SUPREME COURT OF THE UNITED STATES

No. 01–1862

JEANNE WOODFORD, WARDEN, PETITIONER *v.*
ROBERT FREDERICK GARCEAU

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

[March 25, 2003]

JUSTICE O'CONNOR, concurring in the judgment.

The Court today holds that the post-Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) version of 28 U. S. C. §2254 applies to respondent Robert Garceau's habeas corpus application because Garceau did not file his application until after AEDPA's effective date. I agree with that holding. I concur only in the judgment, however, because in my view the Court's reasoning is broader than necessary.

The Court states that if "the state prisoner had before a federal court an application for habeas relief seeking an adjudication on the *merits* of the petitioner's claims, then amended §2254(d) does not apply." *Ante*, at 4. Under the facts of this case, however, the Court may have misapplied its own rule. As the Court concedes, *ante*, at 2, the District Court had a pre-AEDPA filing setting forth the merits of Garceau's claims. After Garceau filed a motion for the appointment of counsel, motion for a stay, and motion for leave to file a habeas application, the District Court stayed Garceau's execution. Over the objection of the State, the District Court held that Garceau had identified non-frivolous issues so that a stay of the execution was appropriate. It is difficult to see how the "merits" were not in front of the District Court at that time, which was well before AEDPA's effective date.

In addition, the Court does not adequately distinguish *McFarland* v. *Scott,* 512 U. S. 849 (1994). Although I dissented from that case, I also recognize that "the doctrine of *stare decisis* is most compelling" when the Court confronts "a pure question of statutory construction." *Hilton* v. *South Carolina Public Railways Comm'n,* 502 U. S. 197, 205 (1991). The Court here, however, appears to adopt the reasoning of the dissent in *McFarland*. Compare *ante*, at 5 ("Finally, our conclusion is reinforced by the procedural rules governing §2254 cases") with *McFarland supra,* at 862 (O'CONNOR, J., dissenting in relevant part) ("The rules governing §2254 cases confirm this conclusion"). I see no need to question the underpinnings of *McFarland* in this case, and I accept the holding of *McFarland* that an application for a writ of habeas corpus is not necessary to trigger the beginning of a habeas proceeding. See, *e.g.,* 28 U. S. C. §§ 2251, 2262.

I agree, however, with the Court's conclusion that the post-AEDPA version of §2254 is applicable to Garceau's case. The text of §2254 itself provides the answer. Both before and after AEDPA, §2254 has concerned *only* applications for a writ of habeas corpus. Compare §2254(a) ("The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain *an application for a writ of habeas corpus* . . ." (emphasis added)) with 28 U. S. C. §2254(a) (1994 ed.) (same). Indeed, only the filing of an application for a writ of habeas corpus triggered the former version of §2254(d). See 28 U. S. C. §2254(d) (1994 ed.) ("In any proceeding instituted in a Federal court by an application for a writ of habeas corpus . . ."). Thus, although Garceau's preapplication filings trigger a habeas corpus proceeding sufficient to permit the District Court to grant a stay under 28 U. S. C. §2251 and to engage in other activity related to the case, these filings do not answer whether the pre- or post-AEDPA version of §2254(d) applies here. Because §2254 has always spoken

in terms of "applications," a case is pending for §2254 purposes only when the prisoner files an *application* for a writ of habeas corpus.

I acknowledge that some language in *Lindh* v. *Murphy,* 521 U. S. 320 (1997), and in *McFarland, supra*, can be read to say that if a habeas case is pending before AEDPA, none of AEDPA's amendments apply—including the amendments to §2254. But these statements do not answer the question in this case. If §2254 applied to habeas proceedings other than applications for a writ of habeas corpus, the answer might well be different. Compare 28 U. S. C. §2251 (a judge, "before whom a habeas corpus proceeding is pending, may, . . . stay any proceeding") with §2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus . . ."). But as the Court correctly points out, *ante*, at 4–5, §2254 applies only once a prisoner has filed "an application for a writ of habeas corpus." §2254(a). See also §§2254(b)(1), 2254(b)(2), 2254(d), 2254(e)(1).

It does not follow from our case law, nor does it follow from the text of §2254 or any other habeas provision, that a habeas applicant can receive the benefit of the pre-AEDPA version of §2254 when §2254 itself cannot be triggered until the prisoner files an application for a writ of habeas corpus. A "case" simply could not have existed for purposes of §2254 until Garceau filed the application itself. Finally, Garceau has no reliance interest here. The pre-AEDPA version of §2254(d) specifically acknowledged that a habeas applicant was entitled to the then-existing less-restrictive version of §2254(d) only when the prisoner "instituted" a "proceeding . . . by an application for a writ of habeas corpus." 28 U. S. C. §2254(d) (1994 ed.).

Because 28 U. S. C. §2254 is triggered only when a prisoner files an application for a writ of habeas corpus, and because Garceau filed his petition after AEDPA's

date, I concur in the judgment of the Court that the post-AEDPA version of §2254(d) governs his claim.