SUPREME COURT OF THE UNITED STATES

No. 00–121

GEORGE DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, PETITIONER *v.* SHERMAN WALKER

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

[June 18, 2001]

JUSTICE O'CONNOR delivered the opinion of the Court.

Title 28 U. S. C. §2244(d)(2) (1994 ed., Supp. V) provides: "The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." This case presents the question whether a federal habeas corpus petition is an "application for State post-conviction or other collateral review" within the meaning of this provision.

I

In 1992, several judgments of conviction for robbery were entered against respondent Sherman Walker in the New York state courts. The last of these convictions came in June 1992, when respondent pleaded guilty to robbery in the first degree in the New York Supreme Court, Queens County. Respondent was sentenced to 7 to 14 years in prison on this conviction.

Respondent unsuccessfully pursued a number of state remedies in connection with his convictions. It is unneces-

sary to describe all of these proceedings herein. Respondent's last conviction was affirmed on June 12, 1995. Respondent was later denied leave to appeal to the New York Court of Appeals. Respondent also sought a writ of error *coram nobis,* which the Appellate Division denied on March 18, 1996. Respondent's last conviction became final in April 1996, prior to the April 24, 1996, effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214.

In a single document dated April 10, 1996, respondent filed a complaint under Rev. Stat. §1979, 42 U. S. C. §1983, and a petition for habeas corpus under 28 U. S. C. §2254 in the United States District Court for the Eastern District of New York. On July 9, 1996, the District Court dismissed the complaint and petition without prejudice. With respect to the habeas petition, the District Court, citing §2254(b), concluded that respondent had not adequately set forth his claim because it was not apparent that respondent had exhausted available state remedies. The District Court noted that, for example, respondent had failed to specify the claims litigated in the state appellate proceedings relating to his robbery convictions.

On May 20, 1997, more than one year after AEDPA's effective date, respondent filed another federal habeas petition in the same District Court. It is undisputed that respondent had not returned to state court since the dismissal of his first federal habeas filing. On May 6, 1998, the District Court dismissed the petition as time barred because respondent had not filed the petition within a "reasonable time" from AEDPA's effective date.

The United States Court of Appeals for the Second Circuit reversed the District Court's judgment, reinstated the habeas petition, and remanded the case for further proceedings. *Walker* v. *Artuz,* 208 F. 3d 357 (2000). The Court of Appeals noted at the outset that, because respondent's conviction had become final prior to AEDPA's effec-

tive date, he had until April 24, 1997, to file his federal habeas petition. The court also observed that the exclusion from the limitation period of the time during which respondent's first federal habeas petition was pending in the District Court would render the instant habeas petition timely.

The Court of Appeals held that respondent's first federal habeas petition had tolled the limitation period because it was an application for "other collateral review" within the meaning of §2244(d)(2). The court characterized the disjunctive "or" between "post-conviction" and "other collateral" as creating a "distinct break" between two kinds of review. *Id.,* at 359. The court also stated that application of the word "State" to both "post-conviction" and "other collateral" would create a "linguistic oddity" in the form of the construction "State other collateral review." *Id.,* at 360. The court further reasoned that the phrase "other collateral review" would be meaningless if it did not refer to federal habeas petitions. The court therefore concluded that the word "State" modified only "post-conviction."

The Court of Appeals also found no conflict between its interpretation of the statute and the purpose of AEDPA. The court found instead that its construction would promote the goal of encouraging petitioners to file their federal habeas applications as soon as possible.

We granted certiorari, 531 U. S. 991 (2000), to resolve a conflict between the Second Circuit's decision and the decisions of three other Courts of Appeals. See *Jiminez* v. *Rice,* 222 F. 3d 1210 (CA9 2000); *Grooms* v. *Johnson,* 208 F. 3d 488 (CA5 1999) *(per curiam); Jones* v. *Morton,* 195 F. 3d 153 (CA3 1999). One other Court of Appeals has since adopted the Second Circuit's view. *Petrick* v. *Martin,* 236 F. 3d 624 (CA10 2001). We now reverse.

II

Our task is to construe what Congress has enacted. We begin, as always, with the language of the statute. See,

e.g., Williams v. *Taylor,* 529 U. S. 420, 431 (2000); *Public Employees Retirement System of Ohio* v. *Betts,* 492 U. S. 158, 175 (1989); *Watt* v. *Energy Action Ed. Foundation,* 454 U. S. 151, 162 (1981). Respondent reads §2244(d)(2) to apply the word "State" only to the term "post-conviction" and not to the phrase "other collateral." Under this view, a properly filed federal habeas petition tolls the limitation period. Petitioner contends that the word "State" applies to the entire phrase "post-conviction or other collateral review." Under this view, a properly filed federal habeas petition does not toll the limitation period.

We believe that petitioner's interpretation of §2244(d)(2) is correct for several reasons. To begin with, Congress placed the word "State" before "post-conviction or other collateral review" without specifically naming any kind of "Federal" review. The essence of respondent's position is that Congress used the phrase "other collateral review" to incorporate federal habeas petitions into the class of applications for review that toll the limitation period. But a comparison of the text of §2244(d)(2) with the language of other AEDPA provisions supplies strong evidence that, had Congress intended to include federal habeas petitions within the scope of §2244(d)(2), Congress would have mentioned "Federal" review expressly. In several other portions of AEDPA, Congress specifically used both the words "State" and "Federal" to denote state and federal proceedings. For example, 28 U. S. C. §2254(i) (1994 ed., Supp. V) provides: "The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254." Likewise, the first sentence of 28 U. S. C. §2261(e) (1994 ed., Supp. V) provides: "The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254." The second sentence of §2261(e) states:

"This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings." Finally, 28 U. S. C. §2264(a)(3) (1994 ed., Supp. V) excuses a state capital prisoner's failure to raise a claim properly in state court where the failure is "based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review."

Section 2244(d)(2), by contrast, employs the word "State," but not the word "Federal," as a modifier for "review." It is well settled that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Bates* v. *United States,* 522 U. S. 23, 29–30 (1997) (quoting *Russello* v. *United States,* 464 U. S. 16, 23 (1983)). We find no likely explanation for Congress' omission of the word "Federal" in §2244(d)(2) other than that Congress did not intend properly filed applications for federal review to toll the limitation period. It would be anomalous, to say the least, for Congress to usher in federal review under the generic rubric of "other collateral review" in a statutory provision that refers expressly to "State" review, while denominating expressly both "State" and "Federal" proceedings in other parts of the same statute. The anomaly is underscored by the fact that the words "State" and "Federal" are likely to be of no small import when Congress drafts a statute that governs federal collateral review of state court judgments.

Further, were we to adopt respondent's construction of the statute, we would render the word "State" insignificant, if not wholly superfluous. "It is our duty 'to give

effect, if possible, to every clause and word of a statute.'" *United States* v. *Menasche,* 348 U. S. 528, 538–539 (1955) (quoting *Montclair* v. *Ramsdell,* 107 U. S. 147, 152 (1883)); see also *Williams* v. *Taylor,* 529 U. S. 362, 404 (2000) (describing this rule as a "cardinal principle of statutory construction"); *Market Co.* v. *Hoffman*, 101 U. S. 112, 115 (1879) ("As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant'"). We are thus "reluctan[t] to treat statutory terms as surplusage" in any setting. *Babbitt* v. *Sweet Home Chapter, Communities for Great Ore.,* 515 U. S. 687, 698 (1995); see also *Ratzlaf* v. *United States,* 510 U. S. 135, 140 (1994). We are especially unwilling to do so when the term occupies so pivotal a place in the statutory scheme as does the word "State" in the federal habeas statute. But under respondent's rendition of §2244(d)(2), Congress' inclusion of the word "State" has no operative effect on the scope of the provision. If the phrase "State post-conviction or other collateral review" is construed to encompass both state and federal collateral review, then the word "State" places no constraint on the class of applications for review that toll the limitation period. The clause instead would have precisely the same content were it to read "post-conviction or other collateral review."

The most that could then be made of the word "State" would be to say that Congress singled out applications for "State post-conviction" review as one example from the universe of applications for collateral review. Under this approach, however, the word "State" still does nothing to delimit the entire class of applications for review that toll the limitation period. A construction under which the word "State" does nothing more than further modify "post-conviction" relegates "State" to quite an insignificant role in the statutory provision. We believe that our duty to

"give each word some operative effect" where possible, *Walters* v. *Metropolitan Ed. Enterprises, Inc.,* 519 U. S. 202, 209 (1997), requires more in this context.

The Court of Appeals characterized petitioner's interpretation as producing the "linguistic oddity" of "State other collateral review," which is "an ungainly construction that [the Court of Appeals did] not believe Congress intended." 208 F. 3d, at 360. But nothing precludes the application of the word "State" to the entire phrase "post-conviction or other collateral review," regardless of the resulting construction that one posits. The term "other collateral" is easily understood as a unit to which "State" applies just as "State" applies to "post-conviction." Moreover, petitioner's interpretation does not compel the verbal formula hypothesized by the Court of Appeals. Indeed, the ungainliness of "State other collateral review" is a very good reason why Congress might have avoided that precise verbal formulation in the first place. The application of the word "State" to the phrase "other collateral review" more naturally yields the understanding "other State collateral review."

The Court of Appeals also reasoned that petitioner's reading of the statute fails to give operative effect to the phrase "other collateral review." The court claimed that "the phrase 'other collateral review' would be meaningless if it did not refer to federal habeas petitions." *Ibid.* This argument, however, fails because it depends on the incorrect premise that there can be no form of state "collateral" review "other" than state "post-conviction" review within the meaning of §2244(d)(2). To the contrary, it is possible for "other collateral review" to include review of a state court judgment that is not a criminal conviction.

Section 2244(d)(1)'s 1-year limitation period applies to "an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." Section 2244(d)(2) provides for tolling during the pendency of

"a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim." Nothing in the language of these provisions requires that the state court judgment pursuant to which a person is in custody be a criminal conviction. Nor does 28 U. S. C. §2254 (1994 ed. and Supp. V) by its terms apply only to those in custody pursuant to a state criminal conviction. See, *e.g.,* §2254(a) ("a person in custody pursuant to the judgment of a State court"); §2254(b)(1) ("a person in custody pursuant to the judgment of a State court"); §2254(d) ("a person in custody pursuant to the judgment of a State court"); §2254(e)(1) ("a person in custody pursuant to the judgment of a State court").

Incarceration pursuant to a state criminal conviction may be by far the most common and most familiar basis for satisfaction of the "in custody" requirement in §2254 cases. But there are other types of state court judgments pursuant to which a person may be held in custody within the meaning of the federal habeas statute. For example, federal habeas corpus review may be available to challenge the legality of a state court order of civil commitment or a state court order of civil contempt. See, *e.g., Francois* v. *Henderson,* 850 F. 2d 231 (CA5 1988) (entertaining a challenge brought in a federal habeas petition under §2254 to a state court's commitment of a person to a mental institution upon a verdict of not guilty by reason of insanity); *Leonard* v. *Hammond,* 804 F. 2d 838 (CA4 1986) (holding that constitutional challenges to civil contempt orders for failure to pay child support were cognizable only in a habeas corpus action). These types of state court judgments neither constitute nor require criminal convictions. Any state collateral review that is available with respect to these judgments, strictly speaking, is not post-conviction review. Accordingly, even if "'"State post-conviction review" means all collateral review of a conviction provided by a state,'" 208 F. 3d, at 360 (quoting *Bar-*

rett v. *Yearwood,* 63 F. Supp. 2d 1245, 1250 (ED Cal. 1999)), the phrase "other collateral review" need not include federal habeas petitions in order to have independent meaning.

Congress also may have employed the construction "post-conviction or other collateral" in recognition of the diverse terminology that different States employ to represent the different forms of collateral review that are available after a conviction. In some jurisdictions, the term "post-conviction" may denote a particular procedure for review of a conviction that is distinct from other forms of what conventionally is considered to be postconviction review. For example, Florida employs a procedure that is officially entitled a "Motion to Vacate, Set Aside, or Correct Sentence." Fla. Rule Crim. Proc. 3.850 (2001). The Florida courts have commonly referred to a Rule 3.850 motion as a "motion for post-conviction relief" and have distinguished this procedure from other vehicles for collateral review of a criminal conviction, such as a state petition for habeas corpus. See, *e.g., Bryant* v. *State,* 780 So. 2d 978, 979 (Fla. App. 2001) ("[A] petition for habeas corpus cannot be used to circumvent the two-year period for filing motions for post-conviction relief"); *Finley* v. *State,* 394 So. 2d 215, 216 (Fla. App. 1981) ("[T]he remedy of habeas corpus is not available as a substitute for post-conviction relief under Rule 3.850"). Congress may have refrained from exclusive reliance on the term "post-conviction" so as to leave no doubt that the tolling provision applies to all types of state collateral review available after a conviction and not just to those denominated "post-conviction" in the parlance of a particular jurisdiction.

Examination of another AEDPA provision also demonstrates that "other collateral" need not refer to any form of federal review in order to have meaning. Title 28 U. S. C. §2263 (1994 ed., Supp. V) establishes the limitation period for filing §2254 petitions in state capital cases that arise

from jurisdictions meeting the "opt-in" requirements of §2261. Section 2263(b)(2) provides that the limitation period "shall be tolled from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition." The reference to "the final State court disposition of such petition" makes it clear that only petitions filed in state court, and not petitions for federal review, toll the limitation period in capital cases. Congress therefore used the phrases "post-conviction review" and "other collateral relief" in a disjunctive clause where the term "other collateral," whatever its precise content, could not possibly include anything federal within its ambit. This illustration vitiates any suggestion that "other collateral" relief or review must include federal relief or review in order for the term to have any significance apart from "post-conviction" review.

Consideration of the competing constructions in light of AEDPA's purposes reinforces the conclusion that we draw from the text. Petitioner's interpretation of the statute is consistent with "AEDPA's purpose to further the principles of comity, finality, and federalism." *Williams,* 529 U. S., at 436. Specifically, under petitioner's construction, §2244(d)(2) promotes the exhaustion of state remedies while respecting the interest in the finality of state court judgments. Under respondent's interpretation, however, the provision would do far less to encourage exhaustion prior to seeking federal habeas review and would hold greater potential to hinder finality.

The exhaustion requirement of §2254(b) ensures that the state courts have the opportunity fully to consider federal-law challenges to a state custodial judgment before the lower federal courts may entertain a collateral attack upon that judgment. See, *e.g., O'Sullivan* v. *Boerckel,* 526 U. S. 838, 845 (1999) ("[T]he exhaustion doctrine is designed to give the state courts a full and fair opportunity

to resolve federal constitutional claims before those claims are presented to the federal courts"); *Rose* v. *Lundy,* 455 U. S. 509, 518–519 (1982) ("A rigorously enforced total exhaustion rule will encourage state prisoners to seek full relief first from the state courts, thus giving those courts the first opportunity to review all claims of constitutional error"). This requirement "is principally designed to protect the state courts' role in the enforcement of federal law and prevent disruption of state judicial proceedings." *Id.,* at 518. The exhaustion rule promotes comity in that "'it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation.'" *Ibid.* (quoting *Darr* v. *Burford,* 339 U. S. 200, 204 (1950)); see also *O'Sullivan, supra,* at 844 ("Comity thus dictates that when a prisoner alleges that his continued confinement for a state court conviction violates federal law, the state courts should have the first opportunity to review this claim and provide any necessary relief").

The 1-year limitation period of §2244(d)(1) quite plainly serves the well-recognized interest in the finality of state court judgments. See generally *Calderon* v. *Thompson,* 523 U. S. 538, 555–556 (1998). This provision reduces the potential for delay on the road to finality by restricting the time that a prospective federal habeas petitioner has in which to seek federal habeas review.

The tolling provision of §2244(d)(2) balances the interests served by the exhaustion requirement and the limitation period. Section 2244(d)(2) promotes the exhaustion of state remedies by protecting a state prisoner's ability later to apply for federal habeas relief while state remedies are being pursued. At the same time, the provision limits the harm to the interest in finality by according tolling effect only to "properly filed application[s] for State post-conviction or other collateral review."

By tolling the limitation period for the pursuit of state remedies and not during the pendency of applications for federal review, §2244(d)(2) provides a powerful incentive for litigants to exhaust all available state remedies before proceeding in the lower federal courts. But if the statute were construed so as to give applications for federal review the same tolling effect as applications for state collateral review, then §2244(d)(2) would furnish little incentive for individuals to seek relief from the state courts before filing federal habeas petitions. The tolling provision instead would be indifferent between state and federal filings. While other statutory provisions, such as §2254(b) itself, of course, would still provide individuals with good reason to exhaust, §2244(d)(2) would be out of step with this design. At the same time, respondent's interpretation would further undermine the interest in finality by creating more potential for delay in the adjudication of federal-law claims.

A diminution of statutory incentives to proceed first in state court would also increase the risk of the very piecemeal litigation that the exhaustion requirement is designed to reduce. Cf. *Rose,* 455 U. S., at 520. We have observed that "strict enforcement of the exhaustion requirement will encourage habeas petitioners to exhaust all of their claims in state court and to present the federal court with a single habeas petition." *Ibid.* But were we to adopt respondent's construction of §2244(d)(2), we would dilute the efficacy of the exhaustion requirement in achieving this objective. Tolling the limitation period for a federal habeas petition that is dismissed without prejudice would thus create more opportunities for delay and piecemeal litigation without advancing the goals of comity and federalism that the exhaustion requirement serves. We do not believe that Congress designed the statute in this manner.

The Court of Appeals reasoned that its interpretation of

the statute would further Congress' goal "to spur defendants to file their federal habeas petitions more quickly." 208 F. 3d, at 361. But this view fails to account sufficiently for AEPDA's clear purpose to encourage litigants to pursue claims in state court prior to seeking federal collateral review. See, *e.g.*, §§2254(b), 2254(e)(2), 2264(a). Section 2244(d)(1)'s limitation period and §2244(d)(2)'s tolling provision, together with §2254(b)'s exhaustion requirement, encourage litigants *first* to exhaust all state remedies and *then* to file their federal habeas petitions as soon as possible.

Respondent contends that petitioner's construction of the statute creates the potential for unfairness to litigants who file timely federal habeas petitions that are dismissed without prejudice after the limitation period has expired. But our sole task in this case is one of statutory construction, and upon examining the language and purpose of the statute, we are convinced that §2244(d)(2) does not toll the limitation period during the pendency of a federal habeas petition.

We also note that, when the District Court dismissed respondent's first federal habeas petition without prejudice, respondent had more than nine months remaining in the limitation period in which to cure the defects that led to the dismissal. It is undisputed, however, that petitioner neither returned to state court nor filed a nondefective federal habeas petition before this time had elapsed. Respondent's May 1997 federal habeas petition also contained claims different from those presented in his April 1996 petition. In light of these facts, we have no occasion to address the alternative scenarios that respondent describes. We also have no occasion to address the question that JUSTICE STEVENS raises concerning the availability of equitable tolling.

We hold that an application for federal habeas corpus review is not an "application for State post-conviction or

other collateral review" within the meaning of 28 U. S. C. §2244(d)(2). Section 2244(d)(2) therefore did not toll the limitation period during the pendency of respondent's first federal habeas petition. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.