SUPREME COURT OF THE UNITED STATES

No. 98–2060

RONALD D. EDWARDS, WARDEN, PETITIONER *v.* ROBERT W. CARPENTER

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

[April 25, 2000]

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether a federal habeas court is barred from considering an ineffective-assistance-of-counsel claim as "cause" for the procedural default of another claim when the ineffective-assistance claim has itself been procedurally defaulted.

I

Respondent was indicted by an Ohio grand jury for aggravated murder and aggravated robbery. He entered a guilty plea while maintaining his innocence– a procedure we held to be constitutional in *North Carolina* v. *Alford*, 400 U. S. 25 (1970)– in exchange for the prosecution's agreement that the guilty plea could be withdrawn if the three-judge panel that accepted it elected, after a mitigation hearing, to impose the death penalty. The panel accepted respondent's plea based on the prosecution's recitation of the evidence supporting the charges and, following a mitigation hearing, sentenced him to life imprisonment with parole eligibility after 30 years on the aggravated-murder count and to a concurrent term of 10 to 25 years on the aggravated-robbery count. On direct

appeal respondent, represented by new counsel, assigned only the single error that the evidence offered in mitigation established that he should have been eligible for parole after 20 rather than 30 years. The Ohio Court of Appeals affirmed, and respondent did not appeal to the Ohio Supreme Court.

After unsuccessfully pursuing state postconviction relief *pro se*, respondent, again represented by new counsel, filed an application in the Ohio Court of Appeals to reopen his direct appeal, pursuant to Ohio Rule of Appellate Procedure 26(B),[1] on the ground that his original appellate counsel was constitutionally ineffective in failing to raise on direct appeal a challenge to the sufficiency of the evidence. The appellate court dismissed the application because respondent had failed to show, as the rule required, good cause for filing after the 90-day period allowed.[2] The Ohio Supreme Court, in a one-sentence *per curiam* opinion, affirmed. *State* v. *Carpenter*, 74 Ohio St. 3d 408, 659 N. E. 2d 786 (1996)

On May 3, 1996, respondent filed a petition for writ of habeas corpus in the United States District Court for the Southern District of Ohio, alleging, *inter alia*, that the evidence supporting his plea and sentence was insufficient, in violation of the Fifth and Fourteenth Amend-

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[1] Rule 26(B) provides, in relevant part:

"(1) A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time."

[2] Respondent filed his application to reopen on July 15, 1994. Although Rule 26(B) did not become effective until July 1, 1993, more than two years after respondent's direct appeal was completed, the Court of Appeals considered respondent's time for filing to have begun on the Rule's effective date and to have expired 90 days thereafter.

ments, and that his appellate counsel was constitutionally ineffective in failing to raise that claim on direct appeal. Concluding that respondent's sufficiency-of-the-evidence claim was procedurally defaulted, the District Court considered next whether the ineffective-assistance-of-counsel claim could serve as cause excusing that default. The District Court acknowledged that the ineffective-assistance claim had been dismissed on procedural grounds, but concluded that Rule 26(B)'s inconsistent application by the Ohio courts rendered it inadequate to bar federal habeas review. See *Ford* v. *Georgia*, 498 U. S. 411, 423–424 (1991) (state procedural default is not an "independent and adequate state ground" barring subsequent federal review unless the state rule was "firmly established and regularly followed'" at the time it was applied). Proceeding to the merits of the ineffective-assistance claim, the District Court concluded that respondent's appellate counsel was constitutionally ineffective under the test established in *Strickland* v. *Washington*, 466 U. S. 668 (1984), and granted the writ of habeas corpus conditioned on the state appellate court's reopening of respondent's direct appeal of the sufficiency-of-the-evidence claim.

On cross-appeals, the United States Court of Appeals for the Sixth Circuit held that respondent's ineffective-assistance-of-counsel claim served as "cause" to excuse the procedural default of his sufficiency-of-the-evidence claim, whether or not the ineffective-assistance claim itself had been procedurally defaulted. *Carpenter* v. *Mohr*, 163 F. 3d 938 (CA6 1998). In the panel's view, it sufficed that respondent had exhausted the ineffective-assistance claim by presenting it to the state courts in his application to reopen the direct appeal, even though that application might, under Ohio law, have been time barred. Finding in addition prejudice from counsel's failure to raise the sufficiency-of-the-evidence claim on direct appeal, the Sixth

Circuit directed the District Court to issue the writ of habeas corpus conditioned upon the state court's according respondent a new culpability hearing. We granted certiorari. 528 U. S. ___ (1999).

II

Petitioner contends that the Sixth Circuit erred in failing to recognize that a procedurally defaulted ineffective-assistance-of-counsel claim can serve as cause to excuse the procedural default of another habeas claim only if the habeas petitioner can satisfy the "cause and prejudice" standard with respect to the ineffective-assistance claim itself. We agree.

The procedural default doctrine and its attendant "cause and prejudice" standard are "grounded in concerns of comity and federalism," *Coleman* v. *Thompson*, 501 U. S. 722, 730 (1991), and apply alike whether the default in question occurred at trial, on appeal, or on state collateral attack, *Murray* v. *Carrier*, 477 U. S. 478, 490–492 (1986). "[A] habeas petitioner who has failed to meet the State's procedural requirements for presenting his federal claims has deprived the state courts of an opportunity to address those claims in the first instance." *Coleman*, 501 U. S., at 732. We therefore require a prisoner to demonstrate cause for his state-court default of *any* federal claim, and prejudice therefrom, before the federal habeas court will consider the merits of that claim. *Id.*, at 750. The one exception to that rule, not at issue here, is the circumstance in which the habeas petitioner can demonstrate a sufficient probability that our failure to review his federal claim will result in a fundamental miscarriage of justice. *Ibid.*

Although we have not identified with precision exactly what constitutes "cause" to excuse a procedural default, we have acknowledged that in certain circumstances counsel's ineffectiveness in failing properly to preserve the claim for review in state court will suffice. *Carrier*, 477

U. S., at 488–489. Not just any deficiency in counsel's performance will do, however; the assistance must have been so ineffective as to violate the Federal Constitution. *Ibid.* In other words, ineffective assistance adequate to establish cause for the procedural default of some *other* constitutional claim is *itself* an independent constitutional claim. And we held in *Carrier* that the principles of comity and federalism that underlie our longstanding exhaustion doctrine– then as now codified in the federal habeas statute, see 28 U. S. C. §§2254(b), (c)– require *that* constitutional claim, like others, to be first raised in state court. "[A] claim of ineffective assistance," we said, generally must "be presented to the state courts as an independent claim before it may be used to establish cause for a procedural default." *Carrier, supra,* at 489.

The question raised by the present case is whether *Carrier*'s exhaustion requirement for claims of ineffective assistance asserted as cause is uniquely immune from the procedural-default rule that accompanies the exhaustion requirement in all other contexts– whether, in other words, it suffices that the ineffective-assistance claim was "presented" to the state courts, even though it was not presented in the manner that state law requires. That is not a hard question. An affirmative answer would render *Carrier*'s exhaustion requirement illusory.[3]

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[3]Last Term, in a *per curiam* summary reversal, we clearly expressed the view that a habeas petitioner must satisfy the "cause and prejudice" standard before his procedurally defaulted ineffective-assistance claim will excuse the default of another claim. *Stewart* v. *LaGrand,* 526 U. S. 115, 120 (1999). Respondent contends that we are not bound by *LaGrand* because in that case the habeas petitioner had *waived* his ineffective-assistance claim in the District Court, thereby rendering our procedural default discussion dicta, and because, in any event, *per curiam* opinions decided without the benefit of full briefing or oral argument are of little precedential value. Whether our procedural default analysis in *LaGrand* is properly characterized as dictum or as

We recognized the inseparability of the exhaustion rule and the procedural-default doctrine in *Coleman*: "In the absence of the independent and adequate state ground doctrine in federal habeas, habeas petitioners would be able to avoid the exhaustion requirement by defaulting their federal claims in state court. . . . The independent and adequate state ground doctrine ensures that the States' interest in correcting their own mistakes is respected in all federal habeas cases." *Coleman, supra,* at 732. We again considered the interplay between exhaustion and procedural default last Term in *O'Sullivan* v. *Boerckel,* 526 U. S. 838 (1999), concluding that the latter doctrine was necessary to "'protect the integrity' of the federal exhaustion rule." *Id.,* at 848 (quoting *id.,* at 853 (STEVENS, J., dissenting)). The purposes of the exhaustion requirement, we said, would be utterly defeated if the prisoner were able to obtain federal habeas review simply by "'letting the time run'" so that state remedies were no longer available. *Id.,* at 848. Those purposes would be no less frustrated were we to allow federal review to a prisoner who had *presented* his claim to the state court, but in such a manner that the state court could not, consistent with its own procedural rules, have entertained it. In such circumstances, though the prisoner would have "concededly exhausted his state remedies," it could hardly be said that, as comity and federalism require, the State had been given a "*fair* 'opportunity to pass upon [his claims].'" *Id.,* at 854 (STEVENS, J., dissenting (emphasis added) (quoting *Darr* v. *Burford,* 339 U. S. 200, 204 (1950)).

To hold, as we do, that an ineffective-assistance-of-counsel claim asserted as cause for the procedural default

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alternative holding, and whatever the precedential value of a *per curiam* opinion, the ease with which we so recently resolved this identical question reflects the degree to which the proper resolution flows irresistibly from our precedents.

of another claim can itself be procedurally defaulted is not to say that that procedural default may not *itself* be excused if the prisoner can satisfy the cause-and-prejudice standard with respect to *that* claim. Indeed, the Sixth Circuit may well conclude on remand that respondent can meet that standard in this case (although we should note that respondent has not argued that he can, preferring instead to argue that he does not have to). Or it may conclude, as did the District Court, that Ohio Rule of Appellate Procedure 26(B) does not constitute an adequate procedural ground to bar federal habeas review of the ineffective-assistance claim. We express no view as to these issues, or on the question whether respondent's appellate counsel was constitutionally ineffective in not raising the sufficiency-of-the-evidence claim in the first place.

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For the foregoing reasons, the judgment of the Court of Appeals for the Sixth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.