No. 20-___

In the Supreme Court of the United States

LYNEAL WAINWRIGHT, WARDEN

Petitioner,

v.

JASON S. SEXTON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DAVE YOST
Ohio Attorney General

BENJAMIN M. FLOWERS*
Ohio Solicitor General
*Counsel of Record
SAMUEL PETERSON
KYSER BLAKELY
Deputy Solicitors General
JERRI FOSNAUGHT
Assistant Attorney General
30 East Broad Street, 17th Fl.
Columbus, Ohio 43215
614-466-8980
614-466-5087, fax
benjamin.flowers
@ohioattorneygeneral.gov

Counsel for Petitioner

QUESTIONS PRESENTED

1. Can federal courts award habeas relief based on errors in state-postconviction proceedings?

2. If errors in state-postconviction proceedings sometimes provide a basis for habeas relief, can a habeas petitioner win relief based on such errors even if he did not diligently pursue the proceedings in which the errors occurred?

LIST OF PARTIES

The petitioner is Lyneal Wainwright, Warden of the Marion Correctional Institution.

The respondent is Jason S. Sexton, an inmate at the Marion Correctional Institution.

LIST OF RELATED CASES

1. *Sexton v. Wainwright*, No. 19-3370 (6th Cir.) (judgment entered August 4, 2020)
2. *Sexton v. Wainwright*, No. 2:18-CV-424 (S.D. Ohio) (judgment entered March 22, 2019)
3. *State v. Sexton*, No. 2017-1554 (Ohio) (jurisdiction declined January 31, 2018)
4. *State v. Sexton*, No. 17AP-564 (Ohio Ct. App., 10th District) (judgment entered September 22, 2017)
5. *State v. Sexton*, No. 97-CR-1148 (Franklin County Court of Common Pleas) (guilty plea entered October 10, 1997)

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INTRODUCTION

This case affords the Court an opportunity to resolve an entrenched circuit split on an important issue of federal law. The question is this: May federal courts award habeas relief based on errors in state-postconviction proceedings? Most courts say no. But the First and Seventh Circuits have held otherwise. *Compare Word v. Lord*, 648 F.3d 129, 131 (2d Cir. 2011) (*per curiam*); *accord Lambert v. Blackwell*, 387 F.3d 210, 247 (3d Cir. 2004); *Sigmon v. Stirling*, 956 F.3d 183, 193–94 (4th Cir. 2020); *Kinsel v. Cain*, 647 F.3d 265, 273 & n.32 (5th Cir. 2011); *Bell-Bey v. Roper*, 499 F.3d 752, 756 (8th Cir. 2007); *Ortiz v. Stewart*, 149 F.3d 923, 939 (9th Cir. 1998); *Sellers v. Ward*, 135 F.3d 1333, 1339 (10th Cir. 1998), *with Montgomery v. Meloy*, 90 F.3d 1200, 1206 (7th Cir. 1996) (*per curiam*); *Flores-Ramirez v. Foster*, 811 F.3d 861, 866 (7th Cir. 2016) (*per curiam*); *Dickerson v. Walsh*, 750 F.2d 150, 152–53 (1st Cir. 1984); *see also Tevlin v. Spencer*, 621 F.3d 59, 70 (1st Cir. 2010). The Sixth Circuit has decisions going both ways. *Compare Cress v. Palmer*, 484 F.3d 844, 853 (6th Cir. 2007), *with DiCenzi v. Rose*, 452 F.3d 465, 469 (6th Cir. 2006).

This case squarely presents the circuit split, because the petitioner, Jason Sexton, seeks habeas relief based on alleged errors in his state-postconviction proceedings. Pet.App.2a. This is an especially good vehicle for resolving the split because the case presents a second question to which lower courts will need an answer if this Court rules for Sexton on the first question. The second question is this: If errors in state-postconviction proceedings sometimes provide a basis for habeas relief, can a habeas petitioner win relief based on errors in state-postconviction proceedings that he did not diligently pursue? The Sixth Circuit

held that the answer is "yes." It thus allowed Jason Sexton to seek habeas relief based on alleged errors in state-postconviction proceedings that Sexton waited *twenty years* to initiate. The Sixth Circuit's timeliness decision is wrong, both as a matter of statutory text and under this Court's decision in *Johnson v. United States*, 544 U.S. 295 (2005). But the fact that the case presents this second question makes it an ideal vehicle for resolving the first one. It ensures that, if the Court sides with the First and Seventh Circuits, it will have an opportunity to provide guidance on the timeliness of habeas petitions alleging errors in state-postconviction proceedings.

This Court should grant *certiorari* and reverse.

OPINIONS BELOW

The Sixth Circuit's decision below is published at *Sexton v. Wainwright*, 968 F.3d 607 (6th Cir. 2020), and reproduced at Pet.App.1a. The District Court's decision dismissing Sexton's habeas petition is available online at *Sexton v. Wainwright*, No. 2:18-CV-424, 2019 U.S. Dist. LEXIS 47993 (S.D. Ohio March 22, 2019), and reproduced at Pet.App.16a. The federal magistrate judge's decision recommending dismissal of Sexton's petition is available online at *Sexton v. Wainwright*, No. 2:18-CV-424, 2018 U.S. Dist. LEXIS 184467 (S.D. Ohio Oct. 29, 2018), and reproduced at Pet.App.32a.

JURISDICTIONAL STATEMENT

The Sixth Circuit issued its opinion and judgment on August 4, 2020. The Warden timely filed this petition on October 29, 2020. This Court has jurisdiction to review the Sixth Circuit's judgment under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §2254(a):

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. §2244(d)(1):

> (d)
>
> > (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—
> >
> > > (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
> > >
> > > (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
> > >
> > > (C) the date on which the constitutional right asserted was initially

> recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

STATEMENT

1. Prosecutors indicted Jason Sexton in 1997 on three counts of aggravated murder, one count of kidnapping, and one count of aggravated robbery. Pet.App.33a. After his attorney negotiated a plea agreement, Sexton pleaded guilty to aggravated murder and aggravated robbery. *Id.* As part of his plea, Sexton agreed to sentences of twenty years to life for the murder charge and ten to twenty-five years for the robbery. *Id.* In exchange, the prosecutor agreed not to pursue any charges in connection with a rape Sexton committed in jail after his arrest. *Id.* The trial judge accepted Sexton's plea and imposed the agreed-upon sentences. *Id.* Sexton did not appeal. *Id.*

That "is how things remained for nearly two decades." Pet.App.3a. But Sexton claims that, in 2017, he learned that he had a right to appeal his agreed-upon sentence. He also claims to have learned that he should, as a matter of state law, have been sentenced by a three-judge panel instead of a single judge. Pet.App.3a–4a. Upon learning of this state-law error, Sexton moved the Ohio Court of Appeals to let him file a delayed appeal, Pet.App.4a, which is a form of post-conviction review in Ohio, *see Searcy v. Carter*, 246

F.3d 515, 518–20 (6th Cir. 2001); *see also Board v. Bradshaw*, 805 F.3d 769, 771–72 (6th Cir. 2015). The court refused. It "denied Sexton's application for leave in a very short opinion, observing simply, 'Sexton has presented no viable reason for the delay in his attempt to appeal.'" Pet.App.4a. Sexton sought review of that decision in the Supreme Court of Ohio, but that court declined jurisdiction. *Id.*

Three months after the Supreme Court of Ohio declined to hear Sexton's case—about *twenty years* after his conviction became final—Sexton filed a petition for a writ of habeas corpus in federal court. *Id.* (The District Court had jurisdiction to hear his case under 28 U.S.C. §§1331 and 2254(a).) His petition alleged (among other things) that the Ohio Court of Appeals had violated his due-process and equal-protection rights by declining to grant him leave to file a delayed appeal. Pet.App.5a.

2. What happened next requires some background on two principles relating to habeas law.

The first principle is this: under 28 U.S.C. §2244(d)(1), habeas petitioners have one year to file a habeas petition after the latest of four dates. Relevant here, the one-year limitations period may begin to run on "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." §2244(d)(1)(D).

The second principle is this: rulings by state-post-conviction courts will not constitute a factual predicate of the sort that can start the one-year limitations period unless the petitioner diligently pursued state-postconviction relief. At least, that is the rule in the context of §2255(f). That statute is analogous to §2244(d). Just as §2244(d) imposes a one-year

limitations period on habeas petitioners in *state* custody, §2255(f) imposes a one-year limitations period on petitioners in *federal* custody. And, just as §2244(d)(1)(D) says the one-year period may run from "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence," §2255(f)(4) says that the limitations period may run from "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." When a petitioner claims that a state-postconviction ruling constitutes a newly discovered fact that triggers the one-year period under §2255(f)—when, for example, the postconviction ruling vacates a state conviction on which a federal sentencing-enhancement was based—the petitioner must show that he diligently brought and litigated the state-postconviction proceedings on which his claim for federal relief is based. *Johnson v. United States*, 544 U.S. 295, 298 (2005). The Court has never addressed whether the same rule applies in the context of §2244(d)(1)(D). In this case, however, the Warden has argued that it does.

3. With that background, return to Sexton's federal habeas case. The Warden moved to dismiss the case as untimely. Pet.App.4a. The District Court agreed. *Id.* Sexton's petition perhaps *appeared* to be timely, because he filed within one year of the Ohio Court of Appeals' decision refusing to reopen his appeal. That adverse decision, after all, constituted the newly discovered "factual predicate" that gave rise to his "claim" for federal habeas relief and thus restarted the one-year period under §2244(d)(1)(D). But the problem for Sexton, the District Court explained, was that §2244(d)(1)(D) runs from the date on which "the

factual predicate of the claim or claims presented could have been discovered *through the exercise of due diligence*." (emphasis added); Pet.App.24a–25a. And under *Johnson*, a state-postconviction ruling triggers that statute only if the petitioner "diligently pursue[d]" state-postconviction relief. Pet.App.29a. Because Sexton did not diligently pursue state-postconviction relief, the District Court reasoned, the state-postconviction ruling in his case did not constitute a "factual predicate" under §2244(d)(1)(D) and thus did not trigger the one-year limitations period. Pet.App.28a.

4. The Sixth Circuit reversed. Pet.App.2a. It held that, because Sexton's claim was based on his request for a delayed appeal, the one-year statute of limitations did not begin to run until 2017, when the state court denied Sexton's request. Pet.App.13a. Because Sexton filed his federal habeas petition within one year of the denial of that request, his petition was timely under §2244(d)(1)(D). *Id.* In reaching this conclusion, the Sixth Circuit rejected the argument that *Johnson* applied in the context of §2244(d)(1)(D), even though §2244(d)(1)(D) and §2255(f)(4) are nearly identical. Pet.App.10a–12a. In other words, the Sixth Circuit held that Sexton had one year to file his habeas petition after the adverse state-postconviction ruling *regardless* of whether he was diligent in pursuing state-postconviction relief. *See* Pet.App.13a. The Court thus remanded for the District Court to consider the merits of Sexton's claim that the state-postconviction court acted unconstitutionally by refusing to let him file a delayed appeal.

5. The Sixth Circuit stayed its mandate. The Warden then timely filed this petition for a writ of *certiorari*.

REASONS FOR GRANTING THE PETITION

This case presents two important questions. *First*, may courts award federal habeas relief based on errors in state-postconviction proceedings? *Second*, if the answer to the first question is "yes," does §2244(D)'s one-year statute of limitations run from the date on which the error in state-postconviction proceedings occurred even if the petitioner failed to exercise "due diligence" in pursuing state-postconviction relief? The first question is the subject of a longstanding circuit split. And the fact that this case gives the Court an option to reach the second question makes this an especially appealing vehicle for addressing the first question. Should the Court hold that petitioners may win habeas relief for errors in state-postconviction relief, it can give the lower courts guidance regarding how to determine whether such claims are timely filed.

I. This Court should grant *certiorari* to decide whether errors in state-postconviction proceedings may provide a basis for federal habeas relief.

Federal courts may "entertain" habeas petitions by those "in custody pursuant to the judgment of a State court." 28 U.S.C. §2254(a). But they may do so "only" if the petitioner seeks relief "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." *Id*. This "in custody" requirement matters a great deal. It means that individuals can seek habeas relief *only* to challenge the legality of their custody. That is why, for example, state prisoners cannot file a habeas petition to challenge the conditions of their confinement. *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004). Such challenges

pertain to the conditions in which the petitioner is held, not the lawfulness of his being held. Litigants can use habeas petitions to challenge only the legality of their being held in custody. *Id*.

When a habeas petitioner alleges an error in state-postconviction proceedings, does he challenge the legality of his custody or something else? This question has long divided the circuits. As a result, there is an entrenched, acknowledged circuit split on the question whether petitioners may use habeas petitions to challenge alleged errors in state-postconviction proceedings. The Court should grant *certiorari* to resolve this question, which is of great importance to the States.

A. This question implicates a circuit split.

Most circuits hold "that errors in state post-conviction proceedings do not provide a basis for" habeas relief. *Word v. Lord*, 648 F.3d 129, 131 (2d Cir. 2011) (*per curiam*); *accord Lambert v. Blackwell*, 387 F.3d 210, 247 (3d Cir. 2004); *Sigmon v. Stirling*, 956 F.3d 183, 193–94 (4th Cir. 2020); *Kinsel v. Cain*, 647 F.3d 265, 273 & n.32 (5th Cir. 2011); *Bell-Bey v. Roper*, 499 F.3d 752, 756 (8th Cir. 2007); *Ortiz v. Stewart*, 149 F.3d 923, 939 (9th Cir. 1998); *Sellers v. Ward*, 135 F.3d 1333, 1339 (10th Cir. 1998). This view proceeds from the premise that States need not "provide post-conviction proceedings" at all. *Word*, 648 F.3d at 131 (citing *Lackawanna Cnty. Dist. Att'y v. Coss*, 532 U.S. 394, 402 (2001)). As a result, no inmate is in custody because of a state-postconviction ruling: state inmates who wish to pursue state-postconviction relief are, by definition, *already in* "custody." §2254(a). That custody is either lawful or not, without regard to future state-postconviction proceedings that the State is not

even obligated to offer. Thus, any errors in state-post-conviction proceedings cannot affect the legality of an inmate's custody. Because such errors cannot make the custody illegal, they cannot justify habeas relief.

Two circuits (and sometimes a third) see things differently. The First and Seventh Circuits "have rejected a *per se* rule that federal habeas review does not extend to claims arising from state post-conviction proceedings." *Word*, 648 F.3d at 131 n.5. The First Circuit, for its part, long ago expressly rejected the view "that errors or defects in a state post-conviction proceeding" are not cognizable in habeas review. *Dickerson v. Walsh*, 750 F.2d 150, 152–53 (1st Cir. 1984); *accord Tevlin v. Spencer*, 621 F.3d 59, 70 (1st Cir. 2010). The court called the majority position "appealing at first blush," but ultimately deemed it inconsistent "with the basic principles of habeas corpus" and also with "Supreme Court rulings." *Dickerson*, 750 F.2d at 153 (citing *Rodriquez v. United States*, 395 U.S. 327 (1969)).

Along the same lines, the Seventh Circuit has held that "state collateral review" will "form the basis for federal habeas corpus relief" when the postconviction court "violates some independent constitutional right." *Montgomery v. Meloy*, 90 F.3d 1200, 1206 (7th Cir. 1996) (*per curiam*); *accord Flores-Ramirez v. Foster*, 811 F.3d 861, 866 (7th Cir. 2016) (*per curiam*). The Seventh Circuit has acknowledged its approach departs from that of its sister circuits. *See Flores-Ramirez*, 811 F.3d at 866.

The Sixth Circuit has at times followed the majority view. *See, e.g.*, *Cress v. Palmer*, 484 F.3d 844, 853 (6th Cir. 2007). But sometimes it sides with the First and Seventh Circuits, as it did here. *See also, e.g.*,

DiCenzi v. Rose, 452 F.3d 465, 469 (6th Cir. 2006). In fact, the decision below was driven in large part by a prior panel's decision that had allowed a habeas claim based on alleged state-postconviction errors to proceed. See Pet.App.7a, 10a (citing *DiCenzi*, 452 F.3d 465, 469).

This acknowledged circuit split has persisted for decades. At this point, it is unlikely to resolve itself. The only way to ensure uniformity across the country is for this Court to grant *certiorari* and answer the question presented.

B. This is an ideal vehicle for addressing the question presented, which is of significant importance to the States.

1. Because this case involves the meaning of federal habeas law, it presents an important question worthy of this Court's review. Every federal habeas question implicates two important and competing interests. On the one hand, there is the individual's right to be free from unlawful confinement. "The writ of habeas corpus stands as a safeguard against imprisonment of those held in violation of the law," *Harrington v. Richter*, 562 U.S. 86, 91 (2011), and "indisputably holds an honored position in" American law, *Engle v. Isaac*, 456 U.S. 107, 126 (1982). On the other hand, "habeas review of state convictions frustrates both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights." *Harrington*, 562 U.S. at 103 (quotation omitted). It also "disturbs the State's significant interest in repose for concluded litigation, denies society the right to punish some admitted offenders, and intrudes on state sovereignty to a degree matched by few

exercises of federal judicial authority." *Id.* (quotation omitted).

Reasonable minds could debate how best to balance these interests. But Congress already balanced them when it passed the Antiterrorism and Effective Death Penalty Act (AEDPA), of which all the statutes at issue here are a part. When courts misinterpret AEDPA, they necessarily undermine a coordinate branch's prerogative to balance competing concerns, and thus wrongfully interfere with either the rights of individuals or the sovereign power of States.

Given the important issues at stake, it is critical to ensure that courts across the country are interpreting AEDPA correctly. That likely explains the Court's practice of summarily reversing factbound decisions misapplying habeas law. *See, e.g.*, *Shoop v. Hill*, 139 S. Ct. 504 (2019) (*per curiam*); *Sexton v. Beaudreaux*, 138 S. Ct. 2555 (2018) (*per curiam*); *Kernan v. Cuero*, 138 S. Ct. 4 (2017) (*per curiam*); *Virginia v. LeBlanc*, 137 S. Ct. 1726 (2017) (*per curiam*). And it justifies the Court's involvement here, too: because of the longstanding circuit split implicated in this case, the Court can be sure that at least some appellate courts are applying AEDPA in a manner that improperly undermines either individual rights or the States' interests.

2. The Sixth Circuit below wrongly undermined state sovereignty by allowing the petitioner to seek habeas relief based on alleged errors in state-postconviction proceedings. The Court can make that clear by granting *certiorari*, holding that alleged errors in state-postconviction proceedings *do not* give rise to a habeas claim, and reversing. And precisely because the Sixth Circuit's decision below allows this case to

proceed, this is an appealing vehicle for addressing the question presented: instead of granting *certiorari* to a circuit that applies the correct rule, and thus needlessly prolonging a habeas case that a State rightly won, this Court can grant review to *end* a habeas case that should not be allowed to continue. Indeed, that posture distinguishes this case from others in which the Court has declined to address the first question presented. *See e.g.*, *Harris v. Caldwell*, 574 U.S. 1079 (2015); *Schexnayder v. Vannoy*, 140 S. Ct. 354 (2019).

Every case about the meaning of a statute "begins with the language of the statue." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999) (internal quotation omitted). "And where the statutory language provides a clear answer, it ends there as well." *Id.* That principle resolves this case. AEDPA states that federal habeas courts may "entertain" habeas petitions filed by individuals "in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." §2254(a). A habeas petition thus "seeks invalidation (in whole or in part) of the judgment authorizing" his "confinement." *Magwood v. Patterson*, 561 U.S. 320, 332 (2010) (emphasis omitted) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 83 (2005)). That matters here because no petitioner is in custody pursuant to a state court's *postconviction* order. Indeed, "postconviction" proceedings take their name from the fact that they *postdate* the conviction and direct appeals. They postdate, in other words, the final judgments by virtue of which the inmate is in custody. Because no inmate is "in custody pursuant to the judgment" of a state-postconviction court, no such judgment can give rise to habeas relief.

AEDPA did little more than codify existing limits on federal habeas powers. Even before AEDPA took effect, most courts had refused to recognize habeas claims based on alleged errors in state-postconviction proceedings. They held that federal habeas courts may not entertain challenges to state-postconviction proceedings because such challenges "represent[] an attack on a proceeding collateral to" the detention of a habeas petitioner "and not on the detention itself." *Williams v. Missouri*, 640 F.2d 140, 144 (8th Cir. 1981); *Hopkinson v. Shillinger*, 866 F.2d 1185, 1218–19 (10th Cir. 1989) (collecting cases). "That was the backdrop against which Congress was legislating" when it enacted AEDPA. *Voisine v. United States*, 136 S. Ct. 2272, 2281 (2016). If it had wanted to depart from what was (even then) the majority view, one would have expected it to say so clearly. Nothing in AEDPA does.

In opening a door to claims based on alleged errors in state-postconviction proceedings, the Sixth Circuit sanctioned a species of habeas relief that this Court has never approved of. States have no obligation to provide postconviction proceedings at all. *Pennsylvania v. Finley*, 481 U.S. 551, 556–57 (1987). Thus, even when this Court has held that errors in state-postconviction proceedings (such as ineffective assistance of counsel) might create "cause" that justifies excusing a petitioner's procedural default, it has never said that such errors give rise to a freestanding claim for habeas relief. *Martinez v. Ryan*, 566 U.S. 1, 15–16 (2012); *Trevino v. Thaler*, 569 U.S. 413, 428–29 (2013). The Sixth Circuit's decision below, and the rule in the First and Seventh Circuits, goes further. Those courts say that errors in postconviction proceedings can give rise

to a freestanding claim of habeas relief. That is a leap this Court has never taken.

The Sixth Circuit in this case did not expressly address this issue, and thus did not provide any reasoning to support allowing Sexton to seek habeas relief based on an alleged error in state-postconviction proceedings. (The question is still squarely presented, as the Sixth Circuit's ruling allows Sexton to seek such relief.) In contrast, the First and Seventh Circuits have attempted to justify their position. *Dickerson*, 750 F.2d at 152–53; *Montgomery*, 90 F.3d at 1206; *Flores-Ramirez*, 811 F.3d at 866. These circuits support their rule with reference to four of this Court's cases. None of those cases, however, supports reading AEDPA to permit habeas claims resting on alleged errors in state-postconviction proceedings.

Two are completely irrelevant. Start with *Rodriguez v. United States*, 395 U.S. 327 (1969) (cited by *Dickerson*, 750 F.2d at 153). That case did not involve, and the Court did not address, the question whether errors in state-postconviction proceedings could give rise to a habeas claim. Indeed, the case did not involve errors in postconviction proceedings at all. Rodriguez, the petitioner, sought federal-postconviction relief based on errors in his *direct* proceedings. Rodriguez alleged, and this Court found, that the lower courts had wrongly denied him his right to a direct appeal of his sentence. *Id*. at 330. Because *Rodriguez* did not involve a request for relief based on errors in a postconviction proceeding, it does not support the conclusion that errors in postconviction proceedings (state or federal) can give rise to a habeas claim.

Next, consider *Smith v. Bennett*, 365 U.S. 708 (1961) (cited by *Montgomery*, 90 F.3d at 1206). That

case is irrelevant because it did not involve a request for federal habeas relief. The petitioners in that case challenged an Iowa law that required indigent prisoners to pay a filing fee before seeking state-postconviction relief. The petitioners argued that this fee requirement violated the Equal Protection Clause. But instead of raising their equal-protection arguments in a federal habeas proceeding, the petitioners sought *certiorari* to the Supreme Court of Iowa upon that court's refusal to docket their state-postconviction filings. *Smith*, 365 U.S. at 709–10. As a result, the case presented the question whether the Iowa Supreme Court had violated the Equal Protection Clause in refusing to docket the petitions, *not* the question whether that refusal would give rise to a claim for federal habeas relief.

Dowd v. Cook, 340 U.S. 206 (1951), is also unrelated to the question presented. The First Circuit, in *Dickerson*, cited *Dowd* for the proposition that the "Supreme Court has specifically addressed state postconviction procedure via habeas petitions." 750 F.2d at 152. But *Dowd* does not support that proposition. The case did indeed involve a federal habeas petition. But the petitioner sought relief based on Indiana's "discriminatory denial of the statutory right of appeal" from his conviction. *Dowd*, 340 U.S. at 208. Although the petitioner had sought state-postconviction relief, *id.*, at 207–08, the federal courts awarded him habeas relief based on Indiana's blocking the petitioner from filing a timely appeal in his *direct proceedings*. Nothing about the case suggests that the same error would have entitled the petitioner to relief had the error occurred in state-postconviction proceedings.

The last case is *Lane v. Brown*, 372 U.S. 477 (1962) (cited by *Flores-Ramirez*, 811 F.3d at 866;

Montgomery, 90 F.3d at 1206; *Dickerson*, 750 F.2d at 152). *Lane* comes closest to supporting the rule in the First and Seventh Circuits, but it still comes up short. In that case, this Court held that Indiana violated the Equal Protection Clause by requiring indigent defendants to pay for a transcript before appealing an adverse state-postconviction proceeding. *Id*. at 481, 483. The Court reached the issue even though the petitioner raised the challenge in a habeas case. But *Lane* did not consider the relevance of the fact that the petitioner had raised his challenge in a habeas petition—it appears to have simply assumed that the matter was correctly addressed via a habeas petition. Because *Lane* never addressed whether defects in state-postconviction proceedings can give rise to federal habeas claims, it creates no binding precedent on that issue. *See Brecht v. Abramson*, 507 U.S. 619, 630–31 (1993) (assumptions underlying past holdings are not themselves binding).

In sum, this Court's cases provide no sound basis for departing from AEDPA's text. In other words, the majority of the circuits have it right, and the Sixth Circuit erred below.

II. The Court should also grant *certiorari* to address how AEDPA's one-year time bar applies in federal habeas cases based on errors in state-postconviction proceedings.

This case presents a second question that arises only if the Court holds that federal courts can award habeas relief based on errors in state-postconviction proceedings. The fact that this case presents the second question makes it an even more attractive vehicle for deciding the first question presented.

This second question arises based on AEDPA's one-year statute of limitations, which says, in relevant part:

> A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—
>
> …
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. §2244(d)(1)(D). If courts can entertain habeas claims based on alleged errors in state-postconviction proceedings, then errors in these proceedings constitute "the factual predicate[s] of a claim" for habeas relief. §2254(d)(1)(D); *see Johnson v. United States*, 544 U.S. 295, 310 (2005). And that gives rise to the following question: Does AEDPA's one-year statute of limitations run from the date on which the state court's error occurred even if the petitioner failed to exercise "due diligence" in pursuing state-postconviction relief?

The Sixth Circuit, applying circuit precedent, held that the answer is "yes." It reasoned that, if the "factual predicate" is the error that occurred during state-postconviction proceedings, it is not possible to "discover[]" that error, through "due diligence" or otherwise, until the postconviction proceedings occurred. Pet.App.13a. Thus, *regardless* of whether Sexton exercised due diligence in seeking state-postconviction

relief, he timely filed because he filed within one year of the error on which his habeas claim was based. *Id.*

The Sixth Circuit's decision is hard to reconcile with this Court's decision in *Johnson*, 544 U.S. 295. That case involved the meaning of §2255(f)(4). Section 2255(f)(4) allows individuals in federal custody to attack their sentences by seeking relief within one year of "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of reasonable diligence." *Johnson* held that, when an order in a state-collateral proceeding constitutes the "fact" giving rise to a claim under §2255, "the fact of the state-court order" sets "the 1-year period running only if the petitioner has shown due diligence in seeking the order." 544 U.S. at 302. This reading appreciates the fact that the petitioner's bringing the collateral proceeding "causes the factual event to occur." *Id.* at 307. If the petitioner fails to exercise due diligence in causing that event to occur, then he fails to exercise due diligence in discovering it. *Id.* This reading is just as compatible with the text of the due-diligence requirements in §2244(d)(1)(D) and §2255(f)(4) as the Sixth Circuit's reading below. And it better accords with the objective purpose of AEDPA's limitations period, which "quite plainly serves the well-recognized interest in the finality of state court judgments." *Duncan v. Walker*, 533 U.S. 167, 179 (2001).

For present purposes, it does not matter which side of this debate is correct. What matters is that this case presents the question, because the presentation of this question guarantees the Court an opportunity to kill two birds with one stone. If the Court holds that courts may award habeas relief based on errors in state-postconviction proceedings, it may go on to

answer the question of what it takes for such claims to be timely brought under §2244(d)(1)(D). (If the Court holds that such errors *do not* give rise to habeas claims, the second question will never arise and is therefore moot.) The opportunity to answer the second question is important. If the Court rules for Sexton on the first question presented, lower courts are likely to be flooded with habeas claims resting on supposed errors in state-postconviction proceedings. Many of those claims will present timeliness issues. Rather than leaving the lower courts to figure out for themselves whether *Johnson* dictates the result of such timeliness disputes, this Court can provide them with clear guidance in the very same case that permits such claims to go forward in the first place.

To be clear, the Court does not *have to* grant review of the second question in order to address the first question. The Court can affirm or reverse the Sixth Circuit on the first issue alone, leaving the timeliness question for another day. But the option to answer both questions at once makes this a particularly suitable case for addressing the question whether federal courts may award habeas relief based on errors in state-postconviction proceedings.

CONCLUSION

The Court should grant the petition for *certiorari*.

DAVE YOST
Ohio Attorney General

BENJAMIN M. FLOWERS*
Ohio Solicitor General
*Counsel of Record
SAMUEL PETERSON
KYSER BLAKELY
Deputy Solicitors General
JERRI FOSNAUGHT
Assistant Attorney General
30 East Broad Street,
17th Fl.
Columbus, Ohio 43215
614-466-8980
614-466-5087, fax
benjamin.flowers
@ohioattorneygeneral.gov

Counsel for Petitioner

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