SUPREME COURT OF THE UNITED STATES

No. 00–5961

MELVIN TYLER, PETITIONER *v.* BURL CAIN, WARDEN

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

[June 28, 2001]

JUSTICE THOMAS delivered the opinion of the Court.

Under *Cage* v. *Louisiana*, 498 U. S. 39 (1990) *(per curiam),* a jury instruction is unconstitutional if there is a reasonable likelihood that the jury understood the instruction to allow conviction without proof beyond a reasonable doubt.[1] In this case, we must decide whether this rule was "made retroactive to cases on collateral review by the Supreme Court." 28 U. S. C. §2244(b)(2)(A) (1994 ed., Supp. V). We hold that it was not.

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[1] In *Cage,* this Court observed that a reasonable juror "could have" interpreted the instruction at issue to permit a finding of guilt without the requisite proof. 498 U. S., at 41. In *Estelle* v. *McGuire,* 502 U. S. 62, 72, and n. 4 (1991), however, this Court made clear that the proper inquiry is not whether the instruction "could have" been applied unconstitutionally, but whether there is a reasonable likelihood that the jury *did* so apply it. See also *Victor* v. *Nebraska,* 511 U. S. 1, 6 (1994) ("The constitutional question in the present cases . . . is whether there is a reasonable likelihood that the jury understood the instructions to allow conviction based on proof insufficient to meet the [constitutional] standard").

I

During a fight with his estranged girlfriend in March 1975, petitioner Melvin Tyler shot and killed their 20-day-old daughter. A jury found Tyler guilty of second-degree murder, and his conviction was affirmed on appeal. After sentencing, Tyler assiduously sought postconviction relief. By 1986, he had filed five state petitions, all of which were denied. See *State ex rel. Tyler* v. *Blackburn,* 494 So. 2d 1171 (La. 1986); *State* v. *Tyler,* 446 So. 2d 1226 (La. 1984); *State ex rel. Tyler* v. *State,* 437 So. 2d 1142 (La. 1983); *State* v. *Tyler,* 430 So. 2d 92 (La. 1983); *State ex rel. Tyler* v. *Maggio,* 428 So. 2d 483 (La. 1982). He next filed a federal habeas petition, which was unsuccessful as well. *Tyler* v. *Butler,* No. 88cv4929 (ED La.), aff'd, *Tyler* v. *Whitley,* 920 F. 2d 929 (CA5 1990). After this Court's decision in *Cage,* Tyler continued his efforts. Because the jury instruction defining reasonable doubt at Tyler's trial was substantively identical to the instruction condemned in *Cage,* Tyler filed a sixth state postconviction petition, this time raising a *Cage* claim. The State District Court denied relief, and the Louisiana Supreme Court affirmed. *State ex rel. Tyler* v. *Cain,* 684 So. 2d 950 (1996).

In early 1997, Tyler returned to federal court. Seeking to pursue his *Cage* claim, Tyler moved the United States Court of Appeals for the Fifth Circuit for permission to file a second habeas corpus application, as required by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214.[2] The Court of Appeals recognized that it could not grant the motion unless Tyler made "a prima facie showing," §2244(b)(3)(C), that his "claim

[2] AEDPA requires that, "[b]efore a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U. S. C. §2244(b)(3)(A) (1994 ed., Supp. V).

relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," §2244(b)(2)(A). Finding that Tyler had made the requisite prima facie showing, the Court of Appeals granted the motion, thereby allowing Tyler to file a habeas petition in District Court.

The District Court proceeded to the merits of Tyler's claim and held that, although *Cage* should apply retroactively, App. 5–7 (citing *Humphrey* v. *Cain,* 138 F. 3d 552 (CA5 1998) (en banc)), Tyler was not entitled to collateral relief. Under AEDPA, a state prisoner can prevail only if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." §2254(d)(1). Concluding that Tyler could not overcome this barrier, the District Court denied his petition.

The Court of Appeals affirmed. Judgt. order reported at 218 F. 3d 744 (CA5 2000). It stated, however, that the District Court erred by failing first to determine whether Tyler "satisfied AEDPA's successive habeas standard." App. 15. AEDPA requires a district court to dismiss a claim in a second or successive application unless, as relevant here, the applicant "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,"[3] §2244(b)(2)(A) (emphasis added); §2244(b)(4). Relying on Circuit precedent, see *Brown* v.

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[3] This requirement differs from the one that applicants must satisfy in order to obtain permission from a court of appeals to file a second or successive petition. As noted above, a court of appeals may authorize such a filing only if it determines that the applicant makes a "prima facie showing" that the application satisfies the statutory standard. §2244(b)(3)(C). But to survive dismissal in district court, the applicant must actually "sho[w]" that the claim satisfies the standard.

Lensing, 171 F. 3d 1031 (CA5 1999); *In re Smith,* 142 F. 3d 832 (CA5 1998), the Court of Appeals concluded that Tyler did not meet this standard because he "could not show that any Supreme Court decision renders the *Cage* decision retroactively applicable to cases on collateral review." App. 15.

The Courts of Appeals are divided on the question whether *Cage* was "made retroactive to cases on collateral review by the Supreme Court," as required by 28 U. S. C. §2244(b)(2)(A). Compare *Rodriguez* v. *Superintendent,* 139 F. 3d 270 (CA1 1998) (holding that *Cage* has not been made retroactive by the Supreme Court); *Brown, supra* (same); *In re Hill,* 113 F. 3d 181 (CA11 1997) (same), with *West* v. *Vaughn,* 204 F. 3d 53 (CA3 2000) (holding that *Cage* has been made retroactive to cases on collateral review). To resolve this conflict, we granted certiorari. 531 U. S. 1051 (2000).

II

AEDPA greatly restricts the power of federal courts to award relief to state prisoners who file second or successive habeas corpus applications. If the prisoner asserts a claim that he has already presented in a previous federal habeas petition, the claim must be dismissed in all cases. §2244(b)(1). And if the prisoner asserts a claim that was *not* presented in a previous petition, the claim must be dismissed unless it falls within one of two narrow exceptions. One of these exceptions is for claims predicated on newly discovered facts that call into question the accuracy of a guilty verdict. §2244(b)(2)(B). The other is for certain claims relying on new rules of constitutional law. §2244(b)(2)(A).

It is the latter exception that concerns us today. Specifically, §2244(b)(2)(A) covers claims that "rel[y] on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previ-

ously unavailable." This provision establishes three prerequisites to obtaining relief in a second or successive petition: First, the rule on which the claim relies must be a "new rule" of constitutional law; second, the rule must have been "made retroactive to cases on collateral review by the Supreme Court"; and third, the claim must have been "previously unavailable." In this case, the parties ask us to interpret only the second requirement; respondent does not dispute that *Cage* created a "new rule" that was "previously unavailable." Based on the plain meaning of the text read as a whole, we conclude that "made" means "held" and, thus, the requirement is satisfied only if this Court has held that the new rule is retroactively applicable to cases on collateral review.

A

As commonly defined, "made" has several alternative meanings, none of which is entirely free from ambiguity. See, *e.g.*, Webster's Ninth New Collegiate Dictionary 718–719 (1991) (defining "to make" as "to cause to happen," "to cause to exist, occur or appear," "to lay out and construct," and "to cause to act in a certain way"). Out of context, it may thus be unclear which meaning should apply in §2244(b)(2)(A), and how the term should be understood. We do not, however, construe the meaning of statutory terms in a vacuum. Rather, we interpret the words "in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dept. of Treasury,* 489 U. S. 803, 809 (1989). In §2244(b)(2)(A), the word "made" falls within a clause that reads as follows: "[A] new rule of constitutional law, made retroactive to cases on collateral review *by the Supreme Court.*" (Emphasis added.) Quite significantly, under this provision, the Supreme Court is the only entity that can "ma[k]e" a new rule retroactive. The new rule becomes retroactive, not by the decisions of the lower court or by the combined action of

the Supreme Court and the lower courts, but simply by the action of the Supreme Court.

The only way the Supreme Court can, by itself, "lay out and construct" a rule's retroactive effect, or "cause" that effect "to exist, occur, or appear," is through a holding. The Supreme Court does not "ma[k]e" a rule retroactive when it merely establishes principles of retroactivity and leaves the application of those principles to lower courts. In such an event, any legal conclusion that is derived from the principles is developed by the lower court (or perhaps by a combination of courts), not by the Supreme Court.[4] We thus conclude that a new rule is not "made retroactive to cases on collateral review" unless the Supreme Court holds it to be retroactive.[5]

To be sure, the statute uses the word "made," not "held." But we have already stated, in a decision interpreting another provision of AEDPA, that Congress need not use the word "held" to require as much. In *Williams* v. *Taylor,*

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[4] Similarly, the Supreme Court does not make a rule retroactive through dictum, which is not binding. Cf. *Seminole Tribe of Fla.* v. *Florida,* 517 U. S. 44, 67 (1996) (contrasting dictum with holdings, which include the final disposition of a case as well as the preceding determinations "*necessary* to that result" (emphasis added)).

[5] Tyler argues that defining "made" to mean "held" would create an anomaly: When it is obvious that a rule should be retroactive, the courts of appeals will not be in conflict, and this Court will never decide to hear the case and will never make the rule retroactive. Thus, Tyler concludes, we should construe §2244(b)(2)(A) to allow for retroactive application whenever the "principles" of our decisions, as interpreted by the courts of appeals, indicate that retroactivity is appropriate. This argument is flawed, however. First, even if we disagreed with the legislative decision to establish stringent procedural requirements for retroactive application of new rules, we do not have license to question the decision on policy grounds. See *Connecticut Nat. Bank* v. *Germain,* 503 U. S. 249, 253–254 (1992). Second, the "anomalous" result that Tyler predicts is speculative at best, because AEDPA does not limit our discretion to grant certiorari to cases in which the courts of appeals have reached divergent results.

529 U. S. 362 (2000), we concluded that the phrase "clearly established Federal law, as *determined* by the Supreme Court of the United States," §2254(d)(1) (emphasis added), "refers to the holdings, as opposed to the dicta, of this Court's decisions," *id.*, at 412. The provision did not use the word "held," but the effect was the same. Congress, needless to say, is permitted to use synonyms in a statute. And just as "determined" and "held" are synonyms in the context of §2254(d)(1), "made" and "held" are synonyms in the context of §2244(b)(2)(A).

We further note that our interpretation is necessary for the proper implementation of the collateral review structure created by AEDPA. Under the statute, before a state prisoner may file a second or successive habeas application, he "shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." §2244(b)(3)(A). The court of appeals must make a decision on the application within 30 days. §2244(b)(3)(D). In this limited time, the court of appeals must determine whether the application "makes a prima facie showing that [it] satisfies the [second habeas standard]." §2244(b)(3)(C). It is unlikely that a court of appeals could make such a determination in the allotted time if it had to do more than simply rely on Supreme Court holdings on retroactivity. The stringent time limit thus suggests that the courts of appeals do not have to engage in the difficult legal analysis that can be required to determine questions of retroactivity in the first instance.

B

Because "made" means "held" for purposes of §2244(b)(1)(A), it is clear that the *Cage* rule has not been "made retroactive to cases on collateral review by the Supreme Court." *Cage* itself does not hold that it is retroactive. The only holding in *Cage* is that the particular jury instruction violated the Due Process Clause.

Tyler argues, however, that a subsequent case, *Sullivan* v. *Louisiana,* 508 U. S. 275 (1993), made the *Cage* rule retroactive. But *Sullivan* held only that a *Cage* error is structural– *i.e.,* it is not amenable to harmless-error analysis and "will always invalidate the conviction." 508 U. S., at 279. Conceding that the holding in *Sullivan* does not render *Cage* retroactive to cases on collateral review, Tyler contends that the reasoning in *Sullivan* makes clear that retroactive application is warranted by the principles of *Teague* v. *Lane,* 489 U. S. 288 (1989). Under *Teague,* a new rule can be retroactive to cases on collateral review if, and only if, it falls within one of two narrow exceptions to the general rule of nonretroactivity. *Id.,* at 311–313 (plurality opinion). See also *O'Dell* v. *Netherland,* 521 U. S. 151, 156–157 (1997). The exception relevant here is for "watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding." *Graham* v. *Collins,* 506 U. S 461, 478 (1993). To fall within this exception, a new rule must meet two requirements: Infringement of the rule must "seriously diminish the likelihood of obtaining an accurate conviction," and the rule must " '"alter our understanding of the *bedrock procedural elements*" ' essential to the fairness of a proceeding." *Sawyer* v. *Smith,* 497 U. S. 227, 242 (1990) (quoting *Teague, supra,* at 311 (plurality opinion), in turn quoting *Mackey* v. *United States,* 401 U. S. 667, 693 (1971) (Harlan, J., concurring in judgments in part and dissenting in part)).

According to Tyler, the reasoning of *Sullivan* demonstrates that the *Cage* rule satisfies both prongs of this *Teague* exception. First, Tyler notes, *Sullivan* repeatedly emphasized that a *Cage* error fundamentally undermines the reliability of a trial's outcome. And second, Tyler contends, 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 determina-

tion of guilt beyond a reasonable doubt. Tyler's arguments fail to persuade, however. The most he can claim is that, based on the principles outlined in *Teague,* this Court *should* make *Cage* retroactive to cases on collateral review. What is clear, however, is that we have not "made" *Cage* retroactive to cases on collateral review.[6]

JUSTICE BREYER observes that this Court can make a rule retroactive over the course of two cases. See *post,* at 3 (dissenting opinion). We do not disagree that, with the right combination of holdings, the Court could do this. But even so, the Court has not made *Cage* retroactive. Multiple cases can render a new rule retroactive only if the holdings in those cases necessarily dictate retroactivity of the new rule. The only holding in *Sullivan* is that a *Cage* error is structural error. There is no second case that held that all structural-error rules apply retroactively or that all structural-error rules fit within the second *Teague* exception. The standard for determining whether an error is structural, see generally *Arizona* v. *Fulminante,* 499 U. S. 279 (1991), is not coextensive with the second *Teague* exception,[7] and a holding that a particular

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[6] We also reject Tyler's attempt to find support in our disposition in *Adams* v. *Evatt,* 511 U. S. 1001 (1994). In *Adams,* we vacated an opinion of the Court of Appeals for the Fourth Circuit, which had held that *Cage* was not retroactive, and remanded for further consideration in light of *Sullivan.* Our order, however, was not a "final determination on the merits." *Henry* v. *Rock Hill,* 376 U. S. 776, 777 (1964) *(per curiam).* It simply indicated that, in light of "intervening developments," there was a "reasonable probability" that the Court of Appeals would reject a legal premise on which it relied and which may affect the outcome of the litigation. *Lawrence* v. *Chater,* 516 U. S. 163, 167 (1996) *(per curiam).*

[7] As explained above, the second *Teague* exception is available only if the new rule "'"*alter[s] our understanding* of the bedrock procedural elements"' essential to the fairness of a proceeding." *Sawyer* v. *Smith,* 497 U. S. 227, 242 (1990) (quoting *Teague* v. *Lane,* 489 U. S. 288, 311 (1989) (plurality opinion), in turn quoting *Mackey* v. *United States,* 401

error is structural does not logically dictate the conclusion that the second *Teague* exception has been met.

III

Finally, Tyler suggests that, if *Cage* has not been made retroactive to cases on collateral review, we should make it retroactive today. We disagree. Because Tyler's habeas application was his second, the District Court was required to dismiss it unless Tyler showed that this Court already had made *Cage* retroactive. §2244(b)(4) ("A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the

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U. S. 667, 693 (1971) (Harlan, J., concurring in judgments in part and dissenting in part) (emphasis added)). Classifying an error as structural does not necessarily alter our understanding of these bedrock procedural elements. Nor can it be said that all new rules relating to due process (or even the "fundamental requirements of due process," see *post*, at 5 (dissenting opinion)) alter such understanding. See, *e.g.*, *Sawyer*, *supra*, at 244 (holding that the rule in *Caldwell* v. *Mississippi*, 472 U. S. 320 (1985), did not fit within the second *Teague* exception even though it "added to an existing guarantee of due process protection against fundamental unfairness"); *O'Dell* v. *Netherland,* 521 U. S. 151, 167 (1997) (holding that the rule in *Simmons* v. *South Carolina*, 512 U. S. 154 (1994), which has been described as serving "one of the hallmarks of due process," *id.*, at 175 (O'CONNOR, J, concurring in judgment), did not fit within the second *Teague* exception). On the contrary, the second *Teague* exception is reserved only for truly "watershed" rules. See *O'Dell*, *supra*, at 167; see also *Caspari* v. *Bohlen,* 510 U. S. 383, 396 (1994) (describing such rules as "groundbreaking"); *Graham* v. *Collins,* 506 U. S. 461, 478 (1993) (explaining that the exception is limited to "a small core of rules," which not only seriously enhance accuracy but also "requir[e] observance of those procedures that . . . are implicit in the concept of ordered liberty'") (quoting *Teague, supra*, at 311 (internal quotation marks omitted)); *Saffle* v. *Parks,* 494 U. S. 484, 495 (1990) (focusing on "primacy and centrality" of the rule). As we have recognized, it is unlikely that any of these watershed rules "ha[s] yet to emerge." *Sawyer*, *supra*, at 243 (quoting *Teague*, *supra*, at 313 (plurality opinion)); see also *Graham*, *supra*, at 478.

claim satisfies the requirements of this section"); §2244(b)(2)(A) ("A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless . . . the applicant 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"). We cannot decide today whether *Cage* is retroactive to cases on collateral review, because that decision would not help Tyler in this case. Any statement on *Cage*'s retroactivity would be dictum, so we decline to comment further on the issue.

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The judgment of the Court of Appeals is affirmed.

It is so ordered.