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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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JOHNSON *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 03–9685. Argued January 18, 2005—Decided April 4, 2005

Following petitioner Johnson's 1994 guilty plea on a federal drug charge, the District Court gave him an enhanced sentence as a career offender under the federal Sentencing Guidelines based on two prior Georgia drug convictions. On appeal, Johnson argued for the first time that he should not have received an enhanced sentence because one of the predicate Georgia convictions was invalid, but the Eleventh Circuit affirmed his sentence and this Court denied certiorari. Two days later, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) went into effect, imposing, among other things, a 1-year statute of limitations on motions by prisoners seeking to modify their federal sentences. The 1-year period runs from the latest of four alternative dates, the last of which is "the date on which the facts supporting the claim . . . could have been discovered through the exercise of due diligence," 28 U. S. C. §2255, ¶6(4). A fifth option supplied by the Courts of Appeals gave prisoners whose convictions became final before AEDPA a 1-year grace period running from that statute's effective date. On April 25, 1997, one year and three days after his pre-AEDPA federal conviction became final and just after the 1-year grace period expired, Johnson *pro se* filed a motion in the District Court for an extension of time to attack his federal sentence under §2255. Finding the AEDPA period expired, the court denied the motion, but without prejudice to Johnson's right to file a §2255 motion claiming any alternative limitation period under the statute. On February 6, 1998, Johnson filed a habeas petition in a Georgia state court, claiming the constitutional invalidity of his guilty pleas in seven cases, one of which was the basis for one of the convictions on which his federal sentence enhancement rested. Some three months after the state court entered an order of vacatur reversing all

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seven convictions, Johnson filed *pro se* a §2255 motion to vacate his enhanced federal sentence in light of the state-court vacatur. He claimed, in effect, that his motion was timely because the order vacating the state judgment constituted previously undiscoverable "facts supporting the claim" that triggered a renewed limitation period under §2255, ¶6(4). Although Johnson asserted that lack of education excused him from acting more promptly, and that he had filed the state petition as soon as he could get help from an inmate law clerk, the District Court denied the motion as untimely. The Eleventh Circuit affirmed, reasoning that the state-court vacatur order was not a "fact" discovered by Johnson under the fourth paragraph of the §2255 limitations rule, but was more properly classified as a legal proposition or a court action obtained at Johnson's behest.

Held: In a case in which a prisoner collaterally attacks his federal sentence on the ground that a state conviction used to enhance that sentence has since been vacated, §2255, ¶6(4)'s 1-year limitations period begins to run when the petitioner receives notice of the order vacating the prior conviction, provided that he has sought it with due diligence in state court after entry of judgment in the federal case in which the sentence was enhanced. Pp. 6–15.

(a) This Court agrees with Johnson that the state-court order vacating his prior conviction is a matter of "fact" supporting his §2255 claim, discovery of which triggers the refreshed 1-year limitations period under the fourth paragraph. By pegging that period to notice of the state order eliminating the predicate required for enhancement, which is almost always necessary and always sufficient for relief, Johnson's argument improves on the Government's proposal that the relevant "facts" are those on which Johnson based his challenge to the validity of his state convictions. Moreover, Johnson's argument is not vulnerable to the Eleventh Circuit's point that an order vacating a conviction is legally expressive or operative language that may not be treated as a matter of fact within the statute's meaning. This Court commonly speaks of the "fact of a prior conviction," *e.g.*, *Apprendi* v. *New Jersey*, 530 U. S. 466, 490, and an order vacating a predicate conviction is spoken of as a fact just as sensibly as the order entering it. In either case, a claim of such a fact is subject to proof or disproof like any other factual issue. Nevertheless, Johnson's take on the statute does carry anomalies, one minor, one more serious. It is strange to say that an order vacating a conviction has been "discovered," the term used by paragraph four, and stranger still to speak about the date on which it could have been discovered with due diligence, when the fact happens to be the outcome of a proceeding in which the §2255 petitioner was the moving party. The more serious problem is Johnson's position that his §2255 petition is timely under

paragraph four as long as he brings it within a year of learning he succeeded in attacking the prior conviction, no matter how long he may have slumbered before starting the successful proceeding. Neither anomaly is serious enough, however, to justify rejecting Johnson's basic argument. The Court's job here is to find a sensible way to apply paragraph four when AEDPA's drafters probably never thought about the present situation. The answer to the question of how to implement the statutory mandate that a petitioner act with "due diligence" in discovering the crucial fact of a vacatur order that he himself seeks is that he take prompt action as soon as he is in a position to realize that he has an interest in challenging the prior conviction with its potential to enhance the later sentence. The particular time when the course of the later federal prosecution clearly shows that diligence is in order is the date of judgment. After the entry of judgment, the §2255 claim's subject has come into being, the significance of inaction is clear, and very little litigation would be wasted, since most challenged federal convictions are in fact sustained. Thus, from the date the District Court entered judgment in his federal case, Johnson was obliged to act diligently to obtain the state-court order vacating his predicate conviction. Had he done so, the 1-year limitation period would have run from the date he received notice of that vacatur. Pp. 6–14.

(b) However, Johnson did not show due diligence in seeking the state-court order vacating his predicate conviction. Although he knew the conviction subjected him to the enhancement, he failed to attack it by filing his state habeas petition until more than three years after entry of judgment in the federal case. Indeed, even if this Court moved the burden of diligence ahead to the date of finality of the federal conviction or to AEDPA's effective date two days later, Johnson would still have delayed unreasonably, having waited over 21 months. Johnson has offered no explanation for this delay, beyond that he was acting *pro se* and lacked the sophistication to understand the procedures. But the Court has never accepted *pro se* representation alone or procedural ignorance as an excuse for prolonged inattention when a statute's clear policy calls for promptness. On this record, Johnson fell far short of reasonable diligence in challenging the state conviction. Since there is every reason to believe that prompt action would have produced a state vacatur order well over a year before he filed his §2255 petition, the fourth paragraph of the §2255 limitations period is unavailable, and Johnson does not suggest that his motion was timely under any other provision. Pp. 14–15.

340 F. 3d 1219, affirmed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST,

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C. J., and O'CONNOR, THOMAS, and BREYER, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which STEVENS, SCALIA, and GINSBURG, JJ., joined.