No. 22-63

IN THE

Supreme Court of the United States

ANTOIN DENIL MARSHAL,
Petitioner,
v.

STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner, Antoin Denil Marshal, contends that the Texas Court of Criminal Appeals (TCCA) erred during state postconviction proceedings when it applied its decades-old doctrine of laches to bar review of Marshal's state habeas application. He argues that Texas's equitable laches doctrine violates the Due Process Clause. Second, he argues that the TCCA's application of the laches doctrine does not constitute an independent and adequate state law ground that bars review of Marshal's claims. Alternatively, Marshal argues that the State is estopped from relying on the doctrine of laches when its misconduct caused the delay in filing the state habeas corpus application.

Respondent (the "State") objects to Marshal's Questions Presented and suggests the following instead:

> Should the Court grant certiorari to review whether the TCCA erred in denying Marshal's state habeas corpus application based on its own equitable doctrine when: (1) the denial was based on the TCCA's application of Texas law; (2) due process protections do not extend to Texas's application of laches to bar postconviction review and (3) the matter is ripe for federal habeas review in the district court?

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INTRODUCTION

Marshal was convicted of capital murder in Harris County, Texas, and sentenced to life imprisonment on December 1, 2006. In the instant petition for certiorari review of the TCCA's denial of state habeas relief based on its own equitable doctrine, he argues that the TCCA violated his right to due process because, he contends, the court does not regularly and consistently apply laches. Pet. Cert. 22–25. Marshal also contends that the TCCA erred in applying its own equitable doctrine because prosecutorial misconduct caused Marshal's delay in filing his state habeas corpus application. Pet. Cert. 30–31. At base, Marshal is asking the Court to order the TCCA to disregard its parochial equitable laches doctrine and rule on the merits of his state habeas application.

But the Court has never held the equitable doctrine of laches violates due process; the Court has long declined to construe the language of a state statute more narrowly than the construction given by that State's highest court; and to rule in Mashal's favor, the Court would have to reject the TCCA's fact findings. Moreover, Marshal's claims are now ripe for him to raise in a federal habeas petition. There, he may argue against any procedural defaults or deference review of his constitutional claims. Therefore, the Court should deny Marshal's petition for a writ of certiorari.

OPINIONS BELOW

The TCCA's order denying Marshal's state habeas corpus application (located at Pet. Cert. App. 1) is not reported. Likewise, the state habeas trial court's recommended findings and conclusions, and its

accompanying Exhibit A (located at Pet. Cert. App. 2–15, 19–28) are also unreported.

JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1257(a) to review Marshal's claim that the denial of his state habeas corpus application based on the doctrine of laches violated due process.

CONSTITUTIONAL PROVISIONS INVOLVED

The Question Presented involves application of the Due Process Clause in Section I of the Fourteenth Amendment.

STATEMENT OF THE CASE

On October 25, 2005, off-duty Houston police officers Reuben DeLeon was shot twice and died at an apartment maintained for police officers in Houston, Texas. *Marshal v. State*, No. 14-06-01133-CR, 2008 WL 516786, at *1 (Tex. App.—Houston [14th Dist.] Feb. 28, 2008, pet. ref'd).

During the trial, the jury heard testimony from eyewitness Calvin Finnels, Jr., who identified Marshal as one of the men he saw entering the victim's apartment building before he heard gunshots. Pet. Cert. App. 4; *Marshal*, 2008 WL 516786, at *1. None of the fingerprints recovered from the scene matched Marshal's fingerprints, and none of the DNA recovered from the "do-rag" or watch found at the scene matched Marshal's DNA. Pet. Cert. App. 6; *Marshal*, 2008 WL 516786, at *1.

Marshal was convicted of capital murder for killing Officer DeLeon and sentenced to life imprisonment. Pet. Cert. App. 6; 49–55; *Marshal*, 2008 WL 516786, at *2. An intermediate Texas appellate court affirmed Marshal's conviction and sentence. *Marshal*, 2008 WL 516786. Marshal filed a petition for discretionary review in the TCCA, but that court refused it on February 6, 2009. *Id.* Marshal did not file a petition for certiorari in this Court, so the direct appeal process ended, and his conviction became final.

In July 2020, Marshal initiated postconviction proceedings by filing a state habeas application alleging that the prosecutors suppressed favorable evidence and used false testimony, and that he was denied effective assistance of counsel. *See* Pet. Cert. 6. The state habeas application did not contain an actual innocence claim. Pet. Cert. App. 8. After the state habeas trial court held a live evidentiary hearing, the State filed an advisory that the DNA found on the "do-rag" had been determined to match a David W. Wesley. *Id.* Wesley was never identified as a witness, accomplice, or victim during Marshal's trial. *Id*. at 9.

Marshal filed an advisory with the state habeas trial court alleging that if the DNA from the "do-rag" had been uploaded to CODIS sooner, then an "innocence project" would have taken Marshal's case and there would not have been such a lengthy delay in filing his state habeas corpus application. *Id.* The trial court found Marshal's advisory to be conclusory and speculative since the entities contacted by Marshal knew at the time that he contacted them in pursuit of representation that Marshal's DNA had not been found on the "do-rag." *Id.* The state habeas trial court

ultimately recommended that the TCCA deny relief based on the doctrine of laches because: (1) Marshal's eleven-year delay in filing an application for state habeas corpus relief was unreasonable; (2) the delay was not the result of "trials and tribulations" with attorneys; (3) he did not provide any explanation for the lack of diligence between 2014 and 2018; (4) he presented no other compelling reason for equitable relief; (5) he had not presented a claim of actual innocence; and (6) the State had been materially prejudiced by the delay because the State would not be able to challenge Finnels's credibility because he was deceased. *Id.* at 14–15. The TCCA denied Marshal's state habeas corpus application based on the findings of the state habeas trial court after a hearing and on the TCCA's independent review of the record. *Id.* at 1; Tex. Code Crim. Proc. art. 11.07.

ARGUMENT

I. The Court Should Not Grant Certiorari Because It Would Require the Court to Review the TCCA's Application of Its Own Procedural Bar.

The gravamen of Marshal's complaint is that the TCCA misapplied its own equitable doctrine. Pet. Cert. 22–25. Even if it had, that would not warrant this Court's review. Texas's doctrine of laches is a matter of state law, and the Court has long held that it has "no authority to construe the language of a state statute more narrowly than the construction given by that State's highest court." *City of Chicago v. Morales*, 527 U.S. 41, 61 (1999). "Comity and respect for federalism compel [the Court] to defer to the decisions of state

courts on issues of state law," a practice that "reflects [the Court's] understanding that the decisions of state courts are definitive pronouncements of the will of the States as sovereigns." *Bush v. Gore*, 531 U.S. 98, 112 (2000) (concurring opinion of Chief Justice Rehnquist, joined by Justice Scalia and Justice Thomas). Thus, the Court is "bound" by a state's construction and interpretation of its own laws, except in "extreme circumstances." *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975); *Radio Station WOW v. Johnson*, 326 U.S. 120, 129 (1945) (the Court presented on rare occasions where the state's interpretation of its law was "an obvious subterfuge to evade consideration of a federal issue."). Because Marshal failed to present any extreme circumstance, this Court should deny certiorari because there is an adequate and independent state-law ground for the decision below. *Mullaney*, 421 U.S. at 691.

The application of the doctrine of laches rests solely within the TCCA's broad discretion. And simply being discretionary cannot negate the adequacy of the doctrine as a bar for relief, as "a discretionary state procedural rule can serve as an adequate ground to bar federal habeas review." *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009). Such a discretionary rule may still be regularly applied "even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Id.*

The Court has previously addressed a similar adequate and independent application of a State procedural bar to deny state habeas relief. As the Court unanimously held in *Walker v. Martin*, the California Supreme Court's practice of barring post-conviction

review of "substantially delayed" state habeas claims was an adequate and independent procedural bar to review in federal habeas despite the considerable range of its application. 562 U.S. 307, 310–22 (2011). The same holds true for Texas. Marshal's arguments about the allegedly irregular application of the doctrine of laches ignores this Court's thorough understanding of the purposes for such a procedural bar. *Id.* Marshal disregards the complexity of various criminal conviction challenges and how an applicant's delay may, or may not, affect the equitable concerns for finality. The TCCA's sparing application of the doctrine in a narrow set of circumstances is appropriate considering the broad array of cases it reviews. Such discretion should not be disrupted. *Kindler*, 558 U.S. at 60–61.

Marshal asserts that the TCCA is prohibited from denying state habeas review based on untimeliness because the TCCA inconsistently applies its own equitable doctrine. Pet. Cert. 22–25. Marshal argues that this case is analogous to *Ford v. Georgia*, 498 U.S. 411 (1991), where the Court held that a state court must strictly and regularly follow its own procedural rule to constitute an independent and adequate state ground for barring review of federal constitutional claims. However, he distinction between *Ford* and this matter is at least two-fold. First, *Ford* stands for the proposition that a state court cannot announce a new procedural requirement and then retroactively fault a defendant for having failed to satisfy it. *See* 498 U.S. at 424–25. *Ford* addressed a direct appeal from a trial proceeding that applied a contemporaneous objection rule to a *Batson* claim. *Id.* at 416. Though state courts may certainly adopt such requirements, this Court

explained, a defendant's failure to contemporaneously object at a trial held years before the requirement was announced is not an adequate and independent state law ground for denying review. *Id.* at 423–24. Here, Marshal concedes that he "anticipated" laches would apply to his case. Pet. Cert. at 18. And the TCCA's laches doctrine has been in place for habeas applications since at least 1999. *See Ex parte Carrio*, 992 S.W.2d 486, 488 (Tex. Crim. App. 1999). Marshal knew laches could apply to his application when he failed to file a state habeas application after his direct appeal ended in 2009.

Further, that the laches analysis comes out differently in different cases does not mean the doctrine of laches is not strictly and regularly followed within the meaning of this Court's precedent. As a discretionary, equitable doctrine, laches involves fact-specific considerations particular to each case. Indeed, "length of delay alone will not constitute either unreasonableness of delay or prejudice." *Ex parte Carrio*, 992 S.W.2d at 488. And Marshal points to no instance in which the TCCA, when faced with facts materially similar to his, refused to apply laches as a bar. Texas's laches doctrine is a far cry from the retroactively applied contemporaneous objection requirement in *Ford*.

Additionally, the contemporaneous objection rule provides an avenue for a trial court to correct any error *at the time* to avoid retrial, should the error be harmful. However, the doctrine of laches developed to encourage finality and inequitable results in a collateral attack so many years after a conviction. A deeper examination reveals that the two proceedings, and their respective

independent and adequate bars, are not comparable. Thus, Marshal's reliance on *Ford* is misguided.

Finally, Marshal's effort to show the inconsistent application of the laches bar redounds against granting certiorari. *See* Pet. Cert. 23–25 fn. 11–18. He asks this Court to reperform and reweigh the TCCA's fact intensive, *equitable* calculus across literally dozens of cases hoping the Court will find an exception to *Kindler*. The Court should decline to do so. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). In essence, Marshal wishes to bypass federal habeas and its requirements for overcoming state procedural bars by filing this petition as opposed to filing with the federal district court. But this Court has held on numerous occasions that it "will not review a question of federal law decided by a state court if the decision of that court rests on a state-law ground that is independent of the federal question and adequate to support the judgment" because "[the Court] in fact lack[s] jurisdiction to review such independently supported judgments on direct appeal: since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory." *Sochor v. Florida,* 504 U.S. 527, 533 (1992); *Michigan v. Long,* 463 U.S. 1032, 1042 (1983).

Furthermore, the Court's deference to "a state trial court's findings of fact" applies "with equal force" to its review of matters even "with a federal constitutional claim." *Hernandez v. New York*, 500 U.S. 352, 366

(1991); *Miller v. Fenton*, 474 U.S. 104, 113 (1985) ("[A]n issue does not lose its factual character merely because its resolution is dispositive of the ultimate constitutional question."). In order to review the TCCA's application of its own equitable doctrine this Court would first be required to review the state habeas trial court's factual findings that: (1) Marshal's eleven-year delay in filing an application for state habeas corpus relief was unreasonable; (2) the delay was not the result of "trials and tribulations" with attorneys; (3) he did not provide any explanation for the lack of diligence between 2014 and 2018; (4) he presented no other compelling reason for equitable relief; (5) he has not presented a claim of actual innocence; and (6) the State has been materially prejudiced by the delay because the State would not be able to present Finnels's credibility. Pet. Cert. App. 14–15. Thus, the Court would have to make numerous, antecedent factual determinations before ever deciding if the TCCA misapplied its own law to the facts. For example, this Court would first need to find that Marshal's allegation was true—his delay in filing a state habeas application was caused when the district attorney's office "made a conscious decision not to upload the full male DNA profile from the do-rag found at the murder scene to the CODIS database in 2006." Pet. Cert. 31. But this negates the deference owed to the state habeas trial court's findings of facts, requiring this the Court to resolve disputed factual issues and reject the facts found by the lower court. Such a resolution conflicts with prior Supreme Court decisions. *Hernandez*, 500 U.S. at 366. The Court normally does "not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 227 (1925); *accord* Sup. Ct. R.

10 (certiorari is "rarely granted" when the petition asserts "erroneous factual findings"). Consequently, Marshal's request to have this Court operate outside its normal purview should be denied.

II. The Court Should Deny Certiorari Because Texas's Application of Laches to Bar Postconviction Review Does Not Violate Due Process.

A. The equitable laches doctrine in Texas

Marshal's state habeas application was denied based on the TCCA's adoption of the state habeas trial court's findings that applied the laches doctrine to bar review of Marshal's claims. Pet. Cert. App. 1, 9–15 (citing *Ex Parte Perez*, 398 S.W.3d 206, 216 (Tex. Crim. App. 2013)). The decision to apply laches to bar postconviction review of a claim requires the courts to consider "among all relevant circumstances, factors such as the length of the applicant's delay in filing the application, the reasons for the delay, and the degree and type of prejudice resulting from the delay." *Ex Parte Perez*, 398 S.W.3d at 217. Additional compelling reasons considered are new evidence demonstrating actual innocence or whether the applicant is "reasonably likely to prevail on the merits." *Id.* at 218. As the TCCA explained, its "broadened prejudice standard is consistent with the principle that the writ of habeas corpus is an extraordinary remedy, any grant of which must be underscored by elements of fairness and equity." *Id.* at 216.

B. Marshal's constitutional arguments are illusory.

Marshal argues that "the Court should grant certiorari to determine whether application of the doctrine of laches violates the Due Process Clause of the Fourteenth Amendment in the absence of a statute of limitations or fair notice as to when the application must be filed[.]" Pet. Cert. 31–32, 28–29. Likening a state habeas proceeding to a criminal trial proceeding, Marshal argues that the TCCA's "arbitrary and capricious" application of the doctrine of laches violates due process, which "requires that a person receive notice of what conduct is prohibited and what conduct is required to comply with the law." *Id.* at 28.

The Due Process Clause "does not establish any right to an appeal . . . and certainly does not establish any right to collaterally attack a final judgment of conviction." *United States v. MacCollom*, 426 U.S. 317, 323 (1976); *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) ("States have no obligation to provide [postconviction] relief"). Yet, when a state does provide a non-discretionary right to appeal a conviction, the state must then provide a fair opportunity for criminal defendants to present their claims as laid out in that state's procedures. *See Griffin v. Illinois*, 351 U.S. 12, 18 (1956); *Ross v. Moffitt*, 417 U.S. 600, 610–11 (1974). Likewise, Texas's habeas review should generally comply with due process, meaning the state procedure should be in accord with fundamental fairness. *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (due process concerns over the recusal of a biased judge); *Dist. Att'y Office for Third Jud. Dist. v. Osborne*, 557 US 52, 68–69 (2009) (recognizing a liberty interest in

pursuing the postconviction relief granted by the State).

Marshal has already been tried, convicted, and availed himself of an appeal under Texas law. Additionally, he was also provided due process when the TCCA received and reviewed his state habeas application. However, Marshal is not alleging that the State has violated his due process protections by preventing him from filing or that the state habeas hearing was somehow biased. Rather, he is challenging the TCCA's discretionary application of its own equitable doctrine during his state habeas proceeding. But due process protections do not extend as far as Marshal proposes. In providing due process to habeas applicants, the State "has more flexibility in deciding what procedures are needed in the context of postconviction relief." *Osborne*, 557 U.S. at 69. Thus, contrary to Marshal's claims, due process does not "dictat[e] the exact form [postconviction review] must assume." *Finley*, 481 U.S. at 559. Marshal's "right to due process is not parallel to a trial right, but rather must be analyzed in light of the fact that he has already been found guilty at a fair trial and has only a limited interest in postconviction relief." *Osborne*, 557 U.S. at 69. Like *Osborne*, Marshal had his chance to demonstrate "his innocence with new evidence under state law." *Id.* at 68. But Marshal failed to establish his actual innocence, and opted to dismantle a longstanding equitable doctrine, using a generalized due process argument, and force the TCCA to review a decades-old conviction.

In the criminal law context, this Court has "'defined the category of infractions that violate 'fundamental

fairness' very narrowly'" premised on "the recognition that, '[b]eyond the specific guarantees enumerated in the Bill of Rights, the Due Process Clause has limited operation.'" *Medina v. California*, 505 U.S. 437, 443 (1992) (quoting *Dowling v. United States*, 493 U.S. 342, 352 (1990) (alterations in original). Moreover, "it has never been thought" that this Court functions "as a rule-making organ for the promulgation of state rules of criminal procedure." *Spencer v. Texas*, 385 U.S. 554, 564 (1967).

Texas's laches doctrine satisfies the fundamental fairness requirement. Texas courts consider "factors such as the length of the applicant's delay in filing the application, the reasons for the delay, and the degree and type of prejudice resulting from the delay." *Ex Parte Perez*, 398 S.W.3d at 217. If that traditional sort of equitable balancing violates due process, then all manner of state and federal doctrines must be jettisoned.

Important too, until recently the Rules Governing Section 2254 Cases in the Federal Courts expressly authorized the district courts to dismiss federal habeas petitions under the equitable doctrine of laches. *See e.g.*, *Baxter v. Estelle*, 614 F.2d 1030, 1032–33 (5th Cir. 1980) ("A petition for habeas corpus may be dismissed if the petitioner's unreasonable delay in filing the petition has prejudiced the state in its ability to respond. This rule has traditionally been applied to habeas corpus petitions under the equitable doctrine of laches, and it continues to apply under the provisions of Rule 9(a) of the Rules Governing s 2254 Cases."). Given that federal habeas petitions have traditionally been subject to laches, it is hard to see how States could

be prohibited from applying the same doctrine. Marshal's constitutional claim fails for this reason alone. *See Smith v. Phillips*, 455 U.S. 209, 218 (1982) ("It seems to us to follow 'as the night the day' that if in the federal system a post-trial hearing such as that conducted here is sufficient to decide allegations of juror partiality, the Due Process Clause of the Fourteenth Amendment cannot possibly require more of a state court system.").

Finally, insofar as Marshal contends that the TCCA's denial of his state habeas application implicates the Sixth Amendment's right to effective assistance of counsel because there was a delay in Marshal finding adequate legal representation to file his state habeas application, Pet. Cert. 1–2, 31, this contention must also fail because the Court has held that there is not a Sixth Amendment right to counsel during postconviction proceedings. *Finley*, 481 U.S. at 555–57 ("[A] defendant has no federal constitutional right to counsel when . . . attacking a conviction that has long since become final upon exhaustion of the appellate process"). Accordingly, because Marshal cannot present a constitutional violation by the TCCA's decision, this Court should deny certiorari.

III. The Questions Presented Are Premature and Are Ripe for Review on Federal Habeas.

Rule 10 provides that certiorari review is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. *See* Sup. Ct. R. 10. Certiorari review of state habeas decisions is generally inappropriate

where a claim is ripe for federal habeas review. Marshal advances no special or important reason for the Court to review the application of a procedural bar in a state habeas proceeding before he has even initiated a federal habeas review of his claims. As Justice Stevens once noted:

> [T]his Court rarely grants review at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims. Instead, the Court usually deems federal habeas proceedings to be the more appropriate avenues for consideration of federal constitutional claims.

Kyles v. Whitley, 498 U.S. 931, 932 (1990) (Stevens, J. concurring).

Indeed, Marshal's arguments here belong in the district court in a federal habeas corpus petition, which he has not yet filed. Prudence calls for the Court to deny certiorari.

CONCLUSION

Based on the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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