

Spalding Vs. Aiken

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Decided On : 1983

Appeal No. : 460 U.S. 1093

Appellant : Spalding

Respondent : Aiken

Judgement :

SPALDING v. AIKEN - 460 U.S. 1093 (1983)

U.S. Supreme Court SPALDING v. AIKEN , 460 U.S. 1093 (1983)

460 U.S. 1093

James SPALDING et al.

v.

Arthur Nathaniel AIKEN

No. 82-665

Supreme Court of the United States

April 18, 1983

On petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

The petition for writ of certiorari is denied.

Chief Justice BURGER, statement concerning the denial of certiorari.

The time has come to consider limitations on the availability of the writ of habeas corpus in federal courts, especially

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for prisoners pressing stale claims that were fully ventilated in state courts. Others have expressed frustration in coping with stale cases, see, e.g., *Illinois v. Allen*, [397 U.S. 337](#) , 351, 357, 1064, 1067 (1970) (Douglas, J., concurring); *McMann v. Richardson*, [397 U.S. 759, 773](#) , 1450 (1970), and this petition underscores the views of those who have expressed concern as to the misuse and abuse of the writ. Relief on claims presented many years after conviction should be limited to cases in which the petitioner can demonstrate a miscarriage of justice or a colorable claim of innocence. The astonishing facts underlying this petition are illustrative and instructive.

Justice BLACKMUN would grant certiorari.

On October 14, 1965, a jury in King County, Washington, found Arthur Aiken and his co-defendant guilty of murder in the first degree for the robbery and slayings of three gas station attendants in separate incidents within one month. Each victim was shot several times. The jury imposed the death penalty. On direct appeal, Aiken advanced numerous challenges to his conviction. Following a remand to the trial court, the Washington Supreme Court affirmed the conviction and the sentence, 72 Wash.2d 306, 434 P.2d 10 (Wash.1967). On petition for certiorari to this Court, the conviction was vacated and the case remanded for reconsideration in light of *Bruton v. United States*, [391 U.S. 123](#) (1968), [392 U.S. 652](#) (1968). After a second petition for certiorari, the conviction was again vacated and remanded for reconsideration in light of *Maxwell v. Bishop*, [398 U.S. 262](#) (1970), *Boulden v. Holman*, [394 U.S. 478](#) (1969), and *Witherspoon v. Ill.*, [391 U.S. 510](#) (1968), 403 U.S. 946d 856 (1971). The state trial court then resentenced Aiken to

three consecutive life prison terms.

On July 26, 1979, fourteen years after his original conviction and eight years after his resentencing, Aiken filed this petition in the United States District Court for the Western District of Washington under 28 U.S.C. 2254. He raised claims concerning pretrial publicity, the voluntariness of his confession, and the trial court's failure to grant severance-

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all claims that had been raised and decided a decade earlier in his first appeal to the Washington Supreme Court. All but the pretrial publicity issue had been presented in his original petition for review here.

On February 22, 1980, the District Court denied the habeas petition because Aiken had prejudiced the State by waiting more than five years before filing his petition, see Rule 9(a) of the Rules Governing Section 2254 Cases, 28 U.S.C. fol. 2254.1 The Court of Appeals for the Ninth Circuit reversed, holding that prejudice may not be presumed. On remand, the State presented evidence that it could locate only 30 of the 87 witnesses who testified at trial and that 136 of the State's 138 exhibits were lost or destroyed. Finding that the evidence demonstrated that it would be difficult to retry Aiken should his petition for relief be granted, the District Court again dismissed the petition, concluding that prejudice as to retrial was also a ground for dismissal under Rule 9(a).2 The Court of Appeals for the

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Ninth Circuit again reversed, reasoning that Rule 9(a) allows consideration only of the State's difficulty in "respond[ing] to the habeas petition," and not consideration of the difficulty in retrying the petitioner. The District Court was ordered to entertain further proceedings pursuant to 2254(d).

The privileges of the writ of habeas corpus are not unlimited. Rather the doctrine of laches should apply to habeas actions as it applies to other actions for relief. Alternatively, Rule 9(a) should be changed to bar relief when delay has prejudiced

the State's ability to retry the petitioner.

The scope of habeas corpus as an avenue for repeated collateral attacks on criminal convictions has expanded enormously through decisions of this Court in the last three decades, see *Stone v. Powell*, [428 U.S. 465](#) , 474-482, 3042-46 (1976). As the ability to attack criminal convictions collaterally has expanded, so too has the range of costs to the judicial system grown. As we noted last Term, collateral review undermines the interest in repose that underlies the principle of *res judicata*, degrades the importance of the trial, frustrates penological goals and drains the resources of the judicial system, *Engle v. Isaac*, [456 U.S. 107](#) , 1570-1572d 783 (1982). See also *Stone v. Powell*, 428 U.S., at 491 n. 31 n. 31; *Brown v. Allen*, [344 U.S. 443](#) , 532-548, 423- 31 (1953) (Jackson, J., concurring; *Schneckloth v. Bustamonte*, [412 U.S. 218](#) , 259-266, 2064-67 (1973) (POWELL, J., concurring). See Friendly, *Is Innocence Irrelevant?*, 38 U.Chi.L.Rev. 142, 146-148 (1970).

Claims presented by way of habeas corpus petitions many years after conviction impose especially heavy burdens on the prison system, on society and on the administration of justice. Our willingness to entertain these late claims tells prisoners that they need never reconcile themselves to what has happened: they need never "make peace" with society, learn a new way of life, or attempt to build a realistic future. Our

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society's constant willingness to reopen cases long closed tells the public that we have no confidence that the laws are administered justly. Because reprosecution becomes increasingly difficult, and sometimes impossible, as time from the original conviction elapses, such relief on the basis of stale claims often results in the permanent release of dangerous individuals without supervision of any sort.

Inmates exploit society's misplaced sentiment. When re-examination of the circumstances surrounding the detention comes late in the day, there is always a danger that process will be abused. A prisoner has incentive to "store up"

technical challenges to his conviction and then press his claims seriatim when reconsideration of his allegations ³ is difficult and when reprosecution is impossible because key witnesses and exhibits have disappeared. Cf. *Del Vecchio v. United States*, [556 F.2d 106](#) , 109 and n. 6 (CA2 1977).

"One form of abuse said to exist is that of a prisoner, knowing he or she has a valid claim for relief, intentionally forgoing presenting that claim until evidence of guilt has dissipated so that reconviction would be impossible." ABA Standards for Criminal Justice, Postconviction Remedies, 22-2.4 (2d ed. 1980).

I would allow summary dismissal of habeas petitions when the state can prove that the lapse of time has made reprosecution impossible. Exceptions should be limited to

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cases where the petitioner can make a colorable claim of innocence, demonstrate that a significant miscarriage of justice has occurred or show that his claim is based on grounds that, with the exercise of reasonable diligence, could not have been discovered earlier. Footnotes

[Footnote 1](#) That measure provides:

"A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred."

As originally drafted, Rule 9(a) would have provided that a five-year delay creates a presumption of prejudice rather than the present standard which requires the state to prove prejudice in every case, see Committee on Rules of Practice and

Procedure of the Judicial Conference of the United States, Preliminary Draft of Proposed Amendments to the Federal Rules of Criminal Procedure, Proposed Rules Governing Habeas Corpus Proceedings, Proposed Rules Governing 2255 Proceedings (1973). The five- year presumption was deleted by Congress, see H.R.Rep. No. 1471, 94th Cong ., 2d Sess. 4-5 (1976), U.S.Code Cong. & Admin.News, p. 2478, on the grounds that it was "unsound policy to require the defendant to overcome a presumption of prejudice and that the legislation brings Rule 9(a) into conformity with other provisions of law," id., at 5, U.S.Code Cong. & Admin.News, p. 2481 (footnotes omitted), and "into conformity with case law," id., n. 9. See also 122 Cong.Rec. 30222-30223 (1976).

[Footnote 2](#) In so holding, the court relied on a comment in the Advisory Committee Notes to the identical provision governing 2255 proceedings. That comment provides:

"Subdivision (a) provides a flexible, equitable time limitation based on laches to prevent movants from withholding their claims so as to prejudice the government both in meeting the allegations of the motion and in any possible retrial." (Emphasis added.)

[Footnote 3](#) See also United States v. Frady, [456 U.S. 152](#) (1982) (19 year delay in asserting claim). In Marshall v. Fowler, No. 82-876, cert. denied, ___ U.S. ___d ___ (April 18, 1983), a petition presenting a claim of coerced confession was filed eight years after petitioner's original conviction. In May 1974, an Ohio trial court held a four-day hearing on this claim, hearing eighteen witnesses and generating 600 pages of transcript. A divided panel of the Court of Appeals for the Sixth Circuit nevertheless remanded the habeas petition for an evidentiary hearing. The petition raises a purely factual contention. I cannot imagine how the evidence that is received now could possibly be more probative than the evidence received eight years ago, when memories were fresh. Thus, the views expressed herein apply equally to Marshall v. Fowler.

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