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Duncan v. Walker 121 S. Ct. 2120 (2001)

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I. Facts

In June 1992, a jury found Sherman Walker ("Walker") guilty of first degree robbery in Queens County Supreme Court and he was sentenced to seven to fourteen years in prison. The State Appellate Division affirmed Walker's conviction in June 1995, and the New York Court of Appeals denied him leave to appeal conviction in January 1996. After Walker pursued several state remedies unsuccessfully, his conviction became final in April 1996. On April 10, 1996, Walker filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of New York. This petition was dismissed without prejudice in July 1996 because Walker "had not adequately set forth his claim because it was not apparent that [Walker] had exhausted available state remedies."[1]

Almost one year after his first habeas petition was dismissed, Walker filed a second petition for a writ of habeas corpus in federal court. This second petition was dismissed as untimely pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA)[2] because Walker had filed it more than one year after the effective date of AEDPA. The United States Court of Appeals for the Second Circuit reversed this judgment and reinstated the habeas petition, holding that Walker's first federal habeas petition had tolled the limitation period, and thus the petition was not untimely.[3]

II. Holding

The United States Supreme Court rejected the Second Circuit's interpretation of 28 U.S.C. § 2244(d)(2).[4] The Court held that Walker's first habeas petition did not toll the limitation period because it was not "other collateral review" within the meaning of § 2244.[5] Thus, the Court found that Walker's second petition for habeas corpus was time barred.[6]

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1. Duncan v. Walker, 121 S. Ct. 2120, 2123 (2001).
2. Anti-Terrorism and Effective Death Penalty Act, Pub. L. No. 104-132, §§ 101, 106, 110 Stat. 1214, 1220 (1996) (codified as amended at 28 U.S.C. § 2244 (Supp. V 2001)).
3. *Walker*, 121 S. Ct. at 2124.
4. *Id.* at 2123-24; *see also* 28 U.S.C. § 2244(d)(2) (Supp. V 1999).
5. *Walker*, 121 S. Ct. at 2129.
6. *Id.*

III. Analysis / Application in Virginia

Title 28 U.S.C. § 2244(d)(2) reads: "The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."[7] Under § 2244(d), there is a one-year statute of limitations in which a state prisoner may file an application in federal court for a writ of habeas corpus.[8] This one-year period runs from the date on which the state criminal judgment became final.[9] However, any prisoner whose conviction became final prior to AEDPA's effective date of April 24, 1996, was granted a one-year grace period in which to file a habeas petition, or until April 24, 1997.[10]

The United States Court of Appeals for the Second Circuit noted that because Walker's conviction became final prior to AEDPA's effective date, he had until April 24, 1997, to file his federal habeas petition.[11] The Second Circuit held that Walker's first habeas petition tolled the limitation period because it fell within the definition of "other collateral review" under § 2244(d)(2).[12] The Second Circuit reasoned that the word "State" applied only to "post conviction," and that the "other collateral" review could include federal habeas petitions as well as state collateral review.[13] Thus, the court held that Walker's habeas petition was timely, as the limitation period had been tolled before one year had expired.[14]

The State asserted that the word "State" in § 2244 applies to the entire phrase "post-conviction or other collateral review."[15] Under this view the statute only covers state collateral review, and a federal habeas petition would not toll the limitation period.[16] Thus, New York argued that Walker's second petition for federal habeas corpus was time-barred because it had been filed after the one-year limitation period.[17]

The United States Supreme Court agreed with the State's interpretation of the statute.[18] The Court determined that its role in the case was to interpret the

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7. § 2244(d)(2).
8. *Id.*
9. Walker v. Artuz, 208 F.3d 357, 359 (2d Cir. 2000) (recognizing that unless a conviction became final prior to April 24, 1996, a petitioner has one year from the date of his final criminal state judgment in which to file an application for a writ of habeas corpus); *see also* § 2244(d).
10. *Walker*, 208 F.3d at 359.
11. *Walker*, 121 S. Ct. at 2123.
12. *Id.*; *see also* § 2244(d)(2).
13. *Walker*, 121 S. Ct. at 2124.
14. *Id.* at 2123.
15. *Id.* at 2124.
16. *Id.*
17. *Id.*
18. *Id.*

statute by construing what Congress had enacted.[19] In doing so, the Court began with the language of the statute.[20] Walker contended that Congress included the phrase "other collateral review" to incorporate federal habeas petitions into the types of review that could toll the limitation period.[21] However, the Court held that "had Congress intended to include federal habeas petitions within the scope of § 2244(d)(2), Congress would have mentioned 'Federal' review expressly."[22] The Court compared § 2244(d)(2) with other sections of AEDPA in which Congress has specifically used both the words "State" and "Federal," such as § 2254(i), which provides that "[t]he ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under § 2254."[23] Contrasting such language with the language in § 2244(d)(2), the Court held that § 2244(d)(2) could not apply to federal habeas petitions because Congress only employed the word "State," and not "Federal," as a modifier for "review."[24] The Court relied on *Bates v United States*[25] in holding that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[26]

The Court also found that it has a duty to give effect to every word of a statute.[27] It found that applying Walker's interpretation of the statute would render the word "State" superfluous.[28] The Court stated that it was "especially unwilling to [treat statutory terms as surplusage] when the term occupies so pivotal a place in the statutory scheme as does the word 'State' in the federal habeas statute."[29] The Court found that if the statute were to include both state and federal collateral review, the word "State" would place "no constraint on the class of applications for review that toll the limitation period."[30] The Court found that "[t]he clause instead would have precisely the same content were it to

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19. *Id.*

20. *Id.* (citing Williams v. Taylor, 529 U.S. 420, 431 (2000) (explaining that in construing legislation, the court begins with the language of the statute and assigns to words their ordinary, common meaning, absent legislative intent to assign different meaning)).

21. *Walker*, 121 S. Ct. at 2124.

22. *Id.*

23. *Walker*, 121 S. Ct. at 2124; *see* 28 U.S.C. § 2254(i) (Supp. 2001).

24. *Walker*, 121 S. Ct. at 2125.

25. 522 U.S. 23 (1997).

26. *Walker*, 121 S. Ct. at 2125 (quoting Russello v. United States, 464 U.S. 16, 23 (1983)) (citing Bates v. United States, 522 U.S. 23, 29-30 (1997)).

27. *Id.* (citing United States v. Menasche, 348 U.S. 528, 538-39 (1955) (quoting Montclair v. Ramsdell, 107 U.S. 147, 152 (1883) (holding that it is the court's duty "'to give effect, if possible, to every clause and word of a statute'")).

28. *Id.*

29. *Id.*

30. *Id.*

read 'post-conviction or other collateral review.'"[31] The Court held that because it had a duty to "'give each word some operative effect' where possible," it could not accept Walker's proposed construction of § 2244(d)(2).[32]

The Second Circuit reasoned that New York's reading of the statute did not give effect to the phrase "other collateral review."[33] That court held that "the phrase 'other collateral review' would be meaningless if it did not refer to federal habeas petitions."[34] The United States Supreme Court reversed the Second Circuit's finding because it reasoned that the statute referred to state "collateral" review as being the review "other" than "post-conviction" review.[35] The court found that the phrase "other collateral review" could include "review of a state court judgment that is not a criminal conviction."[36] The Court also found that in addition to a state criminal conviction "there are other types of state court judgments pursuant to which a person may be held in custody within the meaning of the federal habeas statute," including a state court order of civil commitment or a state court order of civil contempt.[37] Accordingly, state collateral review pertaining to these judgments would not be post-conviction review.[38] Thus, the Court found that even if "State post-conviction review" referred to all state collateral review of a conviction, "the phrase 'other collateral review' need not include federal habeas petitions in order to have independent meaning."[39]

The United States Supreme Court also found that Congress may have used the phrase "post-conviction or other collateral" in order to accommodate the diverse terminology that different states employ to refer to the different forms of collateral review that are available after a conviction.[40] It found that "Congress may have refrained from exclusive reliance on the term 'post-conviction' so as to leave no doubt that the tolling provision applies to all types of state collateral review available after a conviction and not just to those denominated 'post-conviction' in the parlance of a particular jurisdiction."[41] Thus, "other collateral" review does not have to refer to federal habeas petitions in order to have an effect.[42]

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31. *Walker*, 121 S. Ct. at 2125.

32. *Id.* at 2126 (quoting Walters v. Metropolitan Ed. Enterprises, Inc., 519 U.S. 202, 209 (1997) (explaining that courts should interpret statutes so that, if possible, no word is rendered superfluous)).

33. *Id.*

34. Walker v. Artuz, 208 F.3d 357, 360 (2d Cir. 2000).

35. *Walker*, 121 S. Ct. at 2126.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 2127.

40. *Id.*

41. *Id.*

42. *Id.*

Walker contended that New York's construction of the statute created "the potential for unfairness to litigants who file timely federal habeas petitions that are dismissed without prejudice after the limitation period has expired."[43] However, the Court articulated that its "sole task in this case [was] one of statutory construction."[44] The Court held that federal habeas corpus review is not an "application for State post-conviction or other collateral review," and that thus, § 2244(d)(2) did not toll the limitation period during the pendency of Walker's first habeas petition.[45]

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43. *Id.* at 2129.
44. *Id.*
45. *Id.*