

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

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**DRETKE, DIRECTOR, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, CORRECTIONAL  
INSTITUTIONS DIVISION *v.* HALEY**

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

No. 02–1824. Argued March 2, 2004—Decided May 3, 2004

Respondent was charged with and convicted of felony theft. Based on two prior convictions, he was also charged as a habitual offender. Under Texas' habitual offender statute, a defendant convicted of a felony is subject to a sentence of 2 to 20 years if (1) he has two prior felony convictions, and (2) the conviction for the first prior offense became final before commission of the second. Texas law requires the State to prove the habitual offender allegations to a jury beyond a reasonable doubt at a separate penalty hearing. The jury here convicted respondent of the habitual offender charge, and the judge sentenced him to 16½ years. As it turned out, the evidence presented at the penalty phase showed that respondent had committed his second offense three days *before* his first conviction became final, meaning that he was not eligible for the habitual offender enhancement. No one, including defense counsel, noted the discrepancy—either at trial or on direct appeal. Respondent first raised the issue in a request for state postconviction relief, arguing that the evidence at the penalty hearing was insufficient to support the habitual offender conviction. The state court rejected his sufficiency of the evidence claim on procedural grounds, because he had not raised the issue earlier; the state court likewise rejected respondent's claim that counsel had been ineffective for failing to object. Respondent renewed his sufficiency of the evidence and ineffective assistance claims in a subsequent federal habeas application. Conceding that respondent was not, in fact, eligible for the habitual offender enhancement, the State nevertheless argued that respondent had procedurally defaulted his sufficiency of the evidence claim. The District Court excused the procedural de-

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fault because respondent was actually innocent of the enhanced sentence; it thus did not reach the ineffective assistance claim. The Fifth Circuit affirmed, holding that the actual innocence exception applies to noncapital sentencing procedures involving career offenders and habitual felony offenders.

*Held:* A federal court faced with allegations of actual innocence, whether of the sentence or of the crime charged, must first address all nondefaulted claims for comparable relief and other grounds for cause to excuse the procedural default. Normally, a federal court will not entertain a procedurally defaulted constitutional claim in a habeas petition absent a showing of cause and prejudice to excuse the default. However, this Court recognizes a narrow exception to the general rule when the applicant can demonstrate actual innocence of the substantive offense, *Murray v. Carrier*, 477 U. S. 478, 496, or, in the capital sentencing context, of the aggravating circumstances rendering the inmate eligible for the death penalty, *Sawyer v. Whitley*, 505 U. S. 333. The Court declines to answer the question presented here, whether this exception should be extended to noncapital sentencing error, because the District Court failed first to consider alternative grounds for relief urged by respondent. This avoidance principle was implicit in *Carrier* itself, where the Court expressed confidence that, “for the most part, ‘victims of fundamental miscarriage of justice will meet the cause-and-prejudice standard,’” 477 U. S., at 495–496, particularly given the availability of ineffective assistance of counsel claims, *id.*, at 496. Petitioner concedes that respondent has a viable and significant ineffective assistance of counsel claim. Success on the merits would give respondent all of the relief that he seeks, *i.e.*, resentencing, and also would provide cause to excuse the procedural default of his sufficiency of the evidence claim. The many threshold legal questions often accompanying actual innocence claims provide additional reason for restraint. For instance, respondent’s claim raises the question whether the holding of *In re Winship*, 397 U. S. 358—that each element of a criminal offense must be proved beyond a reasonable doubt—should be extended to proof of prior convictions used to support recidivist enhancements. Not all actual innocence claims will involve threshold constitutional questions, but, as this case illustrates, such claims are likely to present equally difficult questions regarding the scope of the actual innocence exception itself. Pp. 5–9.

306 F. 3d 257, vacated and remanded.

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