

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

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TREST v. CAIN, WARDEN

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

No. 96–7901. Argued November 10, 1997– Decided December 9, 1997

In upholding the District Court’s refusal to issue a writ of habeas corpus vacating petitioner Trest’s Louisiana prison sentence, the Fifth Circuit stated its belief that a state court would refuse to consider Trest’s federal claims as untimely, and that this “procedural default” was an adequate and independent state ground for denying him relief. In his petition for certiorari, Trest pointed out that the Fifth Circuit had raised and decided the “procedural default” question *sua sponte*, and that language in the court’s opinion suggested that it had thought that, once it had noticed the possibility of a procedural default, it was required to raise the matter on its own.

Held: A court of appeals is not “required” to raise the issue of procedural default *sua sponte*. Pp. 2–5.

(a) In the habeas context, procedural default is normally a “defense” that the State is “obligated to raise” and “preserv[e]” if it is not to “lose the right to assert the defense thereafter.” *Gray v. Netherland*, 518 U. S. ___, ___. This Court is unaware of any precedent stating that a habeas court must raise such a matter where the State itself does not do so. P. 2.

(b) This is not an appropriate case in which to examine whether the law nonetheless permitted the Fifth Circuit to raise the procedural default *sua sponte*. First, its opinion contains language suggesting it believed that, despite Louisiana’s failure to raise the matter, Circuit precedent required, not simply permitted, it to consider a potential procedural default. Second, Trest made clear in his certiorari petition that he intended to limit the question to mandatory consideration, and Louisiana in its response did not object, suggest alternate wording, or ask this Court to consider the question in any broader context. Third, the broader question cannot be easily an-

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swered in the context of this case, for this Court is uncertain about matters which arguably are relevant to the question of whether the law permitted the Fifth Circuit to raise a procedural default *sua sponte*: questions about the exhaustion of Trest's federal claims in state court and about the relevant procedural rules to be applied. The parties might have considered these questions, and the Fifth Circuit might have determined their relevance or their answers, had that court not decided the procedural default question without giving the parties an opportunity for argument. Pp. 2–5.

94 F. 3d 1005, vacated and remanded.

BREYER, J., delivered the opinion for a unanimous Court.