

**08-992 BEARD V. KINDLER**

DECISION BELOW:542 F.3d 70

LOWER COURT CASE NUMBER: 03-9010, 03-9011

**QUESTIONS PRESENTED:**

After murdering a witness against him and receiving a sentence of death, respondent broke out of prison, twice. Prior to his recapture in Canada years later, the trial court exercised its discretion under state forfeiture law to dismiss respondent's post-verdict motions, resulting in default of most appellate claims. On federal habeas corpus review, the court of appeals refused to honor the state court's procedural bar, ruling that, because "the state court ... had discretion" in applying the rule, it was not "firmly established" and was therefore "inadequate."

Is a state procedural rule automatically "inadequate" under the adequate-state-grounds doctrine - and therefore unenforceable on federal habeas corpus review - because the state rule is discretionary rather than mandatory?

CERT. GRANTED 5/18/2009

JUSTICE ALITO TOOK NO PART