SUPREME COURT OF THE UNITED STATES

No. 90–1859

J. C. KEENEY, SUPERINTENDENT, OREGON STATE PENITENTIARY, PETITIONER *v.* JOSE TAMAYO-REYES

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

[May 4, 1992]

JUSTICE WHITE delivered the opinion of the Court.

Respondent is a Cuban immigrant with little education and almost no knowledge of English. In 1984, he was charged with murder arising from the stabbing death of a man who had allegedly attempted to intervene in a confrontation between respondent and his girlfriend in a bar.

Respondent was provided with a defense attorney and interpreter. The attorney recommended to respondent that he plead *nolo contendere* to first-degree manslaughter. Ore. Rev. Stat. §163.118(1)(a) (1987). Respondent signed a plea form that explained in English the rights he was waiving by entering the plea. The state court held a plea hearing, at which petitioner was represented by counsel and his interpreter. The judge asked the attorney and interpreter if they had explained to respondent the rights in the plea form and the consequences of his plea; they responded in the affirmative. The judge then explained to respondent, in English, the rights he would waive by his plea, and asked the interpreter to translate. Respondent indicated that he understood his rights and still wished to plead *nolo contendere*. The judge accepted his plea.

Later, respondent brought a collateral attack on the plea in a state-court proceeding. He alleged his plea

had not been knowing and intelligent and therefore was invalid

because his translator had not translated accurately and completely for him the *mens rea* element of manslaughter. He also contended that he did not understand the purposes of the plea form or the plea hearing. He contended that he did not know he was pleading no contest to manslaughter, but rather that he thought he was agreeing to be tried for manslaughter.

After a hearing, the state court dismissed respondent's petition, finding that respondent was properly served by his trial interpreter and that the interpreter correctly, fully, and accurately translated the communications between respondent and his attorney. App. 51. The State Court of Appeals affirmed, and the State Supreme Court denied review.

Respondent then entered Federal District Court seeking a writ of habeas corpus. Respondent contended that the material facts concerning the translation were not adequately developed at the state-court hearing, implicating the fifth circumstance of *Townsend* v. *Sain*, 372 U.S. 293, 313 (1963), and sought a federal evidentiary hearing on whether his *nolo contendere* plea was unconstitutional. The District Court found that the failure to develop the critical facts relevant to his federal claim was attributable to inexcusable neglect and that no evidentiary hearing was required. App. to Pet. for Cert. 37, 38. Respondent appealed.

The Court of Appeals for the Ninth Circuit recognized that the alleged failure to translate the *mens rea* element of first-degree manslaughter, if proved, would be a basis for overturning respondent's plea, 926 F.2d. 1492, 1494 (1991), and determined that material facts had not been adequately developed in the state postconviction court, *id.,* at 1500, apparently due to the negligence of postconviction counsel. The court held that *Townsend* v. *Sain, supra*, at 317, and *Fay* v. *Noia*, 372 U.S. 391, 438 (1963), required an evidentiary hearing in the District

Court unless respondent had deliberately bypassed the orderly procedure of the state courts. Because counsel's negligent failure to develop the facts did not constitute a deliberate bypass, the Court of Appeals ruled that respondent was entitled to an evidentiary hearing on the question whether the *mens rea* element of first-degree manslaughter was properly explained to him. 926 F.2d, at 1502.[1]

We granted certiorari to decide whether the deliberate by-pass standard is the correct standard for excusing a habeas petitioner's failure to develop a material fact in state-court proceedings. 502 U.S. ___ (1991). We reverse.

Because the holding of *Townsend* v. *Sain* that *Fay* v. *Noia*'s deliberate bypass standard is applicable in a case like this had not been reversed, it is quite understandable that the Court of Appeals applied that standard in this case. However, in light of more recent decisions of this Court, *Townsend*'s holding in this respect must be overruled.[2] *Fay* v. *Noia* was itself

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[1]With respect to respondent's claim that the plea form and plea proceeding were not adequately translated, the Court of Appeals concluded that state postconviction proceedings afforded petitioner ample opportunity to contest the translations, that the material facts surrounding these issues were adequately developed, and that the state court's findings were adequately supported by the record. The Court of Appeals therefore held that a federal evidentiary hearing on that claim was not required. 926 F.2d., at 1502.

[2]JUSTICE O'CONNOR asserts that *Townsend* v. *Sain*, 372 U.S. 293 (1963), insofar as relevant to this case, merely reflected existing law. The claim thus seems to be that the general rule stated by the Court in *Townsend* governing when an evidentiary hearing must be granted to a federal habeas corpus petitioner, as well as each of the Court's six criteria

a case where the habeas petitioner had not taken advantage of state remedies by failing to appeal—a procedural default case. Since that time, however, this Court has rejected the deliberate bypass standard in state procedural default cases and has applied instead a standard of cause and prejudice.

In *Francis* v. *Henderson*, 425 U.S. 536 (1976), we acknowledged a federal court's power to entertain an

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particularizing its general pronouncement, reflected what was to be found in prior holdings of the Court. This is a very doubtful claim. Surely the Court at that time did not think this was the case, for it pointedly observed that prior cases had not settled all aspects of the hearing problem in habeas proceedings and that the lower federal courts had reached widely divergent and irreconcilable results in dealing with hearing issues. *Id.,* at 310, and n. 8. Hence it was deemed advisable to give further guidance to the lower courts. It also expressly stated that the rules it was announcing ``must be considered to supersede, to the extent of any inconsistencies, the opinions in *Brown* v. *Allen* [, 344 U.S. 443 (1953)].'' *Id.*, at 312. This was necessary because *Brown* was inconsistent with the holding of *Townsend* regarding habeas petitioners who failed to adequately develop federal claims in state-court proceedings. See *Brown*, 344 U.S., at 465 (federal court may deny writ without rehearing of facts ``where the legality of [the] detention has been determined, *on the facts presented,*'' by the state court) (emphasis added); *Id.,* at 463 (writ should be refused, without more, if federal court satisfied from the record that ``state process has given fair consideration to the issues and the *offered* evidence'') (emphasis added). We have unequivocally acknowledged that *Townsend* substantially changed the availability of evidentiary hearings in federal habeas proceedings. See *Smith* v. *Yeager,* 393 U.S. 122, 125 (1968) *(per curiam)*.

application for habeas even where the claim has been procedurally waived in state proceedings, but nonetheless examined the appropriateness of the exercise of that power and recognized, as we had in *Fay,* that considerations of comity and concerns for the orderly administration of criminal justice may in some circumstances require a federal court to forgo the exercise of its habeas corpus power. 425 U.S., at 538–539. We held that a federal habeas petitioner is required to show cause for his procedural default, as well as actual prejudice. *Id.*, at 542.

In *Wainwright* v. *Sykes*, 433 U.S. 72 (1977), we rejected the application of *Fay*'s standard of ``knowing waiver'' or ``deliberate bypass'' to excuse a petitioner's failure to comply with a state contemporaneous-objection rule, stating that the state rule deserved more respect than the *Fay* standard accorded it. 433 U.S., at 88. We observed that procedural rules that contribute to error-free state trial proceedings are thoroughly desirable. We applied a cause-and-prejudice standard to a petitioner's failure to object at trial and limited *Fay* to its facts. *Wainwright*, *supra*, at 87–88, and n.12. We have consistently reaffirmed that the ``cause and prejudice'' standard embodies the correct accommodation between the competing concerns implicated in a federal court's habeas power. *Reed* v.

It is not surprising, then, that none of the cases cited by JUSTICE O'CONNOR remotely support *Townsend*'s requirement for a hearing in any case where the ``material facts were not adequately developed at the state-court hearing,'' due to petitioner's own neglect. 372 U.S., at 313. Finally, it is undeniable that *Fay* v. *Noia*'s deliberate bypass standard overruled prior procedural default cases, and it is no less true that *Townsend*'s adoption of that standard as a definition of ``inexcusable neglect'' made new law.

Ross, 468 U.S. 1, 11 (1984); *Engle* v. *Isaac*, 456 U.S. 107, 129 (1982).

In *McCleskey* v. *Zant*, 499 U.S.—— (1991), we held that the same standard used to excuse state procedural defaults should be applied in habeas corpus cases where abuse of the writ is claimed by the government. *Id.*, at —— (slip op. 21). This conclusion rested on the fact that the two doctrines are similar in purpose and design and implicate similar concerns. *Id.,* at —— (slip op. 21–22). The writ strikes at finality of a state criminal conviction, a matter of particular importance in a federal system. *Id.*, at —— – ——, (slip op. 22), citing *Murray* v. *Carrier*, 477 U.S. 478, 487 (1986). Federal habeas litigation also places a heavy burden on scarce judicial resources, may give litigants incentives to withhold claims for manipulative purposes, and may create disincentives to present claims when evidence is fresh. 499 U.S., at —— (slip op. 22–23). See also *Reed* v. *Ross*, *supra*, at 13; *Wainwright*, *supra*, at 89.

Again addressing the issue of state procedural default in *Coleman* v. *Thompson*, 501 U.S. —— (1991), we described *Fay* as based on a conception of federal/state relations that undervalued the importance of state procedural rules, *Id.*, at —— (slip op. 25), and went on to hold that the cause-and-prejudice standard applicable to failure to raise a particular claim should apply as well to failure to appeal at all. *Ibid.* ``All of the State's interests—in channeling the resolution of claims to the most appropriate forum, in finality, and in having an opportunity to correct its own errors—are implicated whether a prisoner defaults one claim or all of them.'' *Id.*, at —— (slip op. 25). We therefore applied the cause and prejudice standard uniformly to state procedural defaults, eliminating the ``irrational'' distinction between *Fay* and subsequent cases. *Ibid.* In light of these decisions, it is similarly irrational to distinguish between failing to properly assert a

federal claim in state court and failing in state court to properly develop such a claim, and to apply to the latter a remnant of a decision that is no longer upheld with regard to the former.

The concerns that motivated the rejection of the deliberate bypass standard in *Wainwright*, *Coleman,* and other cases are equally applicable to this case.[3] As in cases of state procedural default, application of the cause-and-prejudice standard to excuse a state

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[3] JUSTICE O'CONNOR puts aside our overruling of *Fay* v. *Noia*'s standard in procedural default cases on the ground that in those cases the cause-and-prejudice standard is just an acceptable precondition to reaching the merits of a habeas petitioner's claim, but insists that applying that standard to cases in which the petitioner defaulted on the development of a claim is not subject to the same characterization. For the reasons stated in the text, we disagree. Moreover, JUSTICE O'CONNOR's position is considerably weakened by her concession that the cause-and-prejudice standard is properly applied to a factually undeveloped claim which had been exhausted but which is first asserted federally in a second or later habeas petition.

Contrary to JUSTICE O'CONNOR's view, *post* at 6, we think it clear that the *Townsend* Court thought that the same standard used to deny a hearing in a procedural default case should be used to deny a hearing in cases described in its fifth circumstance. It is difficult to conceive any other reason for our borrowing the deliberate bypass standard of *Fay* v. *Noia*, particularly if, as the dissent seems to say, *post,* at 6. *Townsend* relied on but did not repeat the analysis found in *Fay* v. *Noia*. Yet the dissent insists that the rejection of *Fay* v. *Noia*'s analysis in our later cases should have no impact on a case such as we have before us now.

prisoner's failure to develop material facts in state court will appropriately accommodate concerns of finality, comity, judicial economy, and channeling the resolution of claims into the most appropriate forum.

Applying the cause-and-prejudice standard in cases like this will obviously contribute to the finality of convictions, for requiring a federal evidentiary hearing solely on the basis of a habeas petitioner's negligent failure to develop facts in state-court proceedings dramatically increases the opportunities to relitigate a conviction.

Similarly, encouraging the full factual development in state court of a claim that state courts committed constitutional error advances comity by allowing a coordinate jurisdiction to correct its own errors in the first instance. It reduces the ``inevitable friction'' that results when a federal habeas court ``overturn[s] either the factual or legal conclusions reached by the state-court system.'' *Sumner* v. *Mata*, 449 U.S. 539, 550 (1981).

Also, by ensuring that full factual development takes place in the earlier, state-court proceedings, the cause-and-prejudice standard plainly serves the interest of judicial economy. It is hardly a good use of scarce judicial resources to duplicate factfinding in federal court merely because a petitioner has negligently failed to take advantage of opportunities in state-court proceedings.

Furthermore, ensuring that full factual development of a claim takes place in state court channels the resolution of the claim to the most appropriate forum. The state court is the appropriate forum for resolution of factual issues in the first instance, and creating incentives for the deferral of factfinding to later federal-court proceedings can only degrade the accuracy and efficiency of judicial proceedings. This is fully consistent with and gives meaning to the requirement of exhaustion. The Court has long held that state prisoners must exhaust state remedies

before obtaining federal habeas relief. *Ex Parte Royall*, 117 U.S. 241 (1886). The requirement that state prisoners exhaust state remedies before a writ of habeas corpus is granted by a federal court is now incorporated in the federal habeas statute.[4] 28 U.S.C. §2254. Exhaustion means more than notice. In requiring exhaustion of a federal claim in state court, Congress surely meant that exhaustion be serious and meaningful.

The purpose of exhaustion is not to create a procedural hurdle on the path to federal habeas court, but to channel claims into an appropriate forum, where meritorious claims may be vindicated and unfounded litigation obviated before resort to federal court. Comity concerns dictate that the requirement of exhaustion is not satisfied by the mere statement of a federal claim in state court. Just as the State must afford the petitioner a full and fair hearing on his federal claim, so must the petitioner afford the State a full and fair opportunity to address and resolve the claim on the merits. Cf. *Picard* v. *Connor*, 404 U.S. 270, 275 (1971).

Finally, it is worth noting that applying the cause-and-prejudice standard in this case also advances uniformity in the law of habeas corpus. There is no good reason to maintain in one area of habeas law a standard that has been rejected in the area in which it was principally enunciated. And little can be said for holding a habeas petitioner to one standard for failing to bring a claim in state court and excusing the petitioner under another, lower standard for failing to develop the factual basis of that claim in the same forum. A different rule could mean that a habeas petitioner would not be excused for negligent failure

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[4] ``An application for a writ of habeas corpus . . . shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State. . . .'' 28 U. S. C. §2254(b).

to object to the introduction of the prosecution's evidence, but nonetheless would be excused for negligent failure to introduce any evidence of his own to support a constitutional claim.[5]

Respondent Tamayo-Reyes is entitled to an evidentiary hearing if he can show cause for his failure to develop the facts in state-court proceedings and actual prejudice resulting from that failure. We

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[5] It is asserted by JUSTICE O'CONNOR that in adopting 28 U. S. C. §2254(d) Congress assumed the continuing validity of all aspects of *Townsend*, including the requirement of a hearing in all fifth circumstance cases absent a deliberate bypass. For several reasons, we disagree. First, it is evident that §2254(d) does not codify *Townsend*'s specifications of when a hearing is required. *Townsend* described categories of cases in which evidentiary hearings would be required. Section 2254(d), however, does not purport to govern the question of when hearings are required; rather, it lists exceptions to the normal presumption of correctness of state-court findings and deals with the burden of proof where hearings are held. The two issues are distinct, and the statute indicates no assumption that the presence or absence of any of the statutory exceptions will determine whether a hearing is held.

Second, to the extent that it even considered the issue of default, Congress sensibly could have read *Townsend* as holding that the federal habeas corpus standard for cases of default under *Townsend*'s fifth circumstance and cases of procedural default should be the same. Third, §2254(d) does not mention or recognize any exception for inexcusable neglect, let alone reflect the specific standard of deliberate bypass. In the face of this silence, it should not be assumed that if there is to be a judicially created standard for equitable default, it must be no other

also adopt the narrow exception to the cause-and-prejudice requirement: A habeas petitioner's failure to develop a claim in state-court proceedings will be excused and a hearing mandated if he can show that a fundamental miscarriage of justice would result from failure to hold a federal evidentiary hearing. Cf. *McCleskey* v. *Zant*, 499 U.S., at —— (slip op. 25); *Murray* v. *Carrier*, 477 U.S., at 496.

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than the deliberate by-pass standard borrowed by *Townsend* from a decision that has since been repudiated.

We agree with JUSTICE O'CONNOR that under our holding a claim invoking the fifth circumstance of *Townsend* will be unavailing where the cause asserted is attorney error. *Murray* v. *Carrier*, 477 U.S. 478 (1986), and *Coleman* v. *Thompson*, 501 U.S. ___ (1991), dictate as much. Such was the intended effect of those cases, but this does not make that circumstance a dead letter, for cause may be shown for reasons other than attorney error. We noted in *Murray*, a procedural default case, that objective factors external to the defense may impede counsel's efforts to comply and went on to say: ``Without attempting an exhaustive catalog of such objective impediments to compliance with a procedural rule, we note that a showing that the factual or legal basis for a claim was not reasonably available to counsel, see *Reed* v. *Ross*, 468 U.S., at 16, or that `some interference by officials,' *Brown* v. *Allen*, 344 U.S. 443, 486 (1953), made compliance impracticable, would constitute cause under this standard.'' 477 U.S., at 488. Much of the same may be said of cases where the petitioner has defaulted on the development of a claim.

Nor, to the extent it is relevant to our decision in this case, is JUSTICE O'CONNOR's argument that many forms of cause would fall under other *Townsend* circumstances persuasive. For example, the third and

The State concedes that a remand to the District Court is appropriate in order to afford respondent the opportunity to bring forward evidence establishing cause and prejudice, Brief for Petitioner 21, and we agree that the respondent should have that opportunity. Accordingly, the decision of the Court of Appeals is reversed, and the cause is remanded to the District Court for further proceedings consistent with this opinion.

So ordered.

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sixth circumstances of *Townsend* speak to the denial by a *court* of full and fair hearing; however, a situation where facts were inadequately developed because of interference from officials would fall naturally into the fifth circumstance.