Carey Vs. Saffold

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Appeal No. : 536 U.S. 214

Appellant : Carey

Respondent : Saffold

Judgement :

Carey v. Saffold - 536 U.S. 214 (2002)

OCTOBER TERM, 2001

SYLLABUS

CAREY, WARDEN *v.* SAFFOLD

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

No.01-301. Argued February 27, 2002-Decided June 17,2002

The Antiterrorism and Effective Death Penalty Act of 1996 requires a state prisoner seeking federal habeas relief to file his petition within one year after his state conviction becomes final, 28 U. S. C. 2244(d)(I)(A), but excludes from that period the time during which an application for state collateral review is "pending,"

2244(d)(2). Respondent Saffold filed a state habeas petition in California seven days before the federal deadline. Five days after the state trial court denied his petition, he filed a further petition in the State Court of Appeal. Four and one-half months after that petition was denied, he filed a further petition in the State Supreme Court, which denied the petition on the merits and for lack of diligence. The Federal District Court dismissed his subsequent federal habeas petition as untimely, finding that the federal statute of limitations was not tolled during the intervals between the denial of one state petition and the filing of the next because no application was "pending" during that time. In reversing, the Ninth Circuit included the intervals in the "pending" period, and found that Saffold's petition was timely because the State Supreme Court based its decision not only on lack of diligence but also on the merits.

HELD

1. As used in 2244(d)(2), "pending" covers the time between a lower state court's decision and the filing of a notice of appeal to a higher state court. Most States' collateral review systems require a prisoner to file a petition in a trial court; then to file a notice of appeal within a specified time after entry of the trial court's unfavorable judgment; and, if still unsuccessful, to file a further notice of appeal (or request for discretionary review) to the state supreme court within a specified time. Petitioner warden seeks a uniform national rule that a state petition is not "pending" during the interval between a lower court's entry of judgment and the timely filing of a notice of appeal in the next court, reasoning that the petition is not being considered during that time. Such a reading is not consistent with the ordinary meaning of "pending," which, in the present context, means until the completion of the collateral review process; i. *e.,* until the application has achieved final resolution through the State's postconviction proceedings. Petitioner's reading

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would also produce a serious statutory anomaly. Because a federal habeas petitioner has not exhausted his state remedies as long as he has "the right under [state] law ... to raise" in that State, "by any available procedure, the question presented," 2254(c), and because petitioner's interpretation encourages state prisoners to file their petitions before the State completes a full round of collateral review, federal courts would have to contend with petitions that are in one sense unlawful (because the claims have not been exhausted) but in another sense required by law (because they would otherwise be barred by the I-year limitations period). pp. 219-221.

2. The same "pending" rule applies to California's unique collateral review system, even though that system involves, not a notice of appeal, but the filing (within a "reasonable" time) of a further original state habeas petition in a higher court. California's system is not as special in practice as its terminology might suggest. A prisoner typically will seek habeas review in a lower court and later seek appellate review in a higher court. Thus, the system functions very much like that in other States, but for its indeterminate timeliness rule. That rule may make it more difficult for federal courts to determine when a review application comes too late. But the tolling provision seeks to protect the State's interests, and the State can explicate timing requirements more precisely should that prove necessary. In applying a federal statute that interacts with state procedural rules, this Court looks to how a state procedure functions, not its particular name. California's system functions in ways sufficiently like other state collateral review systems to bring intervals between a lower court decision and a filing in a higher court within the scope of "pending." Pp.221-225.

3. The words "on the merits" by themselves do not indicate that Saffold's petition was timely, but it is not possible to conclude that the Ninth Circuit was wrong in its ultimate conclusion. The State Supreme Court may have included such words in its opinion for a variety of reasons. And the Ninth Circuit's willingness to take them as an absolute bellwether risks the tolling of the federal limitations period even when it is likely that the state petition was untimely, thus threatening the statutory purpose of encouraging prompt filings in order to protect the federal system from

being forced to hear stale claims. In reconsidering the timeliness issue, the Ninth Circuit is left to evaluate any special conditions justifying Saffold's delay in filing in the state court and any other relevant considerations, and to decide whether to certify a question to the State Supreme Court to seek clarification of the state law. Pp.225-227.

250 F.3d 1262 , vacated and remanded.

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BREYER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, and GINSBURG, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined, *post,* p. 227.

Stanley A. Cross, Supervising Deputy Attorney General of California, argued the cause for petitioner. With him on the brief were *Bill Lockyer,* Attorney General, *Robert R. Anderson,* Chief Assistant Attorney General, and *Jo Graves* and *Arnold* O. *Overoye,* Senior Assistant Attorneys General.

David W Ogden argued the cause for respondent. With him on the brief were *Mary Katherine McComb,* by appointment of the Court, 534 U. S. 1053, and *Seth P. Waxman.* *

JUSTICE BREYER delivered the opinion of the Court.

The federal Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) requires a state prisoner seeking a federal habeas corpus remedy to file his federal petition within one year after his state conviction has become "final." 28 U. S. C. 2244(d)(1)(A). The statute adds, however, that the i-year period does not include the time during which an

*Briefs of *amici curiae* urging reversal were filed for the State of North Carolina et al. by *Roy A. Cooper III,* Attorney General of North Carolina, *Amy* C. *Kunstling,*

Assistant Attorney General, and *Dan Schweitzer,* and by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Janet Napolitano* of Arizona, *Ken Salazar* of Colorado, *M. Jane Brady* of Delaware, *Earl I. Anzai* of Hawaii, *James E. Ryan* of Illinois, *Carla J. Stovall* of Kansas, *J. Joseph Curran, Jr.,* of Maryland, *Thomas* F. *Reilly* of Massachusetts, *Jeremiah W (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *John J. Farmer, Jr.,* of New Jersey, *Betty D. Montgomery* of Ohio, *Hardy Myers* of Oregon, *D. Michael Fisher* of Pennsylvania, *Charles M. Condon* of South Carolina, *Mark Barnett* of South Dakota, *Randolph A. Beales* of Virginia, *Christine* O. *Gregoire* of Washington, and *Hoke MacMillan* of Wyoming; and for the Criminal Justice Legal Foundation by *Kent* S. *Scheidegger.*

David M. Porter and *Peter Goldberger* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging affirmance.

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application for state collateral review is "pending" in the state courts. 2244(d)(2).

This case raises three questions related to the statutory word "pending":

(1) Does that word cover the time between a lower state court's decision and the filing of a notice of appeal to a higher state court?

(2) If so, does it apply similarly to California's unique state collateral review system-a system that does not involve a notice of appeal, but rather the filing (within a reasonable time) of a further original state habeas petition in a higher court?

(3) If so, was the petition at issue here (filed in the California Supreme Court 4lh months after the lower state court reached its decision) pending during that period, or was it no longer pending because it failed to comply with state timeliness rules?

We answer the first two questions affirmatively, while remanding the case to the Court of Appeals for its further consideration of the third.

I

In 1990 Tony Saffold, the respondent, was convicted and sentenced in California state court for murder, assault with a firearm, and robbery. His conviction became final on direct review in April 1992. Because Saffold's conviction became final before AEDPA took effect, the federal limitations period began running on AEDPA's effective date, April 24, 1996, giving Saffold one year from that date (in the absence of tolling) to file a federal habeas petition.

A week before the federal deadline, Saffold filed a *state* habeas petition in the state trial court. The state trial court denied the petition. Five days later Saffold filed a further petition in the State Court of Appeal. That court denied his petition. And 4lh months later Saffold filed a further petition in the California Supreme Court. That court also denied Saffold's petition, stating in a single sentence that it did

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so "on the merits and for lack of diligence." App. G to Pet. for Cert. 1.

Approximately one week later, in early June 1998, Saffold filed a petition for habeas corpus in the Federal District Court. The District Court noted that AEDPA required Saffold to have filed his petition by April 24, 1997. It recognized that the statute gave Saffold extra time by tolling its limitations period while Saffold's application for state collateral review was "pending" in the state courts. But the District Court decided that Saffold's petition was "pending" only while the state courts were actively considering it, and that period did not include the intervals between the time a lower state court had denied Saffold's petition and the time he had filed a further petition in a higher state court. In Saffold's case those intervals amounted to five days (between the trial court and intermediate court) plus 4lf2

months (between the intermediate court and Supreme Court), and those intervals made a critical difference. Without counting the intervals as part of the time Saffold's application for state collateral review was "pending," the tolling period was not long enough to make Saffold's federal habeas petition timely. Hence the District Court dismissed the petition.

The Ninth Circuit reversed. It included in the "pending" period, and hence in the tolling period, the intervals between what was, in effect, consideration of a petition by a lower state court and further consideration by a higher state court-at least assuming a petitioner's request for that further higher court consideration was timely. *Saffold* v. *Newland,* 250 F.3d 1262 , 1266 (2001). It added that Saffold's petition to the California Supreme Court was timely despite the 4lf2 months that had elapsed since the California Court of Appeal decision. That is because the California Supreme Court had denied Saffold's petition, not only because of "lack of diligence" but also "on the merits," a circumstance that showed the California Supreme Court had "applied its untimeliness bar only after considering to some degree the

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underlying federal constitutional questions raised." *Id.,* at 1267.

We granted certiorari. We now vacate the judgment and remand the case.

II

In most States, relevant state law sets forth some version of the following collateral review procedures. First, the prisoner files a petition in a state court of first instance, typically a trial court. Second, a petitioner seeking to appeal from the trial court's judgment must file a notice of appeal within, say, 30 or 45 days after entry of the trial court's judgment. See, *e. g.,* Ala. Rule App. Proc. 4 (2001); Colo. App. Rule 4(b)(1) (2001); Ky. Rule Crim. Proc. 12.04(3) (2002). Third, a petitioner seeking further review of an appellate court's judgment must file a further notice of

appeal to the state supreme court (or seek that court's discretionary review) within a short period of time, say, 20 or 30 days, after entry of the court of appeals judgment. See, *e. g.,* Ala. Rule App. Proc. 5 (2001); Colo. Rev. Stat. 13-4-108 (2001); Conn. Rule App. Proc. 80-1 (2002); Ky. Rule Civ. Proc. 76.20(2)(b) (2002). California argues here for a "uniform national rule" to the effect that an application for state collateral review is not "pending" in the state courts during the interval between a lower court's entry of judgment and the timely filing of a notice of appeal (or petition for review) in the next court. Brief for Petitioner 36. Its rationale is that, during this period of time, the petition is not under court consideration.

California's reading of the word "pending," however, is not consistent with that word's ordinary meaning. The dictionary defines "pending" (when used as an adjective) as "in continuance" or "not yet decided." Webster's Third New International Dictionary 1669 (1993). It similarly defines the term (when used as a preposition) as "through the period of continuance ... of," "until the ... completion of." *Ibid.* That definition, applied in the present context, means that an application is pending as long as the ordinary state collateral

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review process is "in continuance"-i. *e.,* "until the completion of" that process. In other words, until the application has achieved final resolution through the State's postconviction procedures, by definition it remains "pending."

California's reading would also produce a serious statutory anomaly. A federal habeas petitioner must exhaust state remedies before he can obtain federal habeas relief. The statute makes clear that a federal petitioner has not exhausted those remedies as long as he maintains "the right under the law of the State to raise" in that State, "by any available procedure, the question presented." 28 U. S. C. 2254(c). We have interpreted this latter provision to require the federal habeas petitioner to "invok[e] one complete round of the State's established appellate review process." *O'Sullivan* v. *Boerckel,* 526 U. S. 838 , 845 (1999). The exhaustion requirement serves AEDPA's goal of promoting "comity, finality, and

federalism," *Williams* v. *Taylor, 529* U. S. 420, 436 (2000), by giving state courts "the first opportunity to review [the] claim," and to "correct" any "constitutional violation in the first instance." *Boerckel, supra,* at 844-845. And AEDPA's limitations period-with its accompanying tolling provision-ensures the achievement of this goal because it "promotes the exhaustion of state remedies while respecting the interest in the finality of state court judgments." *Duncan* v. *Walker,* 533 U. S. 167 , 178 (2001). California's interpretation violates these principles by encouraging state prisoners to file federal habeas petitions *before* the State completes a full round of collateral review. This would lead to great uncertainty in the federal courts, requiring them to contend with habeas petitions that are in one sense unlawful (because the claims have not been exhausted) but in another sense *required* by law (because they would otherwise be barred by the i-year statute of limitations).

It is therefore not surprising that no circuit court has interpreted the word "pending" in the manner proposed by

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California. Every Court of Appeals to consider the argument has rejected it. *Melancon* v. *Kaylo,* 259 F.3d 401 , 406 *(CA5* 2001); *Payton* v. *Brigano,* 256 F.3d 405 , 408 *(CA6 2001); Hizbullahankhamon* v. *Walker,* 255 F.3d 65 , 72 *(CA2 2001); Nyland* v. *Moore,* 216 F.3d 1264 , 1267 (CAll 2000); *Swartz* v. *Meyers,* 204 F.3d 417 , 421-422 *(CA3* 2000); *Taylor* v. *Lee,* 186 F.3d 557 , 560-561 *(CA4* 1999); *Nino* v. *Galaza,* 183 F.3d 1003 , 1005 *(CA9* 1999); *Barnett* v. *LeMaster, 167* F. 3d 1321, 1323 (CAlO 1999). Like these courts, we answer the first question in the affirmative.

III

Having answered the necessarily predicate question of how the tolling provision ordinarily treats applications for state collateral review in typical "appeal" States, we turn to the question whether this rule applies in California. California's collateral

review system differs from that of other States in that it does not require, technically speaking, appellate review of a lower court determination. Instead it contemplates that a prisoner will file a new "original" habeas petition. And it determines the timeliness of each filing according to a "reasonableness" standard. These differences, it is argued, require treating California differently from "appeal" States, in particular by not counting a petition as "pending" during the interval between a lower court's determination and filing of another petition in a higher court. See, *e. g.,* Brief for Criminal Justice Legal Foundation as *Amicus Curiae 5-18.*

California's "original writ" system, however, is not as special in practice as its terminology might suggest. As interpreted by the courts, California's habeas rules lead a prisoner ordinarily to file a petition in a lower court first. *In re Ramirez,* 89 Cal. App. 4th 1312, 1316, 108 Cal. Rptr. 2d 229, 232 (2001) (appellate court "has discretion to refuse to issue the writ ... on the ground that application has not [first] been made ... in a lower court"); *Harris* v. *Superior Court*