

## Syllabus

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**

## Syllabus

**BELL, WARDEN *v.* THOMPSON****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT**

No. 04–514. Argued April 26, 2005—Decided June 27, 2005

After respondent Thompson was convicted of murder and sentenced to death, Tennessee state courts denied postconviction relief on his claim that his trial counsel had been ineffective for failing to adequately investigate his mental health. His federal habeas attorneys subsequently retained psychologist Dr. Sultan, whose report and deposition contended that Thompson suffered from serious mental illness at the time of his offense. The District Court dismissed the petition, but apparently Thompson’s habeas counsel had failed to include Sultan’s deposition and report in the record. Upholding the dismissal, the Sixth Circuit, *inter alia*, found no ineffective assistance and did not discuss Sultan’s report and deposition in detail. That court later denied rehearing, but stayed issuance of its mandate pending disposition of Thompson’s certiorari petition. After this Court denied certiorari on December 1, 2003, the Sixth Circuit stayed its mandate again, pending disposition of a petition for rehearing, which this Court denied on January 20, 2004. A copy of that order was filed with the Sixth Circuit on January 23, but the court did not issue its mandate. The State set Thompson’s execution date, and state and federal proceedings began on his competency to be executed. Competency proceedings were pending in the Federal District Court on June 23, 2004, when the Sixth Circuit issued an amended opinion in the federal habeas case, vacating the District Court’s habeas judgment and remanding the case for an evidentiary hearing on the ineffective-assistance claim. The Sixth Circuit supplemented the record on appeal with Sultan’s deposition and explained that its authority to issue an amended opinion five months after this Court denied rehearing was based on its inherent power to reconsider an opinion before issuance of the mandate.

## Syllabus

*Held:* Assuming that Federal Rule of Appellate Procedure 41 authorizes a stay of a mandate following a denial of certiorari and that a court may stay the mandate without entering an order, the Sixth Circuit's decision to do so here was an abuse of discretion. Pp. 6–19.

(a) This Court need not decide the scope of the court of appeals' Rule 41 authority to withhold a mandate in order to resolve this case. Pp. 6–9.

(b) Prominent among the reasons warranting the result here is that the Sixth Circuit did not release its amended opinion for more than five months after this Court denied rehearing. The consequence of delay for the State's criminal justice system was compounded by the Sixth Circuit's failure to issue an order or otherwise give notice to the parties that it was reconsidering its earlier opinion. The express terms of the Sixth Circuit's stay state that the mandate would be stayed until this Court acted on the rehearing petition. Thus, once rehearing was denied, the stay dissolved by operation of law. Tennessee, relying on the Sixth Circuit's earlier orders and this Court's certiorari and rehearing denials could assume that the mandate would issue, especially since Thompson sought no additional stay and the Sixth Circuit gave no indication that it might be revisiting its earlier decision. The latter point is important, for it is an open question whether a court may exercise its Rule 41(b) authority to extend the time to issue a mandate through mere inaction. Without a formal docket entry neither the parties nor this Court had, or have, any way to know whether the Sixth Circuit had stayed the mandate or simply made a clerical mistake. That court could have spared the parties and state judicial system considerable time and resources had it notified them that it was reviewing its decision. The scheduling of Thompson's execution and the resulting competency proceedings were steps taken in reliance on the assumption that the federal habeas case was final. That assumption was all the more reasonable because the delay in issuing the mandate took place after this Court had denied certiorari, which usually signals the end of litigation. See Fed. Rule App. Proc. 41(d)(2)(D). The fact that the Sixth Circuit had the opportunity at the rehearing stage to consider the same arguments it eventually adopted in its amended opinion is yet another factor supporting the determination here. A review of the Sultan deposition also reinforces this conclusion. While the evidence would have been relevant to the District Court's analysis, it is not of such a character as to warrant the Sixth Circuit's extraordinary departure from standard procedures. Finally, by withholding its mandate for months—based on evidence supporting only an arguable constitutional claim—while the State prepared to carry out Thompson's sentence, the Sixth Circuit did not accord the appropriate level of respect

Syllabus

to the State's judgment that Thompson's crimes merit the ultimate punishment. See *Calderon v. Thompson*, 523 U. S. 538, 554–557. Pp. 9–19.

373 F. 3d 688, reversed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, and THOMAS, JJ., joined. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.