

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

MCQUIGGIN, WARDEN v. PERKINS**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

No. 12–126. Argued February 25, 2013—Decided May 28, 2013

Rodney Henderson was found stabbed to death after leaving a party in Flint, Michigan, with respondent Floyd Perkins and Damarr Jones. Perkins was charged with murder. Jones, the key prosecution witness, testified that Perkins alone committed the murder while Jones looked on. Perkins, however, testified that Jones and Henderson left him during the evening, and that he later saw Jones with blood on his clothing. Perkins was convicted of first-degree murder and sentenced to life in prison without the possibility of parole. His conviction became final in 1997.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) gives a state prisoner one year to file a federal habeas petition, starting from “the date on which the judgment became final.” 28 U. S. C. §2244(d)(1)(A). But if the petition alleges newly discovered evidence, the filing deadline is one year from “the date on which the factual predicate of the claim . . . could have been discovered through . . . due diligence.” §2244(d)(1)(D).

More than 11 years after his conviction became final, Perkins filed his federal habeas petition, alleging, *inter alia*, ineffective assistance of trial counsel. To overcome AEDPA’s time limitations, he asserted newly discovered evidence of actual innocence, relying on three affidavits, the most recent dated July 16, 2002, each pointing to Jones as the murderer. The District Court found that, even if the affidavits could be characterized as evidence newly discovered, Perkins had failed to show diligence entitling him to equitable tolling of AEDPA’s limitations period. Alternatively, the court found, Perkins had not shown that, taking account of all the evidence, no reasonable juror would have convicted him. The Sixth Circuit reversed. Acknowledging that Perkins’ petition was untimely and that he had not diligently

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pursued his rights, the court held that Perkins' actual-innocence claim allowed him to present his ineffective-assistance-of-counsel claim as if it had been filed on time. In so ruling, the court apparently considered Perkins' delay irrelevant to appraisal of his actual-innocence claim.

Held:

1. Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup v. Delo*, 513 U. S. 298, and *House v. Bell*, 547 U. S. 518, or expiration of the AEDPA statute of limitations, as in this case. Pp. 7–14.

(a) Perkins, who waited nearly six years from the date of the 2002 affidavit to file his petition, maintains that an actual-innocence plea can overcome AEDPA's one-year limitations period. This Court's decisions support his view. The Court has not resolved whether a prisoner may be entitled to habeas relief based on a freestanding actual-innocence claim, *Herrera v. Collins*, 506 U. S. 390, 404–405, but it has recognized that a prisoner "otherwise subject to defenses of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence," *id.*, at 404.

The Court has applied this "fundamental miscarriage of justice exception" to overcome various procedural defaults, including, as most relevant here, failure to observe state procedural rules, such as filing deadlines. See *Coleman v. Thompson*, 501 U. S. 722, 750. The exception, the Court's decisions bear out, survived AEDPA's passage. See, e.g., *Calderon v. Thompson*, 523 U. S. 538, 558; *House*, 547 U. S., at 537–538. These decisions "see[k] to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case." *Schlup*, 513 U. S., at 324. Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA's statute of limitations. Pp. 7–9.

(b) The State urges that recognition of a miscarriage of justice exception would render §2244(d)(1)(D) superfluous. That is not so, for AEDPA's time limitations apply to the typical case in which no actual-innocence claim is made, while the exception applies to a severely confined category: cases in which new evidence shows "it is more likely than not that 'no reasonable juror' would have convicted [the petitioner]," *Schlup*, 513 U. S., at 329. Many petitions that could not pass through the actual-innocence gateway will be timely or not measured by §2244(d)(1)(D)'s triggering provision. Nor does Congress' inclusion of a miscarriage of justice exception in §§2244(b)(2)(B) and 2254(e)(2) indicate an intent to preclude courts

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from applying the exception in §2244(d)(1)(D) cases. Congress did not simply incorporate the miscarriage of justice exception into §§2244(b)(2)(B) and 2254(e)(2). Rather, Congress constrained the exception's application with respect to second-or-successive petitions and the holding of evidentiary hearings in federal court. The more rational inference to draw from the incorporation of a modified version of the exception into other provisions of AEDPA is that, in a case not governed by those provisions, the exception survived AEDPA's passage intact and unrestricted. Pp. 9–14.

2. A federal habeas court, faced with an actual-innocence gateway claim, should count unjustifiable delay on a habeas petitioner's part, not as an absolute barrier to relief, but as a factor in determining whether actual innocence has been reliably shown. A petitioner invoking the miscarriage of justice exception "must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Schlup*, 513 U. S., at 327. Unexplained delay in presenting new evidence bears on the determination whether the petitioner has made the requisite showing. Taking account of the delay in the context of the merits of a petitioner's actual-innocence claim, rather than treating timeliness as a threshold inquiry, is tuned to the exception's underlying rationale of ensuring "that federal constitutional errors do not result in the incarceration of innocent persons." *Herrera*, 506 U. S., at 404. Pp. 14–16.

3. Here, the District Court's appraisal of Perkins' petition as insufficient to meet *Schlup*'s actual-innocence standard should be dispositive, absent cause, which this Court does not currently see, for the Sixth Circuit to upset that evaluation. Under *Schlup*'s demanding standard, the gateway should open only when a petition presents "evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." 513 U. S., at 316. Pp. 16–17.

670 F. 3d 665, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined, and in which ALITO, J., joined as to Parts I, II, and III.

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SUPREME COURT OF THE UNITED STATES

No. 12–126

GREG McQUIGGIN, WARDEN, PETITIONER *v.* FLOYD PERKINS

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

[May 28, 2013]

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the “actual innocence” gateway to federal habeas review applied in *Schlup v. Delo*, 513 U. S. 298 (1995), and further explained in *House v. Bell*, 547 U. S. 518 (2006). In those cases, a convincing showing of actual innocence enabled habeas petitioners to overcome a procedural bar to consideration of the merits of their constitutional claims. Here, the question arises in the context of 28 U. S. C. §2244(d)(1), the statute of limitations on federal habeas petitions prescribed in the Antiterrorism and Effective Death Penalty Act of 1996. Specifically, if the petitioner does not file her federal habeas petition, at the latest, within one year of “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), can the time bar be overcome by a convincing showing that she committed no crime?

We hold that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup* and *House*, or, as in this case, expiration of the statute of

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limitations. We caution, however, that tenable actual-innocence gateway pleas are rare: “[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.” *Schlup*, 513 U. S., at 329; see *House*, 547 U. S., at 538 (emphasizing that the *Schlup* standard is “demanding” and seldom met). And in making an assessment of the kind *Schlup* envisioned, “the timing of the [petition]” is a factor bearing on the “reliability of th[e] evidence” purporting to show actual innocence. *Schlup*, 513 U. S., at 332.

In the instant case, the Sixth Circuit acknowledged that habeas petitioner Perkins (respondent here) had filed his petition after the statute of limitations ran out, and had “failed to diligently pursue his rights.” Order in No. 09–1875, (CA6, Feb. 24, 2010), p. 2 (Certificate of Appealability). Nevertheless, the Court of Appeals reversed the decision of the District Court denying Perkins’ petition, and held that Perkins’ actual-innocence claim allowed him to pursue his habeas petition as if it had been filed on time. 670 F. 3d 665, 670 (2012). The appeals court apparently considered a petitioner’s delay irrelevant to appraisal of an actual-innocence claim. See *ibid.*

We vacate the Court of Appeals’ judgment and remand the case. Our opinion clarifies that a federal habeas court, faced with an actual-innocence gateway claim, should count unjustifiable delay on a habeas petitioner’s part, not as an absolute barrier to relief, but as a factor in determining whether actual innocence has been reliably shown. See Brief for Respondent 45 (habeas court “could . . . hold the unjustified delay *against the petitioner* when making credibility findings as to whether the [actual-innocence] exception has been met”).

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