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Tyler v. Cain 121 S. Ct. 2478 (2001)

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I. Facts

In March 1975, Melvin Tyler ("Tyler") allegedly shot and killed his twenty-day-old daughter during a fight with his estranged girlfriend. A jury found Tyler guilty of second-degree murder, and his conviction was affirmed on appeal. Tyler filed five state petitions for post-conviction relief, which were denied. He also filed a federal habeas petition, which was denied.[1]

In 1990, the United States Supreme Court decided *Cage v Louisiana*,[2] after which Tyler filed a sixth state post-conviction petition, claiming that the *Cage* holding should apply retroactively to his case.[3] The state district court denied relief, and the Supreme Court of Louisiana affirmed. Seeking to pursue his *Cage* claim through a federal habeas corpus petition, Tyler moved the United States Court of Appeals for the Fifth Circuit for permission to file a second habeas corpus application. Such permission is required by the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA").[4] The Fifth Circuit found that Tyler had made the requisite "prima facie showing" that his "claim relie[d] on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," and granted Tyler's motion, thereby allowing him to file a habeas petition in the United States District Court for the Eastern District of Louisiana.[5]

The district court held that Tyler was not entitled to collateral relief based on the merits of his case. The Fifth Circuit affirmed, but held that the district court erred in proceeding to the merits rather than dismissing the claim on the grounds that Tyler had not shown that the "claim relie[d] on a new rule of constitutional law, *made retroactive to cases on collateral review by the Supreme Court*, that was previously unavailable."[6] The Fifth Circuit held that Tyler's petition must be

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1. Tyler v. Cain, 121 S. Ct. 2478, 2480 (2001).

2. 498 U.S. 39 (1990).

3. *Tyler*, 121 S. Ct. at 2480-81; *see* Cage v. Louisiana, 498 U.S. 39, 41 (1990) (holding that a jury charge equating reasonable doubt with "grave uncertainty" and "actual substantial doubt" suggested a higher degree of doubt than is required for acquittal under the reasonable-doubt standard).

4. Anti-Terrorism and Effective Death Penalty Act, Pub. L. No. 104-132, § 102, 110 Stat. 1214, 1217 (1996) (codified as amended at 28 U.S.C. § 2253(c) (Supp. V 1999)).

5. *Tyler*, 121 S. Ct. at 2481.

6. *Id.* at 2479 (emphasis in original); *see also* 28 U.S.C. § 2244(b)(2)(A) (Supp. V 1999).

denied because he "could not show that any Supreme Court decision render[ed] the *Cage* decision retroactively applicable to cases on collateral review."[7]

II. Holding

The United States Supreme Court affirmed the Fifth Circuit's decision denying Tyler's federal habeas petition.[8] The Supreme Court held that, under AEDPA, a new rule is "made retroactive to cases on collateral review" only if the Supreme Court holds the new rule to be retroactively applicable.[9] The Court held that the new rule articulated in *Cage* had not been "made retroactive to cases on collateral review by the Supreme Court" within the meaning of 28 U.S.C. § 2244(b)(2)(A).[10]

III. Analysis / Application in Virginia

In *Cage*, the United States Supreme Court held that a jury instruction violates Due Process if a reasonable juror is likely to have interpreted the instruction to allow a finding of guilt without proof beyond a reasonable doubt.[11] In his second petition for federal habeas relief, Tyler claimed that one of the jury instructions in his trial was substantively identical to the instruction condemned in *Cage*.[12] Tyler asserted that the *Cage* rule should be applied retroactively to his case, and that his second petition for habeas corpus should be accepted.[13]

Under AEDPA, if a prisoner asserts a claim that he has already raised in a previous federal habeas petition, the claim must be dismissed.[14] A petitioner's claim that was not raised in a previous petition must also normally be dismissed.[15] However, if the claim is predicated on "newly discovered facts that call into question the accuracy of a guilty verdict," the claim need not be dismissed.[16] The other exception applies when the petitioner "shows" that the "claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable."[17] Tyler asserted that his second habeas petition fell under this second exception.[18]

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7. *Id.* at 2481.
8. *Id.* at 2485.
9. *Id.* at 2482.
10. *Id.* at 2483; *see* § 2244(b)(2)(A).
11. Cage v. Louisiana, 498 U.S. 39, 41 (1990).
12. *Tyler*, 121 S. Ct. at 2480.
13. *Id.* at 2481.
14. *Id.* at 2482; *see also* 28 U.S.C. § 2244(b)(1) (Supp. V 1999).
15. *Tyler*, 121 S. Ct. at 2482.
16. *Id.* at 2482; *see also* 28 U.S.C. § 2244(b)(2)(B) (Supp. V 1999).
17. *Tyler*, 121 S. Ct. at 2482; *see also* 28 U.S.C. § 2244(b)(2)(A) (Supp. V 1999).
18. *Tyler*, 121 S. Ct. at 2482.

In order to obtain permission from a court of appeals to file a second petition in district court, the applicant needs to make only a "prima facie showing" that the petition satisfies the standard set forth under 28 U.S.C. § 2244(b)(2)(A).[19] However, in order to obtain relief in district court, the petitioner must meet the higher burden of actually "showing" that the claim satisfies the statutory standard.[20] In order to meet this higher standard, the rule on which the second claim relies must meet three qualifications: (1) it must be a "new rule" of constitutional law; (2) it must have been "made retroactive to cases on collateral review by the Supreme Court"; and (3) the claim must have been "previously unavailable."[21] Both the State and Tyler agreed that *Cage* created a "new rule" that was "previously unavailable."[22] However, the State argued that the *Cage* rule had not been made retroactive by the Supreme Court to cases on collateral review.[23]

The Court interpreted the word "made" by looking at its context and place in the "'overall statutory scheme.'"[24] The Court explained that according to 28 U.S.C. § 2244(b)(2)(A), a new rule may be made retroactive to cases on collateral review only by the Supreme Court.[25] The Court stated that the "only way the Supreme Court can, by itself [make a rule retroactive] is through a holding."[26] Thus, the Court decided that "made" means "held."[27] The Court further explained that it does not make "a rule retroactive when it merely establishes principles of retroactivity and leaves the application of those principles to lower courts."[28] Instead, the Court concluded that a new rule is "made retroactive to cases on collateral review" only when the Court actually holds the rule to be so.[29] Although § 2244(b)(2)(A) uses the word "made," not "held," the Court found that "Congress need not use the word 'held' to require as much."[30]

The Court decided that interpreting the word "made" to be a synonym for "held" was necessary to implement AEDPA's collateral review structure.[31] Under § 2244(b)(3), courts of appeals are allowed only thirty days to determine whether a second application for habeas review makes a prima facie showing that

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19. *See* 28 U.S.C. § 2244(b)(3)(C) (Supp. V 1999).
20. *Tyler*, 121 S. Ct. at 2481.
21. *Id.* at 2482 (quoting § 2244(b)(2)(A)).
22. *Id.*
23. *Id.*
24. *Id.* (quoting Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 809 (1989)).
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 2483; *see* Williams v. Taylor, 529 U.S. 362, 412 (2000) (holding that in 28 U.S.C. § 2254(d)(1) the word "determined" means "held").
31. *Tyler*, 121 S. Ct. at 2483.

the application satisfies the heightened standard laid out in § 2244(b)(2)(A).[32] The Court reasoned that this stringent time limit suggests that "the courts of appeals do not have to . . . determine questions of retroactivity in the first instance," but must rather "simply rely on Supreme Court holdings on retroactivity."[33]

The Court found that while *Cage* held that the particular jury instruction used in that case violated Due Process, it did not itself hold that its rule was retroactive.[34] Tyler argued that a subsequent case, *Sullivan v Louisiana*,[35] made the *Cage* rule retroactive under the principles of *Teague v Lane*.[36] Under *Teague*, one exception to the general rule of nonretroactivity is that a new rule may be applied retroactively if an infringement of the rule would "seriously diminish the likelihood of obtaining an accurate conviction," or would "alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding."[37] Tyler argued that the *Cage* rule fit within both prongs of the *Teague* exception.[38] Tyler contended that *Sullivan* found that a *Cage* error "fundamentally undermines the reliability of a trial's outcome."[39] Tyler also argued that "the central point of *Sullivan* is that a *Cage* error deprives a defendant of a bedrock element of procedural fairness: the right to have the jury make the determination of guilt beyond a reasonable doubt."[40]

The Court rejected Tyler's argument that, through its holdings in *Sullivan* and *Cage*, the Court "made" the *Cage* rule retroactive to cases on collateral review.[41] The Court found that, while *Sullivan* held that *Cage* error is structural error, there "is no second case that held that all structural-error rules apply retroactively."[42] The Court similarly found that there was no second case that held that "all structural-error rules fit within the . . . *Teague* exception."[43] The Court stated that "[c]lassifying an error as structural does not necessarily alter our

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32. *Id.* at 2483; *see* 28 U.S.C. § 2244(b)(3) (Supp. V 1999).

33. *Tyler*, 121 S. Ct. at 2483.

34. *Id.*

35. 508 U.S. 275 (1993).

36. *Tyler*, 121 S. Ct. at 2483; *see* Sullivan v. Louisiana, 508 U.S. 275, 281-82 (1993) (holding that a *Cage* error is structural and therefore always invalidates a conviction); *see also* Teague v. Lane, 489 U.S. 288, 311 (1989) (plurality opinion) (explaining that an exception to the general rule of nonretroactivity will be reserved for "watershed rules of criminal procedure" that alter the understanding of "bedrock procedural elements that must be found to vitiate the fairness of a particular conviction" (quoting Mackey v. United States, 401 U.S. 667, 693 (1971) (Harlan, J., concurring in part and dissenting in part))).

37. Sawyer v. Smith, 497 U.S. 227, 242 (1990) (citing *Teague*, 489 U.S. at 311).

38. *Tyler*, 121 S. Ct. at 2484.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

understanding of these bedrock procedural elements. Nor can it be said that all new rules relating to due process . . . alter such understanding."[44]

The Court found that the *Cage* rule had not been "held retroactive to cases on collateral review" by any of its prior holdings.[45] The Court also held that the *Teague* exception for "watershed" rules did not necessarily dictate retroactivity in this case.[46] The Court, stating that "[a]ny statement on *Cage's* retroactivity would be dictum," declined Tyler's invitation to make the *Cage* rule retroactive in his case.[47] The Court held that because the Court had not already made *Cage* retroactive, the district court was required to dismiss Tyler's second habeas petition.[48]

IV. Conclusion

The Court found that *Teague* does not logically dictate that all structural-error rules are "watershed" rules, thus mandating retroactivity. The Court also found that AEDPA requires that in order for a new rule to be applied retroactively on collateral review, the Supreme Court must have "made" the rule retroactive.[49] For purposes of interpreting AEDPA, the Supreme Court held that it "ma[kes]" something retroactive only through a Supreme Court holding.[50] The Court found that neither *Cage* nor any subsequent Supreme Court case explicitly held the new rule articulated in *Cage* to be retroactive.[51]

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44. *Id.* at 2484 n.7.
45. *Id.* at 2484.
46. *Id.*
47. *Id.* at 2485.
48. *Id.* at 2484; *see* 28 U.S.C. § 2244(b)(4) (Supp. V 1999).
49. *Tyler*, 121 S. Ct. at 2482.
50. *Id.*
51. *Id.* at 2483-84.

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