

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 97–300

TERRY STEWART, DIRECTOR, ARIZONA
DEPARTMENT OF CORRECTION, ET AL.,
PETITIONERS v. RAMON MARTINEZ-
VILLAREAL

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

[May 18, 1998]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In *Ford v. Wainwright*, 477 U. S. 399, 410 (1986) we held that “the Eighth Amendment prohibits a State from inflicting the penalty of death upon a prisoner who is insane.” In this case, we must decide whether respondent Martinez-Villareal’s *Ford* claim is subject to the restrictions on “second or successive” applications for federal habeas relief found in the newly revised 28 U. S. C. A. §2244 (Supp. 1997). We conclude that it is not.

Respondent was convicted on two counts of first-degree murder and sentenced to death. He unsuccessfully challenged his conviction and sentence on direct appeal in the Arizona state courts. *Arizona v. Martinez-Villareal*, 145 Ariz. 441, 702 P. 2d 670, cert. denied, 474 U. S. 975 (1985). He then filed a series of petitions for habeas relief in state court, all of which were denied. He also filed three petitions for habeas relief in federal court, all of which were

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dismissed on the ground that they contained claims on which the state remedies had not yet been exhausted.

In March 1993 respondent filed a fourth habeas petition in federal court. In addition to raising other claims, respondent also asserted that he was incompetent to be executed. Counsel for the State urged the District Court to dismiss respondent's *Ford* claim as premature. The court did so but granted the writ on other grounds. The Court of Appeals for the Ninth Circuit reversed the District Court's granting of the writ but explained that its instruction to enter judgment denying the petition was not intended to affect any later litigation of the *Ford* claim. *Martinez-Villareal v. Lewis*, 80 F. 3d 1301, 1309, n. 1 (CA9 1996).

On remand to the District Court, respondent, fearing that the newly enacted Antiterrorism and Effective Death Penalty Act (AEDPA) might foreclose review of his *Ford* claim, moved the court to reopen his earlier petition. In March 1997 the District Court denied the motion and reassured respondent that it had "no intention of treating the [*Ford*] claim as a successive petition." *Martinez-Villareal v. Stewart*, 118 F.3d 628, 630 (CA9 1997). Shortly thereafter, the State obtained a warrant for respondent's execution. Proceedings were then held in the Arizona Superior Court on respondent's mental condition. That court concluded that respondent was fit to be executed. The Arizona Supreme Court rejected his appeal of that decision.

Respondent then moved in the Federal District Court to reopen his *Ford* claim. He challenged both the conclusions reached and the procedures employed by the Arizona state courts. Petitioner responded that under AEDPA, the court lacked jurisdiction. The District Court agreed with petitioner, ruling on May 16, 1997, that it did not have jurisdiction over the claim. Respondent then moved in the Court of Appeals for permission to file a successive habeas corpus application. §2244(b)(3).

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The Court of Appeals stayed respondent's execution so that it could consider his request. It later held that §2244(b) did not apply to a petition that raises only a competency to be executed claim and that respondent did not, therefore, need authorization to file the petition in the District Court. It accordingly transferred the petition that had been presented to a member of that court back to the District Court. *Martinez-Villareal*, 118 F. 3d, at 634–635.

We granted certiorari to resolve an apparent conflict between the Ninth Circuit and the Eleventh Circuit on this important question of federal law. See, e.g., *In re Medina*, 109 F. 3d 1556 (CA11 1996).

Before reaching the question presented, however, we must first decide whether we have jurisdiction over this case. In AEDPA, Congress established a “gatekeeping” mechanism for the consideration of “second or successive habeas corpus applications” in the federal courts. *Felker v. Turpin*, 518 U. S. 651, ____ (1996); §2244(b). An individual seeking to file a “second or successive” application must move in the appropriate court of appeals for an order directing the district court to consider his application. §2244(b)(3)(A). The court of appeals then has 30 days to decide whether to grant the authorization to file. §2244(b)(3)(D). A court of appeals’ decision whether to grant authorization “to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” §2244(b)(3)(E).

If the Court of Appeals in this case had granted respondent leave to file a second or successive application, then we would be without jurisdiction to consider the State's petition and would have to dismiss the writ. This is not, however, what the Court of Appeals did. The Court of Appeals held that the §2244(b) restrictions simply do not apply to respondent's *Ford* claim, and that there was accordingly no need for him to apply for authorization to file

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a second or successive petition. We conclude today that the Court of Appeals reached the correct result in this case, and that we therefore have jurisdiction to consider the State's petition.

Section 2244(b) provides:

“(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

“(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

“(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

“(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

“(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.”

If respondent's current request for relief is a “second or successive” application, then it plainly should have been dismissed. The *Ford* claim had previously been presented in the 1993 petition, and would therefore be subject to dismissal under (b)(1)(A). Even if we were to consider the *Ford* claim to be newly presented in the 1997 petition, it does not fit within either of (b)(2)(B)'s exceptions, and dismissal would still be required.

The State contends that because respondent has already had one “fully-litigated habeas petition, the plain meaning

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of §2244(b) as amended requires his new petition to be treated as successive.” Brief for Petitioner 12. Under that reading of the statute, respondent is entitled to only one merits judgment on his federal habeas claims. Because respondent has already presented a petition to the District Court, and the District Court and the Court of Appeals have acted on that petition, §2244(b) must apply to any subsequent request for federal habeas relief.

But the only claim on which respondent now seeks relief is the *Ford* claim that he presented to the District Court, along with a series of other claims, in 1993. The District Court, acting for the first time on the merits of any of respondent’s claims for federal habeas relief, dismissed the *Ford* claim as premature, but resolved all of respondent’s other claims, granting relief on one. The Court of Appeals subsequently reversed the District Court’s grant of relief. At that point it became clear that respondent would have no federal habeas relief for his conviction or his death sentence, and the Arizona Supreme Court issued a warrant for his execution. His claim then unquestionably ripe, respondent moved in the state courts for a determination of his competency to be executed. Those courts concluded that he was competent, and respondent moved in the federal district court for review of the state court’s determination.

This may have been the second time that respondent had asked the federal courts to provide relief on his *Ford* claim, but this does not mean that there were two separate applications, the second of which was necessarily subject to §2244(b). There was only one application for habeas relief, and the District Court ruled (or should have ruled) on each claim at the time it became ripe. Respondent was entitled to an adjudication of all of the claims presented in his earlier, undoubtedly reviewable, application for federal habeas relief. The Court of Appeals was therefore correct in holding that respondent was not re-

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quired to get authorization to file a “second or successive” application before his *Ford* claim could be heard.

If the State’s interpretation of “second or successive” were correct, the implications for habeas practice would be far-reaching and seemingly perverse. In *Picard v. Connor*, 404 U. S. 270, 275 (1971), we said:

It has been settled since *Ex Parte Royall*, 117 U. S. 241 (1886), that a state prisoner must normally exhaust available state judicial remedies before a federal court will entertain his petition for *habeas corpus*. . . . The exhaustion-of-state-remedies doctrine, now codified in the federal habeas statute, 28 U. S. C. §§2254(b) and (c), reflects a policy of federal–state comity. . . . It follows, of course, that once the federal claim has been fairly presented to the state courts, the exhaustion requirement is satisfied.

Later, in *Rose v. Lundy*, 455 U. S. 509, 522 (1982), we went further and held that “a district court must dismiss habeas petitions containing both unexhausted and exhausted claims.” But none of our cases expounding this doctrine have ever suggested that a prisoner whose habeas petition was dismissed for failure to exhaust state remedies, and who then did exhaust those remedies and returned to federal court, was by such action filing a successive petition. A court where such a petition was filed could adjudicate these claims under the same standard as would govern those made in any other first petition.

We believe that respondent’s *Ford* claim here—previously dismissed as premature—should be treated in the same manner as the claim of a petitioner who returns to a federal habeas court after exhausting state remedies. True, the cases are not identical; respondent’s *Ford* claim was dismissed as premature, not because he had not exhausted state remedies, but because his execution was not imminent and therefore his competency to be executed

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could not be determined at that time. But in both situations, the habeas petitioner does not receive an adjudication of his claim. To hold otherwise would mean that a dismissal of a first habeas petition for technical procedural reasons would bar the prisoner from ever obtaining federal habeas review. See, e.g., *United States ex rel. Barnes v. Gilmore*, 968 F. Supp. 384, 385 (ND Ill. 1997) (“If Barnes continues in his nonpayment of the required \$5 filing fee . . . this Court will be constrained to dismiss his petition”); *Marsh v. United States District Court for the Northern District of California*, 1995 WL 23942 (ND Cal., Jan. 9, 1995) (“Because petitioner has since not paid the filing fee nor submitted a signed affidavit of poverty, the petition for writ of habeas corpus is dismissed without prejudice”); *Taylor v. Mendoza*, 1994 WL 698493 (ND Ill., Dec. 12, 1994).*

The State places great reliance on our decision in *Felker v. Turpin*, 518 U. S. 651 (1996), but we think that reliance is misplaced. In *Felker* we stated that the “new restrictions on successive petitions constitute a modified res judicata rule, a restraint on what used to be called in habeas corpus practice ‘abuse of the writ.’” 518 U. S., at 664. It is certain that respondent’s *Ford* claim would not be barred under any form of res judicata. Respondent brought his claim in a timely fashion, and it has not been ripe for resolution until now.

Thus, respondent’s *Ford* claim was not a “second or successive” petition under §2244(b) and we have jurisdiction to review the judgment of the Court of Appeals on the

*This case does not present the situation where a prisoner raises a *Ford* claim for the first time in a petition filed after the federal courts have already rejected the prisoner’s initial habeas application. Therefore, we have no occasion to decide whether such a filing would be a “second or successive habeas corpus application” within the meaning of AEDPA.

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State's petition for certiorari. But for the same reasons that we find we have jurisdiction, we hold that the Court of Appeals was correct in deciding that respondent was entitled to a hearing on the merits of his *Ford* claim in the District Court. The judgment of the Court of Appeals is therefore

Affirmed.