

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

FIORE v. WHITE, WARDEN, ET AL.

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

No. 98–942. Argued October 12, 1999– Decided November 30, 1999

Petitioner Fiore and his codefendant Scarpone were convicted of “operat[ing] a hazardous waste” facility without a “permit,” Pa. Stat. Ann., Tit. 35, §6018.401(a), because their operation deviated significantly from the terms of the permit they possessed. Fiore appealed his conviction to the Pennsylvania Superior Court, which affirmed; but Scarpone appealed his conviction to the Pennsylvania Commonwealth Court, which reversed. The Pennsylvania Supreme Court denied further review of Fiore’s case, and his conviction became final. However, it subsequently affirmed the Commonwealth Court’s decision in Scarpone’s case, finding that §6018.401(a) does not apply to those who possess a permit but deviate radically from the permit’s terms. After the Pennsylvania courts refused to reconsider Fiore’s identical conviction, he sought federal habeas relief, arguing, *inter alia*, that the Federal Constitution required that his conviction be set aside because his conduct was not criminal under §6018.401(a). The District Court granted his petition, but the Third Circuit reversed, primarily because it believed that state courts have no obligation to apply their decisions retroactively.

Held: To help determine the proper state-law predicate for this Court’s determination of the federal constitutional questions raised here, the Court certifies to the Pennsylvania Supreme Court the question whether the interpretation of §6018.401(a) set forth in *Scarpone v. Commonwealth*, 535 Pa. 273, 279, 634 A. 2d 1109, 1112, states the correct interpretation of Pennsylvania law at the date Fiore’s conviction became final. *Scarpone* marked the first time that the Pennsylvania Supreme Court had interpreted the statute. Because that authoritative interpretation came only after Fiore’s conviction became final, this Court must know whether the *Scarpone* construction

Syllabus

stated the statute's correct understanding at the time Fiore's conviction became final, or whether it changed the interpretation then applicable. Judgment and further proceedings in this case are reserved pending receipt of the Pennsylvania Supreme Court's response. Pp. 5–7.

149 F. 3d 221, question certified.

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