SUPREME COURT OF THE UNITED STATES

No. 02–1824

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, PETITIONER *v.* MICHAEL WAYNE HALEY

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

[May 3, 2004]

JUSTICE STEVENS, with whom JUSTICE KENNEDY and Justice SOUTER join, dissenting.

The unending search for symmetry in the law can cause judges to forget about justice. This should be a simple case.

Respondent was convicted of the theft of a calculator. Because of his prior theft convictions, Texas law treated respondent's crime as a "state jail felony," which is punishable by a maximum sentence of two years in jail. Tex. Penal Code Ann. §12.35(a) (2003). But as a result of a congeries of mistakes made by the prosecutor, the trial judge, and his attorney, respondent was also erroneously convicted and sentenced under Texas' habitual offender law, §12.42(a)(2) (Supp. 2004). Respondent consequently received a sentence of more than 16 years in the penitentiary. The State concedes that respondent does not qualify as a habitual offender and that the 16-year sentence was imposed in error.[1] Respondent has already served more than 6 years of that sentence—a sentence far in excess of

[1] Brief for Petitioner 4; Tr. of Oral Arg. 4 ("[I]t's almost a law school hypothetical, because the error is so clean").

the 2-year maximum that Texas law authorizes for respondent's crime.

Because, as all parties agree, there is no factual basis for respondent's conviction as a habitual offender, it follows inexorably that respondent has been denied due process of law. *Thompson* v. *Louisville,* 362 U. S. 199 (1960); *Jackson* v. *Virginia,* 443 U. S. 307 (1979). And because that constitutional error clearly and concededly resulted in the imposition of an unauthorized sentence, it also follows that respondent is a "victim of a miscarriage of justice," *Wainwright* v. *Sykes,* 433 U. S. 72, 91 (1977), entitled to immediate and unconditional release.

The Magistrate Judge, the District Court, and the Court of Appeals all concluded that respondent is entitled to such relief. Not a word in any federal statute or any provision of the Federal Rules of Procedure provides any basis for challenging that conclusion. The Court's contrary determination in this case rests entirely on a procedural rule of its own invention. But having also invented the complex jurisprudence that requires a prisoner to establish "cause and prejudice" as a basis for overcoming procedural default, the Court unquestionably has the authority to recognize a narrow exception for the unusual case that is as clear as this one.

Indeed, in the opinion that first adopted the cause and prejudice standard, the Court explained its purpose as providing "an adequate guarantee" that a procedural default would "not prevent a federal habeas court from adjudicating for the first time the federal constitutional claim of a defendant who in the absence of such an adjudication will be the victim of a miscarriage of justice." *Ibid.* The Court has since held that in cases in which the cause and prejudice standard is inadequate to protect against fundamental miscarriages of justice, the cause and prejudice requirement "must yield to the imperative of correcting a fundamentally unjust incarceration." *Engle* v. *Isaac,* 456

U. S. 107, 135 (1982).

If there were some uncertainty about the merits of respondent's claim that he has been incarcerated unjustly, it might make sense to require him to pursue other avenues for comparable relief before deciding the claim.[2] But in this case, it is universally acknowledged that respondent's incarceration is unauthorized. The miscarriage of justice is manifest. Since the "imperative of correcting a fundamentally unjust incarceration" will lead to the issuance of the writ regardless of the outcome of the cause and prejudice inquiry, the Court's ruling today needlessly postpones final adjudication of respondent's claim and perversely prolongs the very injustice that the cause and prejudice standard was designed to prevent.

That the State has decided to oppose the grant of habeas relief in this case, even as it concedes that respondent has already served more time in prison than the law authorized, might cause some to question whether the State has forgotten its overriding "obligation to serve the cause of justice." *United States* v. *Agurs,* 427 U. S. 97, 111 (1976); see *post*, p. ___ (KENNEDY, J., dissenting). But this Court is surely no less at fault. In its attempt to refine the

---

[2] Because it is not always easy to discern the difference between "constitutional claims that call into question the reliability of an adjudication of legal guilt," to which the cause and prejudice requirement applies, and claims that a constitutional violation "probably resulted in the conviction of one who is actually innocent," for which failure to show cause is excused, *Murray* v. *Carrier,* 477 U. S. 478, 495–496 (1986), a court reviewing a claim of actual innocence must generally proceed with caution. But that type of caution is plainly unwarranted in a case in which constitutional error has concededly resulted in the imposition of an unlawful sentence. In such a case, there is simply no risk that entertaining the habeas applicant's procedurally defaulted claim will result in an unwarranted encroachment on the principles of comity and finality that underlie the procedural default doctrine.

boundaries of the judge-made doctrine of procedural default, the Court has lost sight of the basic reason why the "writ of habeas corpus indisputably holds an honored position in our jurisprudence." *Engle,* 456 U. S., at 126. Habeas corpus is, and has for centuries been, a "bulwark against convictions that violate fundamental fairness." *Ibid.* (internal quotation marks omitted). Fundamental fairness should dictate the outcome of this unusually simple case.

I respectfully dissent.