SUPREME COURT OF THE UNITED STATES

No. 03–221

CHERYL K. PLILER, WARDEN, PETITIONER *v.*
RICHARD HERMAN FORD

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

[June 21, 2004]

JUSTICE THOMAS delivered the opinion of the Court.

Under *Rose* v. *Lundy,* 455 U. S. 509 (1982), federal district courts must dismiss "mixed" habeas corpus petitions—those containing both unexhausted and exhausted claims. In this case, we decide whether the District Court erred by dismissing, pursuant to *Rose*, a *pro se* habeas petitioner's two habeas petitions without giving him two particular advisements. Because we hold that the District Court's failure to provide these warnings did not make the dismissals improper, we need not address the second question presented, whether respondent's subsequent untimely petitions relate back to his "improperly dismissed" initial petitions.

I

On April 19, 1997, five days before his 1-year statute of limitations under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, would have run, respondent signed and delivered to prison authorities two *pro se* federal habeas corpus petitions. The first petition related to respondent's conviction for, among other things, conspiring to murder John Loguercio and at-

tempting to murder Loguercio's wife; the second related to his conviction for the first-degree murder and conspiracy to commit the murder of Thomas Weed. Because the petitions contained unexhausted claims, respondent also filed motions to stay the petitions so that he could return to state court to exhaust the unexhausted claims. The Magistrate Judge gave respondent three options: (1) The petitions could be dismissed without prejudice and respondent could refile after exhausting the unexhausted claims; (2) the unexhausted claims could be dismissed and respondent could proceed with only the exhausted claims; or (3) respondent could contest the Magistrate Judge's finding that some of the claims had not been exhausted. App. 51–52; 81–82.

With respect to his petition in the Loguercio case, respondent chose the first option. With respect to the Weed case, respondent failed to respond to the Magistrate Judge. The District Court dismissed respondent's petitions without prejudice. In both cases, respondent proceeded by filing habeas corpus petitions in the California Supreme Court, which were both summarily denied. Respondent subsequently refiled his *pro se* habeas petitions in Federal District Court. The District Court, in both cases, dismissed the petitions with prejudice as untimely under AEDPA's 1-year statute of limitations, 28 U. S. C. §2254(d), and denied respondent's motions for a certificate of appealability (COA). The Ninth Circuit consolidated respondent's motions for a COA, and then granted a COA on the question whether his federal habeas petitions were timely under §2254(d). A divided panel concluded that both of respondent's initial federal habeas petitions were timely filed and held that his later petitions related back to the initial petitions. *Ford* v. *Hubbard*, 330 F. 3d 1086, 1097 (2003).

Although the District Court correctly concluded that it did not have discretion to stay respondent's mixed peti-

tions, see *Rose*, *supra*, at 522, the Ninth Circuit determined that the District Court could have acted on the stay motions if respondent had chosen the Magistrate Judge's second option—dismissal of the unexhausted claims—and then renewed the prematurely filed stay motions. Under the Ninth Circuit's view, the District Court was obligated to advise respondent that it could consider his stay motions only if he chose this route. 330 F. 3d, at 1099. The District Court's failure to inform respondent was, according to the Court of Appeals, prejudicial error because it deprived respondent of a "fair and informed opportunity to have his stay motions heard, to exhaust his unexhausted claims, and ultimately to have his claims considered on the merits." *Id.*, at 1100.

The District Court also committed prejudicial error, according to the Ninth Circuit, for failing to inform respondent that AEDPA's 1-year statute of limitations had run on both of his petitions and that, consequently, he would be barred from refiling his petitions in federal court if he failed to amend them or if he chose to dismiss the petitions without prejudice in order to exhaust the unexhausted claims. Under the Court of Appeals' view, the District Court "definitively, although not intentionally," misled respondent by telling him that if he chose the first option, the dismissal would be without prejudice. *Ibid.* The Court of Appeals concluded that respondent should have been told that, because AEDPA's statute of limitations had run with respect to his claims, a dismissal without prejudice would effectively result in a dismissal with prejudice unless equitable tolling applied. *Id.*, at 1101. According to the Court of Appeals, the District Court's error in this regard deprived respondent of the opportunity to make a "meaningful" choice between the two op-

tions. *Id.*, at 1102.[1] We granted certiorari, 540 U. S. ___ (2004).

II

Under *Rose*, federal district courts must dismiss mixed habeas petitions. 455 U. S., at 510, 522. Subsequent to the Court's decision in *Rose*, Congress enacted AEDPA, which imposed a 1-year statute of limitations for filing a federal habeas corpus petition. See 28 U. S. C. §2244(d)(1). The combined effect of *Rose* and AEDPA's limitations period is that if a petitioner comes to federal court with a mixed petition toward the end of the limitations period, a dismissal of his mixed petition could result in the loss of all of his claims—including those already exhausted—because the limitations period could expire during the time a petitioner returns to state court to exhaust his unexhausted claims. To address this, the Ninth Circuit has held that a district court may employ a stay-and-abeyance procedure. See *Calderon* v. *United States Dist. Court for the Northern Dist. of California ex rel. Taylor*, 134 F. 3d 981, 988 (1998). The stay-and-abeyance procedure involves three steps: first, dismissal of any unexhausted claims from the original mixed habeas petition; second, a stay of the remaining claims, pending exhaustion of the dismissed unexhausted

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[1] Finding it impossible to put respondent in the position he had occupied prior to the District Court's "erroneous dismissal" of his initial petitions, the Ninth Circuit concluded that Federal Rule of Civil Procedure 15(c)'s amendment procedures apply to "ensure that [respondent's] rights are not unduly prejudiced as a result of the district court's errors." 330 F. 3d, at 1102. Accordingly, it held that "a *pro se* habeas petitioner who files a mixed petition that is improperly dismissed by the district court, and who then . . . returns to state court to exhaust his unexhausted claims and subsequently re-files a second petition without unreasonable delay," may have his second petition relate back to the initial timely petition. *Ibid.* As explained above, we need not address whether the Ninth Circuit's decision on this ground was correct.

claims in state court; and third, amendment of the original petition to add the newly exhausted claims that then relate back to the original petition. *Id.*, at 986.

In this case, the Ninth Circuit held that if a *pro se* prisoner files a mixed petition, the district court must give two specific warnings regarding the stay-and-abeyance procedure: first, that "it would not have the power to consider [a prisoner's] motions to stay the [mixed] petitions unless he opted to amend them and dismiss the then-unexhausted claims," 330 F. 3d, at 1092–1093, and, second, if applicable, "that [a prisoner's] federal claims would be time-barred, absent cause for equitable tolling, upon his return to federal court if he opted to dismiss the petitions 'without prejudice' and return to state court to exhaust all of his claims," *id.*, at 1093.

Without addressing the propriety of this stay-and-abeyance procedure, we hold that federal district judges are not required to give *pro se* litigants these two warnings. District judges have no obligation to act as counsel or paralegal to *pro se* litigants. In *McKaskle* v. *Wiggins,* 465 U. S. 168, 183–184 (1984), the Court stated that "[a] defendant does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure" and that "the Constitution [does not] require judges to take over chores for a *pro se* defendant that would normally be attended to by trained counsel as a matter of course." See also *Martinez* v. *Court of Appeal of Cal., Fourth Appellate Dist.,* 528 U. S. 152, 162 (2000) ("[T]he trial judge is under no duty to provide personal instruction on courtroom procedure or to perform any legal 'chores' for the defendant that counsel would normally carry out"). Explaining the details of federal habeas procedure and calculating statutes of limitations are tasks normally and properly performed by trained counsel as a matter of course. Requiring district courts to advise a *pro se* litigant in such a manner would undermine district judges' role as

impartial decisionmakers. And, to the extent that respondent is concerned with a district court's potential to mislead *pro se* habeas petitioners, the warnings respondent advocates run the risk of being misleading themselves.

Specifically, the first warning could encourage the use of stay-and-abeyance when it is not in the petitioner's best interest to pursue such a course. This could be the case, for example, where the petitioner's unexhausted claims are particularly weak and petitioner would therefore be better off proceeding only with his exhausted claims. And it is certainly the case that not every litigant seeks to maximize judicial process.

The second advisement would force upon district judges the potentially burdensome, time-consuming, and fact-intensive task of making a case-specific investigation and calculation of whether the AEDPA limitations period has already run or will have run by the time the petitioner returns to federal court. As the dissent below recognized, district judges often will not be able to make these calculations based solely on the face of habeas petitions. 330 F. 3d, at 1108. Such calculations depend upon information contained in documents that do not necessarily accompany the petitions. This is so because petitioners are not required by 28 U. S. C. §2254 or the Rules Governing §2254 Cases to attach to their petitions, or to file separately, state-court records.[2] See 1 R. Hertz & J. Liebman, Federal Habeas Corpus Practice and Procedure §15.2c, p. 711 (4th

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[2]There is one circumstance where nonindigent petitioners must furnish the court with portions of the record. See 28 U. S. C. §2254(f) ("If the applicant challenges the sufficiency of the evidence . . . to support the State court's determination of a factual issue . . . the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence"; "[i]f the applicant, because of indigency or other reason is unable to produce such part of the record," a court must direct the State to produce it).

ed. 2001) ("Most petitioners do not have the ability to submit the record with the petition, and the statute and rules relieve them of any obligation to do so and require the state to furnish the record with the answer"). District judges, thus, might err in their calculation of the statute of limitations and affirmatively misinform *pro se* petitioners of their options.

Respondent nevertheless argues that the advisements are necessary to ensure that *pro se* petitioners make informed decisions and do not unknowingly forfeit rights. Brief for Respondent 27–32. Respondent reads *Rose* as mandating that "a prisoner be given '*the choice* of returning to state court to exhaust his claims or amending or resubmitting the habeas petition to present only exhausted claims to the district court.'" Brief for Respondent 25–26, 27 (quoting *Rose*, 455 U. S., at 510) (emphasis in brief). But *Rose* requires only that "a district court must dismiss . . . 'mixed petitions,' leaving the prisoner with the choice" described above. *Ibid*. In other words, *Rose* requires dismissal of mixed petitions, which, as a practical matter, means that the prisoner must follow one of the two paths outlined in *Rose* if he wants to proceed with his federal habeas petition. But nothing in *Rose* requires that both of these options be equally attractive, much less suggests that district judges give specific advisements as to the availability and wisdom of these options. As such, any advisement of this additional option would not "simply implement what this Court *already* requires." Brief for Respondent 27 (emphasis in original).

Respondent also relies heavily upon *Castro* v. *United States*, 540 U. S. ___ (2003). In *Castro*, we held that a federal district court cannot *sua sponte* recharacterize a *pro se* litigant's motion as a first §2255 motion unless it informs the litigant of the consequences of the recharacterization, thereby giving the litigant the opportunity to contest the recharacterization, or to withdraw or amend

the motion. *Id.*, at ___ (slip op., at 1). *Castro* dealt with a District Court, of its own volition, taking away a petitioner's desired route—namely, a Federal Rule of Criminal Procedure 33 motion—and transforming it, against his will, into a §2255 motion. Cf. *id.*, at ___ (slip op., at 2) (SCALIA, J., concurring in part and concurring in judgment) ("Recharacterization . . . requires a court deliberately to override the *pro se* litigant's choice of procedural vehicle for his claim"). We recognized that although this practice is often used to help *pro se* petitioners, it could also harm them. *Id.*, at ___ (slip op., at 4–5). Because of these competing considerations, we reasoned that the warning would "help the *pro se* litigant understand . . . whether he should withdraw or amend his motion [and] whether he should *contest* the recharacterization," *id.*, at ___ (slip op., at 8) (emphasis in original). *Castro*, then, did not address the question whether a district court is required to explain to a *pro se* litigant his options before a *voluntary* dismissal and its reasoning sheds no light on the question we confront.

Therefore, we hold that district courts are not required to give the particular advisements required by the Ninth Circuit before dismissing a *pro se* petitioner's mixed habeas petition under *Rose*. We remand the case for further proceedings given the Court of Appeals' concern that respondent had been affirmatively misled quite apart from the District Court's failure to give the two warnings.

For the foregoing reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.