Ct. to appoint such counsel by writ of mandamus. Held, writ of mandamus to so compel was made permanent, and D was granted time to file transcript and assignment of errors in appealing from judgment of conviction.

RELATED CASES: State ex rel. White, 34 N.E.2d 129 (trial counsel withdrew his appearance because not experienced in appeals; Tr. Ct. ordered to appoint appellate counsel).

TITLE: State ex rel. Riggs v. Vigo Circuit Ct.
INDEX NO.: Q.3.
CITE: (5/7/57), Ind., 142 N.E.2d 214
SUBJECT: Extraordinary remedies -- mandamus; procedure for making application
HOLDING: Before party can resort to proceedings mandating Tr. Ct., it must appear that action regarding which he seeks mandatory relief has first been presented to Tr. Ct. in such manner that Tr. Ct. can fully understand issue involved, and that this Ct., in turn, can review action of Tr. Ct. on basis of facts presented to Tr. Ct. Here, D's petition was fatally defective, in that it did not set forth any formal motion to correct record nunc pro tunc, nor did it appear that D submitted special bill of exception to Tr. Ct. setting forth testimony and evidence allegedly omitted from bill of exceptions, certified by reporter as containing all evidence. Held, petition for writ of mandate is denied.

RELATED CASES: Anderson, 199 N.E.2d 88 (even where it seems clear that Tr. Ct. understands issue and will not correct its own error, Supreme Ct. requires that written motion be filed with Tr. Ct.).

TITLE: State ex rel. Goldsmith v. Super. Ct. of Marion County
INDEX NO.: Q.3.
CITE: (5/25/84), Ind., 463 N.E.2d 273
SUBJECT: Mandamus - relief by direct appeal
HOLDING: Writ of mandamus is denied where relator could have appealed. OAR 2(C), 3(A)(6). Mandamus is extraordinary remedy viewed with extreme disfavor. Relator must have clear & unquestioned right to relief before mandamus may be invoked. Here, prosecutor sought writ of mandate requiring judge to sentence D consecutively. D was originally sentenced consecutively, but filed PCR. While PCR was pending, plea negotiations again ensued & prosecutor agreed not to make sentencing recommendation on new plea. Issue was whether statute (Ind. Code 35-50-1-2) mandated consecutive sentence. D was given concurrent sentence. Prosecutor's challenge to Ct.'s "jurisdiction" was summarily overruled. Held, writ denied. Ct. also refuses to give advisory opinion on sentencing issue.

TITLE: State ex rel. Henson v. Washington Circuit Ct.
INDEX NO.: Q.3.
CITE: (11/6/87), Ind., 514 N.E.2d 838
SUBJECT: Extraordinary remedies -- mandamus; speedy trial violations
HOLDING: After D's motion to dismiss charges against him was denied, D applied for alternative writ of mandamus which would require his release and discharge and prohibit further proceedings on same charges. D claimed that he was entitled to discharge since State failed to bring him to trial within one year period prescribed by Crim.R. 4(C). Ct. held that although D's failure to object to initial date of trial, which was nine days beyond statutory deadline, constituted waiver of speedy trial rights as of first trial date, his failure to object did not constitute waiver of right to have trial on that date. Thus, failure to try D as of that date which was clearly outside one year limit, without demonstration of why cause was not tried, required discharge of D. Held, writ made permanent and discharge of D ordered.

TITLE: State ex rel Woodford v. Marion Superior Ct.
INDEX NO.: Q.3.
CITE: (9-7-95), Ind., 655 N.E.2d 63
SUBJECT: Mandamus - Tr. Ct.'s duty to consider successive PCR petition
HOLDING: In decision denying D's writ of mandate, Indiana S.Ct. held that Tr. Ct. had no absolute duty to consider D's successive petition for post-conviction relief. In Woodford v. State (1989), Ind., 544 N.E.2d 1355, Ct. affirmed denial of D's first PCR petition, but noted that D should be entitled to file new petition if he had any other basis upon which to establish that his plea was not voluntary & intelligent. In November 1994, D filed new PCR petition, & submitted plea agreement with outgoing prosecutor asking Tr. Ct. to reduce D's sentence from life in prison to 40 years. Prosecutor answered D's petition by admitting nearly all allegations. Tr. Ct. struck D's PCR petition sua sponte for failure to obtain leave to file successive petition under P-C Rule 1(12). Amendments to this rule effective January 1, 1994, require prisoners desiring to pursue successive post-conviction relief petitions to obtain leave of S.Ct. or Ct. App. before filing in Tr. Ct. After Tr. Ct. struck petition, new prosecutor moved to amend State's answer by denying most allegations & raising various affirmative defenses. In his petition for writ of mandamus, D argued that because S.Ct. in Woodford decision expressly authorized his successive PCR petition, Tr. Ct.'s jurisdiction to hear petition was mandatory as law of the case. In rejecting this argument, Ct. noted that its holding in Woodford did not freeze 1989 procedural rules or impose special duty on Tr. Ct. to exempt D from compliance with any rules in effect at time he chose to file PCR petition. Thus, Tr. Ct.'s dismissal fully accorded with law. Writs of mandate & prohibition will be issued only where Tr. Ct. has absolute duty to act or refrain from acting, not where matter is discretionary with Tr. Ct. State ex rel. Harris v. Scott Circuit Ct. (1982), Ind., 437 N.E.2d 952. Held, writ denied, DeBruler & Sullivan, JJ., dissenting.

Q. EXTRAORDINARY REMEDIES
Q.4. Injunctions (IC 34-26-1-1)

TITLE: Doe 1 v. Boone County Prosecutor & Sheriff
INDEX NO.: Q.4
CITE: (10/24/2017), 85 N.E.3d 902 (Ind. Ct. App 2017)
SUBJECT: Church is not "school property"; State enjoined from arresting plaintiffs for attending church
HOLDING: Even though the plaintiffs' churches conduct Sunday school classes and offer child care services, the churches are not "school property," so Boone County authorities are permanently enjoined from arresting and/or prosecuting the plaintiffs for entering their churches. See Ind. Code § 35-42-4-14(b).

In July of 2015, the Boone County Sheriff sent a letter to the county's registered sex offenders, including the three plaintiffs, advising them that the law prohibits serious sex offenders from entering "school property" and that churches are "school property," if the church conducts Sunday school or has child care for children who are at least three years of age and not yet enrolled in kindergarten. Under this interpretation, the plaintiffs' churches are school property. The plaintiffs sought declaratory and injunctive relief, claiming their churches are not school property. The trial court denied relief, except one ground not at issue in the appeal.

The churches are not school property under Ind. Code § 35-31.5-2-285(1)(D). This statute defines school property as a "federal, state, local, or nonprofit program or service operated to serve, assist, or otherwise benefit children who are at least three (3) years of age and not yet enrolled in kindergarten . . . ." This broad wording might include churches, but this section also contains a list of examples that qualify as "school property," including: 1) a Head Start program, 2) a special education preschool program, and 3) a developmental child care program for preschool children. Ind. Code § 35-31.5-2-285(1)(D)(i)-(iii). These examples focus on places or entities traditionally thought of and known as "schools." Churches and religious instruction are not schools, nor do they become so by use of the popular and common name of "Sunday school." "Moreover, we note what the statute 'does not say.' See Day v. State, 57 N.E.3d 809, 812 (Ind. 2016). The statute does not say churches, Sunday school, or anything related to religious instruction for children is 'school property.'" If the legislature intended for churches offering Sunday school or other religious instruction to children to qualify as "school property," it would have said so. Therefore, the plaintiffs are entitled to a permanent injunction that bars Boone County authorities from arresting and/or charging the plaintiffs under Ind. Code § 35-42-4-14(b) for attending church. Held, judgment reversed.

Q. EXTRAORDINARY REMEDIES
Q.5. Civil Rights

TITLE: Ali v. Federal Bureau of Prisons
INDEX NO.: Q.5.
CITE: 128 S. Ct. 831 (2008)
SUBJECT: Immunity applies to prison officials for lost personal belongings
HOLDING: Court addressed the scope of 28 U.S.C. ' 2680, which carves out certain exceptions to the United States' waiver of sovereign immunity for torts committed by federal employees. Section 2680(c) provides that the waiver of sovereign immunity does not apply to claims arising from the detention of property by "any officer of customs or excise or any other law enforcement officer." Petitioner, who contended several personal items were lost during transfer from one federal prison to another, argued that the clause applies only to law enforcement officers enforcing customs or excise laws, and thus did not affect the waiver of sovereign immunity for his property claim against officers of the Federal Bureau of Prisons. Majority, in 5-4 decision, held that the broad phrase "any other law enforcement officer" covers all law enforcement officers. Case involves discussion of several aspects of statutory construction. Kennedy, J., dissenting and joined by Stevens, Souter, and Breyer, JJ., filed lengthy opinion challenging majority's decision on basis of *ejusdem generis* and *noscitur a sociis,* which together instruct that words in a series should be interpreted in relation to one another. He disagreed with majority's opinion that only one possible way existed to read the statute, with the majority not giving proper respect to "what went before" in relation to the Federal Tort Claims Act. Kennedy also expressed concern that the analytical framework and specific interpretation used by the majority will become binding on federal courts, "which will confront other cases in which a series of words operate in a clause similar to the one we consider today." Breyer, J., joined by Stevens, J., filed a separate dissent to emphasize his belief that the statute's *scope* was of primary concern. He also took issue with the great reliance the majority placed on the word "any" before "other law enforcement officer." Breyer noted context, not a dictionary, sets the boundaries of time, place, and circumstances within which words such as "any" will apply, noting that when he tells his wife "There isn't any butter" he wouldn't mean "There isn't any butter in town" but rather he would mean their refrigerator.

TITLE: Butler v. Compton
INDEX NO.: Q.5.
CITE: 482 F.3d 1277 (10th Cir. 2007)
SUBJECT: Civil rights - favorable termination rule
HOLDING: Tenth Circuit Court of Appeals held that when someone is convicted pursuant to a plea bargain involving the dismissal of some charges, that person may bring a federal civil rights lawsuit challenging police misconduct underlying a dismissed count without complying with the "favorable termination" rule of Heck v. Humphrey, 512 U.S. 477 (1994). The favorable termination rule requires the dismissal of a federal civil rights lawsuit whose successful prosecution would necessarily imply the invalidity of a criminal conviction. Plaintiff was arrested and charged with burglary after police used deception to gain entry to his motel room. He was subsequently charged with other burglaries and pleaded guilty to those crimes in exchange for the dismissal of charges tied to the police entry of his motel room. Following his conviction, Plaintiff filed a 42 U.S.C. ' 1983 action alleging that the entry of the motel room violated his Fourth Amendment rights. The district court dismissed the lawsuit based on Heck. Court held that the favorable determination rule applied only to police conduct related to the specific counts underlying the Plaintiff's conviction. Court noted that the rule is designed to keep convicts from relying on ' 1983 to circumvent the tougher pleading requirements for habeas corpus petitions. "The purpose behind Heck is not implicated here because there is no attempt by [Plaintiff] . . . to avoid the pleading requirements of habeas. He cannot bring a habeas action because he has no conviction to challenge."

TITLE: City of Indianapolis v. Earl

INDEX NO.: Q.5.

CITE: (01-27-12), 960 N.E.2d 868 (Ind. Ct. App 2012)

SUBJECT: Police liability for high speed chase

HOLDING: A police chase ended when the suspect drove into Earl's vehicle at high speed. Earl was severely injured and sued the City of Indianapolis, alleging that the police officer continued the pursuit "without due regard of the safety of other drivers and pedestrians in the vicinity and in a high traffic area . . . ." Tr. Ct. held that the City was not entitled to summary judgment under the law enforcement immunity provision of the Indiana Tort Claims Act, and the Court of Appeals affirmed. City and police officers are not immune from liability for injuries caused by the officer's negligent operation of police vehicle while pursuing a fleeing suspect, Patrick v. Miresso, 848 N.E.2d 1083 (Ind. 2006), even where injured party was struck by a vehicle operated by the fleeing suspect. City of Indianapolis v. Garman, 848 N.E.2d 1087 (2006). "[T]he issue of whether [the officer] acted 'with due regard for the safety of all persons' is one for the trier of fact to decide after taking into consideration the totality of the facts. Thus, the Tr. Ct. was correct in denying the City's motion for summary judgment." Held, judgment affirmed.

TITLE: Connick v. Thompson

INDEX NO.: Q.5.

CITE: (03-29-11), 131 S.Ct. 1350 (U.S. 2011)

SUBJECT: Failure to train claims under ' 1983 require pattern of Brady violations

HOLDING: Civil rights plaintiffs suing district attorneys' offices for their failure to train prosecutors regarding their discovery obligations under Brady v. Maryland, 373 U.S. 83 (1963), must establish a pattern of similar Brady violations. The fact that Brady determinations are often difficult and that some prosecutors will inevitably make bad calls does not mean that the need for Brady training is so obvious that a district attorney's failure to provide that training is tantamount to a policy decision to violate the Constitution. A district attorney's office may not be held liable under '1983 for failure to train its prosecutors based on a single Brady violation. The fact that prosecutors have gone to law school, learn ethics, are subject to bar sanctions for ethical breaches, and practice with other prosecutors who are skilled in ethical obligations is plenty enough for a prosecutor's office to escape civil liability for a single Brady breach. "In light of this regime of legal training and professional responsibility, recurring constitutional violations are not the 'obvious consequence' of failing to provide prosecutors with formal in-house training about how to obey the law...Prosecutors are not only equipped but are also ethically bound to know what Brady entails and to perform legal research when they are uncertain."

Here, Thompson, who spent years on death row, won a '1983 judgment after local prosecutors suppressed exculpatory forensic test results. The trial judge in Thompson's '1983 lawsuit should have granted the district attorney's office's motion for summary judgment on the ground that Thompson could not, as a matter of law, prove that the district attorney was deliberately indifferent to the need for more or different Brady training in the absence of a showing of a pattern of similar Brady violations. Held, Fifth Circuit Court of Appeals' opinion at 578 F.3d 293 reversed. Scalia, J., joined by Alito, J., CONCURRING, responding to dissent. Ginsburg, J., joined by Breyer, Sotomayor and Kagan, JJ., DISSENTING, believes that a single Brady violation, coupled with deliberate indifference to the obligation, is actionable under City of Canton v. Harris, 489 U.S. 378 (1979). Dissenters challenged the unreal world view of the majority opinion and recounted the deliberate indifference of the DA and his staff to a proper understanding of Brady obligations.

TITLE: Crawford-El v. Britton

INDEX NO.: Q.5.

CITE: 523 U.S. 574, 118 S.Ct. 1584 (1998)

SUBJECT: Civil Rights Actions

HOLDING: A civil rights plaintiff asserting a constitutional claim that requires proof that a public official acted with an improper motive need not establish the official's motive by clear and convincing evidence to withstand a motion for summary judgment. Petitioner, a litigious federal prisoner, was transferred several times to institutions in several different states. His personal belongs were transferred separately and were diverted so that petitioner did not receive them until several months after he arrived at his final destination. Petitioner filed a §1983 action alleging that the diversion of his property was motivated by an intent to retaliate against him for exercise of his first amendment rights. The District Court dismissed petitioner's complaint, and the Court of Appeals determined that in an unconstitutional motive case, the plaintiff must establish motive by clear and convincing evidence. It based its ruling in part on Harlow v. Fitzgerald, 457 U.S. 800 (1982), which set out a single, objective standard for evaluating a qualified immunity defense, eliminating the subjective standard which allowed the defense to be rebutted by allegations of malice. The majority here finds that the holding in Harlow, which related only to the scope of the qualified immunity defense, provides no support for making any change in the plaintiff's burden in proving a constitutional violation. While the public official's subjective intent may be irrelevant to the issue of qualified immunity, it may be an essential component of a complainant's case. Existing law prevents bare allegations of unconstitutional motive from automatically going to trial. Summary judgment may be available if there is doubt about the illegality of the official's conduct, and with respect to certain claims, there must be evidence of causation as well as improper motive.

RELATED CASES: Los Angeles County v. Humphries, (person suing a municipality for violation of her civil rights under § 1983 must show that her rights were violated by a city policy (rather than by the unauthorized conduct of a city employee) to obtain any relief against the city, even if the plaintiff is seeking only an injunction or a declaration that her rights were violated.)

TITLE: Conn v. Gabbert
INDEX NO.: Q.5.
CITE: 526 U.S. 286; 119 S.Ct. 1292; 143 L.Ed.2d 399 (1999)
SUBJECT: Due Process Right to Pursue Profession--Search of Attorney
HOLDING: Execution of search warrant for person of attorney while client was testifying before grand jury did not violate attorney's 14th Amendment due process right to pursue his profession, even if execution was timed to hinder attorney-client contact during grand jury proceedings. Right to pursue profession is not infringed by inevitable interruptions of daily routine as result of legal process. This is so even if prosecutor intended to prevent consultation with grand jury witness. Brief interruption here did not rise to level of constitutional deprivation. Further, even if client had right to have attorney present outside grand jury hearing room, attorney lacks standing to vindicate this right. To extent that attorney's claim challenges reasonableness of search, 4th Amendment is proper basis for challenge.

TITLE: Haywood v. Drown.

INDEX NO.: Q.5

CITE: 129 S.Ct. 2108 (05-26-09)

SUBJECT: State bar to prisoner's lawsuit violates Supremacy Clause

HOLDING: A New York statute that bars prisoners from bringing 42 U.S.C. ' 1983 damages lawsuits against corrections officers in the state's trial courts violates the Constitution's Supremacy Clause. State legislature decided that such actions are "by and large frivolous and vexatious" and thus contrary to state policy. Court rejected State's argument that it qualifies as a permissible neutral rule of judicial administration. The statute bars only a "particular species" of Section 1983 actions from state trial courts, and thus operates more like an immunity statute than a jurisdictional one. States "retain substantial leeway to establish the contours of their jurisdictional systems," but have no authority to "nullify a federal right or cause of action they find inconsistent with their local policies." Held, judgment reversed. Thomas, J., joined by Roberts, C.J., Scalia, J., and Alito, J., DISSENTING, argued that equality of treatment of state and federal claims sufficed to uphold the statute, unlike the immunity statute in Howlett v. Rose, 496 U.S. 356 (1990), is truly jurisdictional.

TITLE: Kisela v. Hughes
INDEX NO.: Q.5.
CITE: (4/2/2018), (U.S. Supreme Court 2018)
SUBJECT: Officer who shot knife-wielding woman entitled to qualified immunity
HOLDING: A Tucson, Arizona police officer who shot an erratic, knife-wielding woman is entitled to qualified immunity because his actions did not violate clearly established statutory or constitutional rights of which a reasonable officer would have known.

Officer Andrew Kisela responded to reports that Hughes was in the street with a large knife "screaming and crying very loud." When he arrived, he saw Hughes approaching another woman. After Hughes ignored orders to drop the knife and continued to move toward the woman, Kisela fired at Hughes, striking her several times but not causing life-threatening injuries. Hughes filed a § 1983 lawsuit, alleging that Kisela used excessive force, i.e., more force than the Fourth Amendment allows. The District Court granted Kisela's motion for summary judgment, but the 9th Circuit reversed, finding that the facts most favorable to Hughes made it "obvious" that Kisela violated Hughes' rights. Eschewing briefing and oral arguments, the Supreme Court summarily reversed the 9th Circuit because any rights Kisela may have violated were not clearly established.

Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. White v. Pauly, 137 S.Ct. 548 (2017). Although "this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." Id. at 552. "In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law." Id. Use of excessive force is an area of the law "in which the result depends very much on the facts of each case," and thus police officers are entitled to qualified immunity unless existing precedent "squarely governs" the specific facts at issue. Mullenix v. Luna, 136 S.Ct. 305 (2015).

Here, Kisela said he shot Hughes because, although he and other officers at the scene were in no apparent danger, he believed Hughes was a threat to Chadwick. Kisela had mere seconds to assess the potential danger to Chadwick. He was confronted with a woman who had just been seen hacking a tree with a large kitchen knife and whose behavior was erratic enough to cause a concerned bystander to call 911 and then flag down Kisela as he drove to the scene. Hughes had moved to within a few feet of Chadwick, and she failed to acknowledge at least two commands to drop the knife. This is far from an obvious case in which any competent officer would have known that shooting Hughes to protect Chadwick would violate the Fourth Amendment. The 9th Circuit reliance on Harris v. Roderick, 126 F. 3d 1189 (9th Cir. 1997) – the case arising from the "Ruby Ridge" shooting – does not pass the straight-face test. There, an FBI sniper, who was positioned safely on a hilltop, used excessive force when he shot a man in the back while the man was retreating to a cabin. Suffice it to say, a reasonable police officer could miss the connection between the situation confronting the sniper at Ruby Ridge and the situation confronting Kisela in Hughes' front yard. Held, cert. granted, 9th Circuit decision at 862 F. 3d 775 (2016) reversed, and case remanded for proceedings consistent with the opinion. PER CURIAM; Sotomayor, dissenting, joined by Ginsburg, J.

TITLE: Livingstone v. North Belle Vernon Borough

INDEX NO.: Q.5.

CITE: 91 F.3d 515 (1996)

SUBJECT: Oral Release-Dismissal Agreement -- Voluntariness Must be Shown by Clear and Convincing Evidence

HOLDING: Where civil rights plaintiff challenges voluntariness of prior oral "release- dismissal" agreement, state must prove voluntariness of agreement by clear and convincing evidence. Plaintiff had been arrested for disorderly conduct and other crimes as a result of a family argument, and during trial, before she was to testify (and would more than likely have described physical abuse to which she was subjected), state agreed to terminate criminal prosecution in exchange for oral promise to release government from liability. She later sued, and trial court instructed jury that government's burden of proof for establishing voluntariness of release-dismissal agreement was "preponderance of evidence." Third Circuit disagrees, finding that mid-level "clear and convincing" standard is more appropriate, because the interests at stake are more substantial than mere loss of money.

TITLE: McDonough v. Smith
INDEX NO.: Q.5.
CITE: 139 S. Ct. 2149 (U.S. 2019) 06/20/2019
SUBJECT: Fabricated evidence claims accrue only on favorable termination of prosecution
HOLDING: The three-year statute of limitations on a constitutional claim under 42 U.S.C. § 1983 alleging that a prosecutor fabricated evidence in a prosecution begins to run when that prosecution terminates in favor of the criminal defendant/Section 1983 plaintiff and not, as the lower court held, when the evidence is first used against the defendant.

Here, Petitioner McDonough's claim, brought less than three years following his acquittal for election-related fraud, was timely. McDonough's constitutional claim was analogous to the common law tort of malicious prosecution, which accrues only on favorable termination of the underlying criminal proceeding. This favorable-termination requirement is rooted in pragmatic concerns about avoiding parallel criminal and civil litigation over the same subject matter and the related possibility of conflicting civil and criminal judgments, and about precluding the use of Section 1983 to collaterally attack state convictions. Thomas, J., joined by Kagan and Gorsuch, JJ., DISSENTING, arguing that the case should have been dismissed as improvidently granted because the constitutional basis for McDonough's claim was unclear and the court was therefore unable to confirm he had a constitutional claim at all.

TITLE: Mink v. Suthers

INDEX NO.: Q.5.

CITE: 482 F.3d 1244 (10th Cir. 2007)

SUBJECT: No absolute prosecutorial immunity for review of search warrant

HOLDING: Tenth Circuit Court of Appeals held that a prosecutor is not entitled to absolute immunity against a claim for damages arising from her review of a search warrant application. Court explained that such a review is not closely associated enough with the judicial phase of the criminal justice system to give rise to absolute prosecutorial immunity. A prosecutor is entitled to absolute immunity from liability in civil rights actions only for conduct that is "intimately associated with the judicial phase of the criminal process," Imbler v. Pachtman, 424 U.S. 409 (1976), and that "occur[s] in the course of his role as an advocate for the State," Buckley v. Fitzsimmons, 509 U.S. 259 (1993). Court held that the prosecutor in this case "was not wearing the hat of an advocate and, thus, is not entitled to absolute prosecutorial immunity." In short, she was not preparing her case when she reviewed the affidavit. Court emphasized that "absolute immunity . . . does not extend to those actions that are investigative or administrative in nature, including the provision of legal advice outside the setting of a prosecution."

TITLE: Morse v. Frederick

INDEX NO.: Q.5.

CITE: 551 U.S. 393, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007)

SUBJECT: Disruption not necessary to limit speech at school

HOLDING: Court held that because schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use, the school officials in this case did not violate the First Amendment by confiscating a pro-drug banner that said "Bong HiTS 4 JESUS" and suspending Petitioner for displaying the banner during a school outing - the Olympic Torch Relay. Majority rejected Petitioner's argument that this was not a school speech case as the event occurred during normal school hours and was sanctioned by the high-school principal. A principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use. Majority rejected Petitioner's argument that the student expression could not be suppressed because school officials could not reasonably conclude that it would "materially and substantially disrupt the work and discipline of the school." Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969). Majority pointed to Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986) where the suspension of a student who delivered a high school assembly speech employing "an elaborate, graphic, and explicit sexual metaphor" was upheld. Fraser demonstrates that (1) the constitutional rights of students are not automatically coextensive with the rights of adults in other settings and (2) Tinker's mode of analysis is not absolute, since the Fraser Court did not conduct the "substantial disruption" analysis. Breyer, J., filed an opinion concurring in the judgment in part and dissenting in part; Stevens, J., filed a dissenting opinion, in which Souter and Ginsburg, JJ., joined, in which he had no problem with a principal's action to remove a 14-foot banner when his student body was being reviewed by a potential national audience, no matter the message; noted that marijuana use (in personal amounts) has been found protected by the Alaska Constitution and that medicinal marijuana use was a hot political topic in Alaska at the time; questioned what Court would do if Petitioner flew a "WINE SiPS 4 JESUS" banner, which could be either a religious message or pro-alcohol message; and questioned "whether the fear of disapproval by those in the majority is silencing opponents of the war on drugs."

TITLE: Pearson v. Callahan
INDEX NO.: Q.5.
CITE: (U.S.), (01/21/09), 129 S.Ct. 808
SUBJECT: Standard of immunity for constitutional violations
HOLDING: The rigid two-step process for analyzing whether a government official is entitled to qualified immunity, established in Saucier v. Katz, 531 U.S. 991 (2001) is no longer mandatory in every case. Under Saucier, a judge first had to decide whether a government official's action violated the Constitution and only if there was a violation, then whether the constitutional right was "clearly established" at time of the violation. If the court answered either question in the negative, then qualified immunity shielded the D from liability.

In this case, police officers entered respondent's home without a warrant and conducted a search that respondents allege was a violation of Fourth Amendment consent-once-removed doctrine (see Georgia v. Randolph, 547 U.S. 103 (2006)). Court unanimously held that the Saucier procedure should not be regarded as an inflexible requirement and that the officers are entitled to qualified immunity on ground that it was not clearly established at time of the search that their conduct was unconstitutional. In rejecting Saucier's rigid two-step test, Court emphasized that it was not preventing lower courts from following the Saucier procedure; rather, courts should have the discretion to decide whether that procedure is worthwhile in particular cases. Thus, federal courts now have discretion to address whether the unconstitutionality of the officials' conduct was clearly established at the time without first determining whether the facts alleged by plaintiff make out a violation of a constitutional right. Held, 10th Circuit Court of Appeals decision that officers were not entitled to qualified immunity reversed.

TITLE: Perdue v. Kenny A.
INDEX NO.: Q.5.
CITE: (04-21-10), 130 S.Ct. 1662 (2010)
SUBJECT: Enhancements to attorney fees available in extraordinary circumstances
HOLDING: In a federal civil rights action challenging the lawfulness of state actors' conduct, an award of attorneys' fees under 42 U.S.C. § 1988 can include an enhancement for superior performance in sufficiently extraordinary circumstances. The strong presumption that the standard "lodestar" sum (hours worked times prevailing hourly rates in community) is adequate may be overcome when it does not adequately gauge the attorney's true market value or when expense outlays or delay in payment are exceptional. The district judge must provide a reasonably specific explanation for any enhancement. Held, Eleventh Circuit Court of Appeals' opinion at 532 F.3d 1209 reversed and remanded; Kennedy, J., concurring; Thomas, J., concurring. Breyer, J., with whom Stevens, Ginsburg, and Sotomayor, J.J., join, CONCURRING IN PART AND DISSENTING IN PART, asserted that majority inappropriately went beyond the narrow question that the court had agreed to consider and addressed whether an enhancement was appropriate in this case. "But even were I to engage in that inquiry, I would hold that the District Court did not abuse its discretion in awarding an enhancement," Breyer said.

TITLE: Sacramento County, CA v. Lewis

INDEX NO.: Q.5.

CITE: 523 U.S. 833,118 S.Ct. 1708 (1998)

SUBJECT: Civil Rights Actions -- Police Liability for High Speed Chase

HOLDING: Police officer does not violate substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending suspected criminal. Constitutional limits on high-speed chases by police officers are found in substantive due process principles that prohibit arbitrary official conduct that "shocks the conscience." High-speed chase does not shock the conscience unless it involves a purpose to cause harm unrelated to the legitimate object of arrest. Officers here are therefore not liable under §1983 civil rights action.

TITLE: San Francisco v. Sheehan
INDEX NO.: Q.5.
CITE: (5/18/15), 135 S.Ct. 1765, (U.S. 2015)
SUBJECT: Officers who shot mentally ill person entitled to qualified immunity
HOLDING: Officers who shot Teresa Sheehan, a woman suffering from a schizoaffective disorder and who had threatened to kill them, were entitled to qualified immunity against her claim under 42 U.S.C. § 1983 that they violated her Fourth Amendment rights. The officers were dispatched to Sheehan's group home because she had threatened to kill a social worker with a knife. When they first entered Sheehan's room, she grabbed a knife and threatened to kill them. They retreated and closed the door. Because they worried about what Sheehan might do next, they reentered her room. Sheehan, brandishing a knife, threatened the officers and approached them. After pepper spray proved ineffective, the officers shot Sheehan several times. She survived.

The officers are entitled to qualified immunity because they did not violate any clearly established Fourth Amendment rights. Plumhoff v. Rickard, 134 S. Ct. 2012 (2014). An officer "cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in [his] shoes would have understood that he was violating it," id., at 2023, meaning that "existing precedent . . . placed the statutory or constitutional question beyond debate." Ashcroft v. al-Kidd, 131 S.Ct. 2074, 2083 (2011). This exacting standard "gives government officials breathing room to make reasonable but mistaken judgments" by "protect[ing] all but the plainly incompetent or those who knowingly violate the law." Id. at 2085.

The officers did not violate the Fourth Amendment when they opened Sheehan's door the first time. Their use of force was also reasonable. The only question is whether they violated the Fourth Amendment when they reopened Sheehan's door rather than trying to accommodate her disability. Even if such a Fourth Amendment right exists, it was not clearly established at the time, so the officers are entitled to qualified immunity. Held, cert. granted, Ninth Circuit opinion at 743 F.3d 1211 reversed in part, and remanded. Alito, J., joined by Roberts, C.J., and Kennedy, Thomas, Ginsburg, and Sotomayor, JJ; Scalia, J., concurring and dissenting in part, joined by Kagan, J.; Breyer, J., took no part in the consideration or decision of the case.

TITLE: Sause v. Bauer
INDEX NO.: Q.5.
CITE: (6/28/2018), 138 S.Ct. 2561 (U.S. 2018)
SUBJECT: Dismissal of § 1983 lawsuit reversed
HOLDING: PER CURIAM. The U.S. Supreme Court reversed the District Court's dismissal of Petitioner's § 1983 lawsuit on qualified immunity grounds, where Petitioner had alleged that police officers violated her First Amendment right to pray; the officers ordered her to stop praying as they were in the process of *citing* her for disorderly conduct and interfering with law enforcement. The Court remanded the case for the District Court to determine: 1) the reasons the officers were in Petitioner's apartment and 2) any legitimate law enforcement interests that might have justified an order to stop praying at the specific time in question. Held, cert. granted, judgment of the 10th Circuit reversed, and remanded.

TITLE: Shipman v. Hamilton
INDEX NO.: Q.5.
CITE: 520 F.3d 775 (7th Cir. 2008)
SUBJECT: Qualified immunity does not protect police officer in nurse's arrest
HOLDING: Seventh Circuit held a police officer is not entitled to qualified immunity in a civil rights lawsuit brought by a hospital nurse who claims that the officer violated her rights under the Fourth and 14th Amendments by arresting her after she telephoned a physician to ask how to handle the officer's desire to serve papers on a very ill patient. The 60-year-old patient was in intensive-care. The nurse's version was that she pointed out the patient's room to the officer, said she needed to call the doctor, and told the officer she thought he should wait for the doctor to show up before serving the patient. Once the nurse got off the phone with the doctor, the officer told her she had blocked his service of process by making the call and arrested her. The nurse sued under 42 U.S.C. ' 1983. The officer argued that he was entitled to qualified immunity. Court held that officer was not entitled to qualified immunity because no reasonable officer in Defendant's position would have believed that there existed probable cause to arrest the nurse. Court immediately ruled out probable cause to arrest for obstruction of a peace officer because Illinois requires some sort of physical resistance by the suspect. Court also found no probable cause for obstructing service of process. Court noted that even if Illinois is unclear whether some physical resistance is necessary for the charge, no reasonable police officer involved in this situation could have believed that he had grounds to arrest the nurse, because at no time did she take any action, physical or otherwise, to hinder his ability to serve the patient. Rather, she actually assisted the officer by directing him to the patient's room.

TITLE: Stanton v. Sims
INDEX NO.: Q.5.
CITE: (11/4/2013), 134 S.Ct. 3 (2013)
SUBJECT: Officer entitled to qualified immunity on injuries resulting from warrantless search
HOLDING: PER CURIAM.

On issue of qualified immunity for police officer, Sixth Circuit erred in reversing District Court's granting of officer's motion for summary judgment on Sims' claim that officer violated her 4th Amendment rights by entering her yard without a warrant to pursue Nicholas Patrick, whom the officer pursued after Patrick disobeyed the officer's order to stop and fled into Sims' yard. Sims sued because she was injured when the officer kicked open her gate to find and detain Patrick.

Qualified immunity protects government officials from liability as long as their conduct does not violate clearly established constitutional rights that a reasonable person would know. Pearson v. Callahan, 555 U.S. 223, 231 (2009); Harlow v. Fitzgerald, 547 U.S. 800 (1982). The Ninth Circuit ruling was based on its mistaken view that the law on such warrantless searches was settled, when, in fact, "federal and state courts are sharply divided on the question whether an officer with probable cause to arrest a suspect for a misdemeanor may enter a home without a warrant while in hot pursuit of that suspect." While warrantless entries into a home for misdemeanors should be rare, see Welsh v. Wisconsin, 466 U.S. 740, 753 (1984) - "we did not lay down a categorical rule for all cases involving minor offenses." Id. at 750. Under some circumstances, hot pursuit will allow such warrantless searches. Held, Sixth Circuit opinion at 706 F.3d 354 (2013) reversed, and remanded for proceedings consistent with opinion.

TITLE: Thompson v. Clark

INDEX NO.: Q.5.

CITE: 142 S.Ct. 1332 (US Supreme Court 2022) 04/04/2022

SUBJECT: Criminal proceedings reach "favorable termination" when they end without conviction

HOLDING: A plaintiff bringing a damages claim under 42 U.S.C. § 1983 for constitutional violations arising in the criminal-justice process need only show that his prosecution ended without a conviction and not "with some affirmative indication of innocence." Here, Plaintiff's showing that his criminal prosecution ended without a conviction satisfied the requirement to demonstrate a favorable termination of a criminal prosecution in his Fourth Amendment claim under Section 1983 for malicious prosecution. Alito, J., joined by Thomas and Gorsuch, JJ., dissenting.

TITLE: Torres v. City of Madera

INDEX NO.: Q.5.

CITE: 524 F.3d 1053 (9th Cir. 2008)

SUBJECT: Civil rights: Accidental shooting governed by 4th Am. reasonableness and continuing seizure rule

HOLDING: Court reversed summary judgment determination in favor of government in §1983 action where arrestee was mortally wounded by police officer who mistakenly shot arrestee, while intending to deploy Taser device holstered near firearm. Arrestee's family sought damages for violation of arrestee's Fourth Amendment right to be free from unreasonable seizures. District court granted summary judgment stating, "A Fourth Amendment seizure occur[s] . . . only when there is a governmental termination of freedom of movement through means intentionally applied," and that "the means or instrumentality at issue is the intent to seize [arrestee] with the [Taser] versus the Glock and not the general intent to seize [arrestee] by shooting 'something.'" Court reversed finding the arrestee was "seized," within meaning of Fourth Amendment, by governmental termination of freedom of movement through means intentionally applied, when he was handcuffed and placed in back of patrol car and also by the officer's mistaken shooting. Court determined that the applicable law is governed by the Fourth Amendment reasonableness requirements, under the continuing seizure rule, rather than analysis of whether mistaken shooting constituted an alleged seizure by means intentionally applied.

TITLE: Van de Kamp v. Goldstein
INDEX NO.: Q.5.
CITE: (U.S.), (01/26/09), 129 S.Ct. 855
SUBJECT: Supervising prosecutors who neglect duties on information sharing have total immunity
HOLDING: Absolute immunity protects supervisory prosecutors from civil rights lawsuits claiming that they failed to properly train and supervise subordinates in providing criminal defendants with potential impeachment material about confidential informers or to establish an information system for managing such information. Here, after Goldstein served 24 years in prison for murder conviction, he was released based upon a court finding that the jailhouse informant had been given favorable treatment for his information, but that fact was never shared--as it should have been--with Goldstein's defense lawyer. Goldstein then brought a civil rights lawsuit, claiming in part that supervising prosecutors failed to train and supervise subordinates regarding disclosure of constitutionally required information to criminal defendants and failed to create a system for retaining and sharing information about informants. The two top prosecutors lost their bid for immunity in the Ninth Circuit.

Court held that training, supervision and information-sharing are not "administrative," in the sense of lacking legal immunity, but instead are "intimately associated with the judicial phase of the criminal process." Thus, supervisors' failure to perform such tasks satisfactorily cannot give rise to liability for damages. See Imbler v. Pachtman, 424 U.S. 409 (1976); Buckley v. Fitzsimmons, 509 U.S. 259 (1993). Held, judgment reversed and remanded.

TITLE: Wilson v. Layne

INDEX NO.: Q.5.

CITE: 526 U.S. 603; 119 S.Ct. 1692; 143 L.Ed.2d 818 (1999)

SUBJECT: Allowing Media Presence During Service of Arrest Warrant in Residence

HOLDING: During early morning execution of warrant to arrest petitioners' son in their home, law enforcement officers invited newspaper reporter & photographer to accompany them. Reporter & photographer did not assist officers in service of warrant, but observed & took photographs. Petitioners had been asleep & were dressed in underwear & nightgown. After establishing that petitioners' son was not present, officers & reporters left. Petitioners sued for violation of their 4th Amendment rights. Majority holds that allowing media to accompany officers during execution of warrant in residence violates 4th Amendment, because their presence was not related to the objectives authorized by the warrant. However, the majority finds that respondent officers had qualified immunity because this right was not "clearly established" at time of incident in 1992. "Clearly established," for purposes of qualified immunity, means that the contours of a right must be sufficiently clear that a reasonable official would understand that his actions were unlawful. His exact action need not have previously have been held unlawful, but in light of existing law its unlawfulness must be apparent. Here, majority reasons first that officers had warrant, & that because accurate media coverage of law enforcement activities serves an important public purpose, it was not clear that inviting media along exceeded the authorized scope of warrant. Second, although media ride-alongs had become fairly common police practice at the time, there were no cases holding them to violate 4th Amendment. Finally, the officers were following a written departmental policy on ride-alongs, & while such a policy cannot make reasonable actions which are contrary to decided caselaw, in an area such as this where there was no caselaw, reliance on such a policy was not unreasonable. Stevens, J., DISSENTS as to finding of qualified immunity.

TITLE: Ziegler v. Aukerman
INDEX NO.: Q.5.
CITE: 512 F.3d 777 (6th Cir. 2008)
SUBJECT: Burden of proof in civil right's action
HOLDING: Sixth Circuit Court of Appeals held a plaintiff is not obligated to prove that his or her rights were deprived without due process of law in order to prevail in a civil rights action under 42 U.S.C. ' 1983. Instead, a plaintiff need only prove that he or she was deprived of a federal constitutional or statutory right by a state actor. Court noted that inconsistent circuit caselaw could give the impression that a civil rights plaintiff must always establish that a deprivation of rights occurred without due process of law. In O'Brien v. City of Grand Rapids, 23 F.3d 990 (6th Cir. 1994), Court said there are three elements to a Section 1983 claim, one of which is that the deprivation occurred without due process. However, not only is there a line of contrary cases in the circuit, even a cursory reading of Section 1983 makes clear that this is not so, as the phrase "due process" is nowhere found in the statute. Court acknowledged that a plaintiff may allege a due process violation in an action under Section 1983, and that certain constitutional rights inherently raise due process concerns. However, Court made clear, Section 1983 does not invariably require a plaintiff to allege a violation of due process.

Q. EXTRAORDINARY REMEDIES

Q.6. Others

TITLE: A.N. v. K.G.
INDEX NO.: Q.6.
CITE: (6/12/2014), 10 N.E.3d 1270 (Ind. Ct. App 2014)
SUBJECT: 28-year extension of protective order is unreasonable
HOLDING: On rehearing, Court held that 28-year extension of a protective order was unreasonable, absent findings that an extension longer than IC 34-26-5-9(e)'s presumptive two-year term was necessary to "protect the petitioner and to bring about a cessation of the violence or the threat of violence." Improperly granted protective orders "may pose a considerable threat to a respondent's liberty." Barger v. Barger, 887 N.E.2d 990, 993-94 (Ind. Ct. App. 2008). Held, petition for rehearing granted in part, 28-year extension reversed, and remanded for setting of a reasonable extension.

TITLE: Hollis v. State
INDEX NO.: Q.6.
CITE: (2d Dist. 9/17/84), Ind. App., 468 N.E.2d 553
SUBJECT: Violent Crime Compensation Act
HOLDING: Family exclusion clause of Ind. Code 16-7-3.6-5(b) does not violate claimant's 14th Amend right to equal protection. Here, claimant is minor child whose father shot & killed her mother, was sentenced to death for multiple murders & committed suicide on death row. Hearing examiner found child ineligible for assistance because she is a "member of the family" of the offender, her father. Further, her mother's status as a "spousal dependent" precludes child's derivative claim. Ind. Code 16-7-3.6-5(b). But see 14 Ind.L.Rev. 751 (1981) (criticizing general family member exclusion). Family exclusion's purpose is to avoid collusion claims/reward spousal abuse. Cole, App., 454 N.E.2d 889. Ct. finds statute bears rational relationship to furtherance of legitimate purposes. Held, affirmed.

RELATED CASES: Otterman v. Ind. Bd., App., 471 N.E.2d 23, on reh'g 473 N.E.2d 1021 (Ad Law 721; pre-appeal statement (AR 2(C)) is not required in "appeals" from administrative agency decisions); Tobias v. Violent Crime Comp. Div., App., 470 N.E.2d 105, on reh'g 473 N.E.2d 148 (Ad Law 670 "pecuniary loss" as used in Ind. Code 16-7-3.6-8 (prior to amendment in 1983) includes loss of support; other issues: Ct. rejects D's contentions that she is entitled to attorney fees in excess of statutory limit in Ind. Code 16-7-3.6-14 or to expenses relating to birth of a child born after victim died).

TITLE: State v. Ziliak
INDEX NO.: Q.6.
CITE: (1st Dist. 6/19/84), Ind. App., 464 N.E.2d 929
SUBJECT: Civil remedies for crime victim - no recovery against state as perpetrator
HOLDING: Tr. Ct. erred in awarding treble damages, attorney fees & Ct. costs against state under Ind. Code 34-4-30-1, which provides additional civil remedies to property crime victims. Here, state sought injunctive relief to perform archeological surveys on Ziliaks' land. Ziliaks counterclaimed for damages against state for criminal trespass & mischief & theft for removal of Indian artifacts from their land by state employees. Jury awarded Ziliaks actual damages of $85. Tr. Ct. trebled damages & awarded attorney fees ($9,240) & costs, assessed against state. State cannot commit a crime; therefore, state may not be held liable for civil damages under Ind. Code 34-4-30-1. Citations omitted. Held, reversed & remanded.