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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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DAY *v.* MCDONOUGH, INTERIM SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS

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

No. 04–1324. Argued February 27, 2006—Decided April 25, 2006

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) sets a one-year limitation period for filing a state prisoner's federal habeas corpus petition, running from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review," 28 U. S. C. §2244(d)(1)(A), but stops the one-year clock while the petitioner's "properly filed" application for state postconviction relief "is pending," §2244(d)(2). Under Eleventh Circuit precedent, which is not challenged here, that tolling period does not include the 90 days in which a petitioner might have sought certiorari review in this Court challenging state-court denial of postconviction relief.

Petitioner Day's Florida trial-court sentence was affirmed on December 21, 1999, and his time to seek this Court's review of the final state-court decision expired on March 20, 2000. Day unsuccessfully sought state postconviction relief 353 days later. The trial court's judgment was affirmed on appeal, effective December 3, 2002. Day petitioned for federal habeas relief 36 days later, on January 8, 2003. Florida's answer asserted that the petition was "timely" because it was filed after 352 days of untolled time. Inspecting the answer and attachments, however, a Federal Magistrate Judge determined that the State had miscalculated the tolling time: Under the controlling Eleventh Circuit precedent, the untolled time was actually 388 days, rendering the petition untimely. After affording Day an opportunity to show cause why the petition should not be dismissed for failure to meet AEDPA's one-year deadline, the Magistrate Judge found petitioner's responses inadequate and recommended dismissal. The District Court adopted the recommendation, and the Eleventh Circuit af-

firmed, concluding that a State's patently erroneous concession of timeliness does not compromise a district court's authority *sua sponte* to dismiss a habeas petition as untimely.

Held: In the circumstances here presented, the District Court had discretion to correct the State's erroneous computation and, accordingly, to dismiss the habeas petition as untimely under AEDPA's one-year limitation. Pp. 2–11.

(a) A statute of limitations defense is not jurisdictional, therefore courts are under no obligation to raise the matter *sua sponte*. Cf. *Kontrick* v. *Ryan*, 540 U. S. 443, 458. As a general matter, a defendant forfeits a statute of limitations defense not asserted in its answer or in an amendment thereto. See Federal Rules of Civil Procedure 8(c), 12(b), and 15(a) (made applicable to federal habeas proceedings by Rule 11 of the Rules governing such proceedings). And the Court would count it an abuse of discretion to override a State's deliberate waiver of the limitations defense. But, in appropriate circumstances, a district court may raise a time bar on its own initiative. The District Court in this case confronted no intelligent waiver on the State's part, only an evident miscalculation of time. In this situation the Court declines to adopt either an inflexible rule requiring dismissal whenever AEDPA's one-year clock has run, or, at the opposite extreme, a rule treating the State's failure initially to plead the one-year bar as an absolute waiver. Rather, the Court holds that a district court has discretion to decide whether the administration of justice is better served by dismissing the case on statute of limitations grounds or by reaching the merits of the petition. This resolution aligns the statute of limitations with other affirmative defenses to habeas petitions, notably exhaustion of state remedies, procedural default, and nonretroactivity. In *Granberry* v. *Greer,* 481 U. S. 129, 133, this Court held that federal appellate courts have discretion to consider a state prisoner's failure to exhaust available state remedies before invoking federal habeas jurisdiction despite the State's failure to interpose the exhaustion defense at the district-court level. Similarly, in *Caspari* v. *Bohlen*, 510 U. S. 383, 389, the Court held that "a federal court may, but need not, decline to apply [the nonretroactivity rule announced in *Teague* v. *Lane*, 489 U. S. 288, 310,] if the State does not argue it." It would make scant sense to distinguish AEDPA's time bar from these other threshold constraints on federal habeas petitioners. While a district court is not required to double-check the State's math, cf. *Pliler* v. *Ford,* 542 U. S. 225, 231, no Rule, statute, or constitutional provision commands a judge who detects a clear computation error to suppress that knowledge. Cf. Fed. Rule Civ. Proc. 60(a). The Court notes particularly that the Magistrate Judge, instead of acting *sua sponte*, might have informed the State of its obvious computation error and

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entertained an amendment to the State's answer. See, *e.g.,* Fed. Rule Civ. Proc. 15(a). There is no dispositive difference between that route, and the one taken here. Pp. 2–10.

(b) Before acting *sua sponte*, a court must accord the parties fair notice and an opportunity to present their positions. It must also assure itself that the petitioner is not significantly prejudiced by the delayed focus on the limitation issue, and "determine whether the interests of justice would be better served" by addressing the merits or by dismissing the petition as time barred. See *Granberry,* 481 U. S., at 136. Here, the Magistrate Judge gave Day due notice and a fair opportunity to show why the limitation period should not yield dismissal. The notice issued some nine months after the State's answer. No court proceedings or action occurred in the interim, and nothing suggests that the State "strategically" withheld the defense or chose to relinquish it. From all that appears in the record, there was merely an inadvertent error, a miscalculation that was plain under Circuit precedent, and no abuse of discretion in following *Granberry* and *Caspari.* P. 11.

391 F. 3d 1192, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, and ALITO, JJ., joined. STEVENS, J., filed an opinion dissenting from the judgment, in which BREYER, J., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS and BREYER, JJ., joined.