SUPREME COURT OF THE UNITED STATES

No. 01–301

TOM L. CAREY, WARDEN, PETITIONER *v.* TONY EUGENE SAFFOLD

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

[June 17, 2002]

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 1-year period does not include the time during which an 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 4½ 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 4½ 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 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 peti-

tion in a higher state court. In Saffold's case those intervals amounted to five days (between the trial court and intermediate court) plus 4½ 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 4½ 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 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." Id. That definition, applied in the present context, means that an application is pending as long as the ordinary state collateral 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 post-conviction 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. 362, 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 1-year statute of limitations).

It is therefore not surprising that no circuit court has interpreted the word "pending" in the manner proposed by 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 (CA11 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 (CA10 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 of Cal.*, 500 F. 2d 1124, 1126 (CA9 1974) (same); 6 B. Witkin & N. Epstein, California Criminal Law §20, p. 540 (3d ed. 2000) (describing general policy that reviewing court will require application to have been made first in lower court). And a prisoner who files a subsequent and similar petition in another lower court (say, another trial court) will likely find consideration of that petition barred as successive. See, *e.g.*, *In re Clark*, 5 Cal. 4th 750, 767–771, 855 P. 2d 729, 740–744 (1993). At the same time, a prisoner who files that same petition in a higher, reviewing court will find that he can obtain the

basic appellate review that he seeks, even though it is dubbed an "original" petition. See *In re Resendiz*, 25 Cal. 4th 230, 250, 19 P. 3d 1171, 1184 (2001) (reviewing court grants substantial deference to lower court's factual findings). Thus, typically a prisoner will seek habeas review in a lower court and later seek appellate review in a higher court—just as occurred in this case.

The upshot is that California's collateral review process functions very much like that of other States, but for the fact that its timeliness rule is indeterminate. Other States (with the exception of North Carolina, see *Allen* v. *Mitchell*, 276 F. 3d 183, 186 (CA4 2001)), specify precise time limits, such as 30 or 45 days, within which an appeal must be taken, while California applies a general "reasonableness" standard. Still, we do not see how that feature of California law could make a critical difference. As mentioned, AEDPA's tolling rule is designed to protect the principles of "comity, finality, and federalism," by promoting "the exhaustion of state remedies while respecting the interest in the finality of state court judgments." *Duncan*, *supra*, at 178 (internal quotation marks omitted). It modifies the 1-year filing rule (a rule that prevents prisoners from delaying their federal filing) in order to give States the opportunity to complete one full round of review, free of federal interference. Inclusion of California's "reasonableness" periods carries out that purpose in the same way, and to the same degree, as does inclusion of the more specific appellate filing periods prevalent in other States. And exclusion of those periods in California would undermine AEDPA's statutory goals just as it would in those States. See Part II, *supra*.

The fact that California's timeliness standard is general rather than precise may make it more difficult for federal courts to determine just when a review application (*i.e.*, a filing in a higher court) comes too late. But it is the State's interests that the tolling provision seeks to protect,

and the State, through its Supreme Court decisions or legislation, can explicate timing requirements more precisely should that prove necessary.

Ordinarily, for purposes of applying a federal statute that interacts with state procedural rules, we look to how a state procedure functions, rather than the particular name that it bears. See *Richfield Oil Corp.* v. *State Bd. of Equalization,* 329 U. S. 69, 72 (1946) (looking to function rather than "designation" that state law gives a state-court judgment for purposes of determining federal jurisdiction); *Department of Banking of Neb.* v. *Pink,* 317 U. S. 264, 268 (1942) *(per curiam)* (same). We find that California's system functions in ways sufficiently like other state systems of collateral review to bring intervals between a lower court decision and a filing of a new petition in a higher court within the scope of the statutory word "pending."

The dissent contends that this application of the federal tolling provision to California's "original writ" system "will disrupt the sound operation of the federal limitations period in at least 36 States." *Post*, at 1 (opinion of KENNEDY, J.). This is so, the dissent believes, because the prisoner is given two choices when his petition has been denied by the intermediate court: He can file a "petition for hearing" in the supreme court within 10 days, or he can file a "new petition" in the supreme court. *In re Reed*, 33 Cal. 3d 914, 918, and n. 2, 663 P. 2d 216, 217, and n. 2 (1983). Why is California different, the dissent asks, from "appeal" States that *also* give their supreme courts the power to entertain original habeas petitions? Won't our interpretation of the federal tolling rule, as it applies to California, apply equally to those other States, meaning that even after the statutory time to *appeal* to the supreme court has expired, the federal limitations period may still be tolled because a prisoner might, at any time, file an original petition?

The answer to this question is "no." In "appeal" sys-

tems, the original writ plays a different role. As the Supreme Court of Idaho (one of the States cited by the dissent) explains:

> "The Supreme Court, having jurisdiction to *review on appeal* decisions of the district courts in habeas corpus proceedings . . . will not exercise its power . . . to grant an *original* writ of habeas corpus, except in *extraordinary cases*." *In re Barlow*, 48 Idaho 309, 282 P. 380 (1929).

See also, *e.g.*, *Commonwealth* v. *Salzinger*, 406 Pa. 268, 269, 177 A. 2d 619, 620 (1962) ("extraordinary circumstances" required for exercise of original jurisdiction); *La Belle* v. *Hancock*, 99 N. H. 254, 255, 108 A. 2d 545 (1954) *(per curiam)* ("original authority" to grant habeas relief "not ordinarily exercised"); *Ex parte Lambert*, 37 Tex. Crim. 435, 436, 36 S. W. 81, 82 (1896) ("[E]xcept in extraordinary cases, we will not entertain jurisdiction as a court to grant original writs of habeas corpus").

California, in contrast, has engrained original writs—both at the appellate level and in the supreme court—into its normal collateral review process. As we have explained, and as the dissent recognizes, the only avenue for a prisoner to challenge the denial of his application in the superior court is to file a "new petition" in the appellate court. And to challenge an appellate court denial, "*[f]urther review* [of a habeas application] may be sought in [the supreme] court *either* by a new petition for habeas corpus or, preferably, by a petition for hearing." *In re Reed*, *supra,* at 918, n. 2, 663 P. 2d, at 216, n. 2 (emphasis added). Unlike States such as, say, Idaho, see *In re Barlow*, *supra*, the original writ in California is not "extraordinary"—it is *interchangeable* with the petition for hearing, with neither option bringing adverse consequences to the petitioner. Consequently, we treat California both as *similar* to other States (in that its "original

writ" system functions like the "appeal" systems of those other States), and *differently* from other States (in that the rule we apply to original writs in California does not apply to original writs in other States, precisely because original writs in California function like appeals). And of course, as we have said, California remains free, through legislative or judicial action, to adjust its "original writ" system accordingly.

IV

It remains to ask whether Saffold delayed "unreasonably" in seeking California Supreme Court review. If so, his application would no longer have been "pending" during this period. Saffold filed his petition for review in the California Supreme Court 4½ months after the California Court of Appeals issued its decision. The Ninth Circuit held that this filing was nonetheless timely. It based its conclusion primarily upon the fact that the California Supreme Court wrote that it denied the petition "on the merits and for lack of diligence." These first three words, the Ninth Circuit suggested, showed that the California Supreme Court could not have considered the petition too late, for, if so, why would it have considered the merits? 250 F. 3d, at 1267.

There are many plausible answers to this question. A court will sometimes address the merits of a claim that it believes was presented in an untimely way: for instance, where the merits present no difficult issue; where the court wants to give a reviewing court alternative grounds for decision; or where the court wishes to show a prisoner (who may not have a lawyer) that it was not merely a procedural technicality that precluded him from obtaining relief. Given the variety of reasons why the California Supreme Court may have included the words "on the merits," those words cannot by themselves indicate that the petition was timely. And the Ninth Circuit's apparent

willingness to take such words as an absolute bellwether risks the tolling of the federal limitations period even when it is highly likely that the prisoner failed to seek timely review in the state appellate courts. See, *e.g.*, *Welch* v. *Newland*, 267 F. 3d 1013 (CA9 2001) (finding limitations period tolled during 4-year gap). The Ninth Circuit's rule consequently threatens to undermine the statutory purpose of encouraging prompt filings in federal court in order to protect the federal system from being forced to hear stale claims. See *Duncan,* 533 U. S., at 179.

If the California Supreme Court had clearly ruled that Saffold's 4½-month delay was "unreasonable," that would be the end of the matter, regardless of whether it also addressed the merits of the claim, or whether its timeliness ruling was "entangled" with the merits. 250 F. 3d, at 1267. We cannot say in this case, however, that the Ninth Circuit was wrong in its ultimate conclusion. Saffold argues that special circumstances were present here: He was not notified of the Court of Appeal's decision for several months, and he filed within days after receiving notification. And he contends it is more likely that the phrase "lack of diligence" referred to the delay between the date his conviction became final and the date he first sought state post-conviction relief—a matter irrelevant to the question whether his application was "pending" during the 4½-month interval. We leave it to the Court of Appeals to evaluate these and any other relevant considerations in the first instance. We also leave to the Court of Appeals the decision whether it would be appropriate to certify a question to the California Supreme Court for the purpose of seeking clarification in this area of state law.

* * *

For the foregoing reasons, we answer the first two issues presented in this case in the affirmative, vacate the

judgment below, and remand for further proceedings consistent with this opinion.

It is so ordered.