

KENNEDY, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 02–1824

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT
OF CRIMINAL JUSTICE, CORRECTIONAL INSTI-
TUTIONS 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 KENNEDY, dissenting.

For the reasons JUSTICE STEVENS sets forth, the Respondent should be entitled to immediate relief, and I join his dissenting opinion. The case also merits this further comment concerning the larger obligation of state or federal officials when they know an individual has been sentenced for a crime he did not commit.

In 1997, Michael Haley was sentenced to serve 16 years and 6 months in prison for violating the Texas habitual offender law. Texas officials concede Haley did not violate this law. They agree that Haley is guilty only of theft, a crime with a 2-year maximum sentence. Yet, despite the fact that Haley served more than two years in prison for his crime, Texas officials come before our Court opposing Haley’s petition for relief. They wish to send Haley back to prison for a crime they agree he did not commit.

The rigors of the penal system are thought to be mitigated to some degree by the discretion of those who enforce the law. See, *e.g.*, Jackson, *The Federal Prosecutor*, 31 *J. Am. Inst. Crim. L. & Criminology* 3, 6 (1940–1941). The clemency power is designed to serve the same function. Among its benign if too-often ignored objects, the

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clemency power can correct injustices that the ordinary criminal process seems unable or unwilling to consider. These mechanisms hold out the promise that mercy is not foreign to our system. The law must serve the cause of justice.

These mitigating elements seem to have played no role in Michael Haley's case. Executive discretion and clemency can inspire little confidence if officials sworn to fight injustice choose to ignore it. Perhaps some would say that Haley's innocence is a mere technicality, but that would miss the point. In a society devoted to the rule of law, the difference between violating or not violating a criminal statute cannot be shrugged aside as a minor detail.

It may be that Haley's case provides a convenient mechanism to vindicate an important legal principle. Beyond that, however, Michael Haley has a greater interest in knowing that he will not be reincarcerated for a crime he did not commit. It is not clear to me why the State did not exercise its power and perform its duty to vindicate that interest in the first place.