

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

LACKAWANNA COUNTY DISTRICT ATTORNEY *v.*
COSSCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

No. 99–1884. Argued February 20, 2001— Decided April 25, 2001

In 1986, respondent Coss was convicted in Pennsylvania state court of simple assault, institutional vandalism, and criminal mischief. Coss filed a petition for state postconviction relief with respect to these convictions, alleging ineffective assistance of counsel, but the Pennsylvania courts have never ruled on the petition. In 1990, after Coss had served the full sentences for his 1986 convictions, he was convicted in state court of aggravated assault. He successfully challenged his 6 to 12 year sentence on direct appeal. On remand, the court did not consider Coss' 1986 convictions in determining his eligible sentencing range. In choosing a sentence within the applicable range, the court considered several factors including Coss' extensive criminal record, and reimposed a 6 to 12 year sentence. Coss filed a petition for a writ of habeas corpus, claiming that his 1986 convictions were constitutionally invalid, and that he was "in custody in violation of the Constitution or laws or treaties of the United States." 28 U. S. C. §2254(a). The Federal District Court held that it could properly exercise §2254 jurisdiction because, in sentencing Coss for his 1990 conviction, the sentencing judge made reference to the 1986 convictions. The District Court denied the petition because Coss had not been prejudiced by his 1986 counsel's ineffectiveness. The Third Circuit remanded, agreeing that the District Court had jurisdiction, but finding a "reasonable probability" that but for his counsel's ineffectiveness, Coss would not have been convicted in 1986.

Held: The judgment is reversed, and the case is remanded.

204 F. 3d 453, reversed and remanded.

JUSTICE O'CONNOR delivered the opinion of the Court with respect

LACKAWANNA COUNTY DISTRICT ATTORNEY
v. COSS
Syllabus

to Parts I, II, III–A, and IV, concluding that §2254 does not provide a remedy when a state prisoner challenges a current sentence on the ground that it was enhanced based on an allegedly unconstitutional prior conviction for which the petitioner is no longer in custody. Pp. 5–10, 13.

(a) A §2254 petitioner must first show that he is “in custody pursuant to the judgment of a State court.” §2254(a). Because Coss is no longer serving the sentences for his 1986 convictions, he cannot bring a federal habeas action directed solely at those convictions. However, his §2254 petition can be (and has been) construed as asserting a challenge to the 1990 sentence he is currently serving, as enhanced by the allegedly invalid 1986 convictions. See *Maleng v. Cook*, 490 U. S. 488, 493. Thus, he satisfies §2254’s “in custody” requirement. Pp. 6–7.

(b) The more important question here is the one left unanswered in *Maleng*: the extent to which a prior expired conviction may be subject to challenge in an attack upon a current sentence it was used to enhance. In *Daniels v. United States*, ante, p. ___, this Court held that a federal prisoner who has failed to pursue available remedies to challenge a prior conviction (or has done so unsuccessfully) may not collaterally attack that conviction through a motion under 28 U. S. C. §2255 directed at the enhanced federal sentence. That holding is now extended to cover §2254 petitions directed at enhanced state sentences. The considerations on which the *Daniels* holding was grounded—finality of convictions and ease of administration—are equally present in the §2254 context. See *Daniels*, ante, at 6–7, 4. Pp. 7–9.

(c) As in *Daniels*, an exception exists to the general rule for §2254 petitions that challenge an enhanced sentence on the basis that the prior conviction used to enhance the sentence was obtained where there was a failure to appoint counsel in violation of the Sixth Amendment, as set forth in *Gideon v. Wainwright*, 372 U. S. 335. The failure to appoint counsel is a unique constitutional defect, rising to the level of a jurisdictional defect, which therefore warrants special treatment among alleged constitutional violations. Moreover, an exception for *Gideon* claims does not implicate this Court’s concerns about administrative ease. As with any §2254 petition, a petitioner making a *Gideon* challenge must satisfy the procedural prerequisites for relief, including exhaustion of remedies. Pp. 9–10.

O’CONNOR, J., delivered the opinion of the Court with respect to Parts I, II, III–A, and IV, in which REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined, an opinion with respect to Part III–C, in which REHNQUIST, C. J., and KENNEDY and THOMAS, JJ., joined, and an opin-

Syllabus

ion with respect to Part III–B, in which REHNQUIST, C. J., and KENNEDY, J., joined. SOUTER, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined. BREYER, J., filed a dissenting opinion.