SUPREME COURT OF THE UNITED STATES

No. 09–5327

ALBERT HOLLAND, PETITIONER *v.* FLORIDA

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

[June 14, 2010]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins as to all but Part I, dissenting.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), establishes a 1-year limitations period for state prisoners to seek federal habeas relief, subject to several specific exceptions. 28 U. S. C. §2244(d). The Court concludes that this time limit is also subject to equitable tolling, even for attorney errors that are ordinarily attributable to the client. And it rejects the Court of Appeals' conclusion that Albert Holland is not entitled to tolling, without explaining why the test that court applied was wrong or what rule it should have applied instead. In my view §2244(d) leaves no room for equitable exceptions, and Holland could not qualify even if it did.

I

The Court is correct, *ante*, at 13, that we ordinarily presume federal limitations periods are subject to equitable tolling unless tolling would be inconsistent with the statute. *Young* v. *United States*, 535 U. S. 43, 49 (2002). That is especially true of limitations provisions applicable to actions that are traditionally governed by equitable principles—a category that includes habeas proceedings. See *id.*, at 50. If §2244(d) merely created a limitations period for federal habeas applicants, I agree that applying equitable tolling would be appropriate.

But §2244(d) does much more than that, establishing a detailed scheme regarding the filing deadline that addresses an array of contingencies. In an ordinary case, the clock starts when the state-court judgment becomes final on direct review. §2244(d)(1)(A).[1] But the statute delays the start date—thus effectively tolling the limitations period—in cases where (1) state action unlawfully impeded the prisoner from filing his habeas application, (2) the prisoner asserts a constitutional right newly recognized by this Court and made retroactive to collateral cases, or (3) the factual predicate for the prisoner's claim could not previously have been discovered through due diligence. §2244(d)(1)(B)–(D). It also expressly tolls the limitations period during the pendency of a properly filed application for state collateral relief. §2244(d)(2). Congress, in short, has considered and accounted for specific circumstances that in its view excuse an applicant's delay.

The question, therefore, is not whether §2244(d)'s time

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[1] Title 28 U. S. C. §2244(d) provides:

"(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.

"(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."

bar is subject to tolling, but whether it is consistent with §2244(d) for federal courts to toll the time bar for *additional* reasons beyond those Congress included.

In my view it is not. It is fair enough to infer, when a statute of limitations says nothing about equitable tolling, that Congress did not displace the default rule. But when Congress has *codified* that default rule and specified the instances where it applies, we have no warrant to extend it to other cases. See *United States* v. *Beggerly*, 524 U. S. 38, 48–49 (1998). Unless the Court believes §2244(d) contains an implicit, across-the-board exception that subsumes (and thus renders unnecessary) §2244(d)(1)(B)–(D) and (d)(2), it must rely on the untenable assumption that when Congress enumerated the events that toll the limitations period—with no indication the list is merely illustrative—it implicitly authorized courts to add others as they see fit. We should assume the opposite: that by specifying situations in which an equitable principle applies to a specific requirement, Congress has displaced courts' discretion to develop ad hoc exceptions. Cf. *Lonchar* v. *Thomas*, 517 U. S. 314, 326–328 (1996).

The Court's responses are unpersuasive. It brushes aside §2244(d)(1)(B)–(D), apparently because those subdivisions merely delay the *start* of the limitations period but do not suspend a limitations period already underway. *Ante*, at 15. But the Court does not explain why that distinction makes any difference,[2] and we have described a

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[2]The Court cites several Court of Appeals cases that support its triggering-tolling distinction, *ante*, at 15, but no case of ours that does so. *Clay* v. *United States*, 537 U. S. 522, 529 (2003), described §2244(d)(1)(A) as containing "triggers" for the limitations period, but it did not distinguish delaying the start of the limitations period from tolling. The Court of Appeals cases the Court cites, *Cada* v. *Baxter Healthcare Corp.*, 920 F. 2d 446, 450 (CA7 1990), *Wolin* v. *Smith Barney Inc.*, 83 F. 3d 847, 852 (CA7 1996), and *Wims* v. *United States*, 225 F. 3d 186, 190 (CA2 2000), rely on a distinction between accrual rules and tolling that we have since disregarded, see *TRW Inc.* v.

rule that forestalls the start of a limitations period as "effectively allow[ing] for equitable tolling." *Beggerly*, *supra*, at 48.

The Court does address §2244(d)(2), which undeniably provides for poststart tolling, but dismisses it on the basis that Congress had to resolve a contradiction between §2244(d)'s 1-year time bar and the rule of *Rose* v. *Lundy*, 455 U. S. 509 (1982), that a federal habeas application cannot be filed while state proceedings are pending. But there is no contradiction to resolve unless, in the absence of a statutory tolling provision, equitable tolling would *not* apply to a state prisoner barred from filing a federal habeas application while he exhausts his state remedies. The Court offers no reason why it would not, and our holding in *Young,* 535 U. S., at 50–51, that tolling was justified by the Government's inability to pursue a claim because of the Bankruptcy Code's automatic stay, 11 U. S. C. §362, suggests that it would.[3]

II

A

Even if §2244(d) left room for equitable tolling in some situations, tolling surely should not excuse the delay here. Where equitable tolling is available, we have held that a

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Andrews, 534 U. S. 19, 27, 29 (2001).

[3]The Court reads *Young* as support for disregarding the specific tolling provisions Congress included in §2244(d). *Ante*, at 15. But in the pertinent passage, *Young* explained only that the inclusion of an express tolling rule in a *different* provision regarding a *different* limitations period, 11 U. S. C. §507(a)(8)(A)(ii) (2000 ed.)—albeit a provision within the same subparagraph as the provision at issue, §507(a)(8)(A)(i)—did not rebut the presumption of equitable tolling. See 535 U. S., at 53. Moreover, *Young* stressed that §507(a)(8)(A)(ii) authorized tolling in instances where equity would *not* have allowed it, which reinforced the presumption in favor of tolling. *Ibid.* Here, the Court does not suggest that any of §2244(d)'s exceptions go beyond what equity would have allowed.

litigant is entitled to it only if he has diligently pursued his rights and—the requirement relevant here—if "'some extraordinary circumstance stood in his way.'" *Lawrence* v. *Florida*, 549 U. S. 327, 336 (2007) (quoting *Pace* v. *DiGuglielmo*, 544 U. S. 408, 418 (2005)). Because the attorney is the litigant's agent, the attorney's acts (or failures to act) within the scope of the representation are treated as those of his client, see *Link* v. *Wabash R. Co.*, 370 U. S. 626, 633–634, and n. 10 (1962), and thus such acts (or failures to act) are necessarily not extraordinary circumstances.

To be sure, the rule that an attorney's acts and oversights are attributable to the client is relaxed where the client has a constitutional right to effective assistance of counsel. Where a State is constitutionally obliged to provide an attorney but fails to provide an effective one, the attorney's failures that fall below the standard set forth in *Strickland* v. *Washington*, 466 U. S. 668 (1984), are chargeable to the State, not to the prisoner. See *Murray* v. *Carrier*, 477 U. S. 478, 488 (1986). But where the client has no right to counsel—which in habeas proceedings he does not—the rule holding him responsible for his attorney's acts applies with full force. See *Coleman* v. *Thompson*, 501 U. S. 722, 752–754 (1991).[4] Thus, when a state habeas petitioner's appeal is filed too late because of attorney error, the petitioner is out of luck—no less than if he had proceeded *pro se* and neglected to file the appeal himself.[5]

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[4] The Court dismisses *Coleman* as "a case about federalism" and therefore inapposite here. *Ante*, at 18 (internal quotation marks omitted). I fail to see how federalism concerns are not implicated by ad hoc exceptions to the statute of limitations for attempts to overturn state-court convictions. In any event, *Coleman* did not invent, but merely applied, the already established principle that an attorney's acts are his client's. See 501 U. S., at 754.

[5] That Holland's counsel was appointed, rather than, like counsel in

Congress could, of course, have included errors by state-appointed habeas counsel as a basis for delaying the limitations period, but it did not. Nor was that an oversight: Section 2244(d)(1)(B) expressly allows tolling for state-created impediments that prevent a prisoner from filing his application, but *only if* the impediment violates the Constitution or federal law.

If there were any doubt that equitable tolling is unavailable under §2244(d) to excuse attorney error, we eliminated it in *Lawrence*. The petitioner there asserted that his attorney's miscalculation of the limitations period for federal habeas applications caused him to miss the filing deadline. The attorney's error stemmed from his mistaken belief that—contrary to Circuit precedent (which we approved in *Lawrence*)—the limitations period is tolled during the pendency of a petition for certiorari from a state postconviction proceeding. 549 U. S., at 336; see also Brief for Petitioner in *Lawrence* v. *Florida*, O. T. 2006, No. 05–8820, pp. 31, 36. Assuming *arguendo* that equitable tolling could ever apply to §2244(d), we held that such attorney error did not warrant it, especially since the petitioner was not constitutionally entitled to counsel. *Lawrence*, *supra*, at 336–337.

Faithful application of *Lawrence* should make short work of Holland's claim. Although Holland alleges a wide array of misconduct by his counsel, Bradley Collins, the only pertinent part appears extremely similar, if not iden-

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Coleman, retained, see Brief for Respondent in *Coleman* v. *Thompson*, O. T. 1990, No. 89–7662, pp. 33–34, 40, is irrelevant. The Sixth Amendment right to effective assistance of counsel, we have held, applies even to an attorney the defendant himself hires. See *Cuyler* v. *Sullivan*, 446 U. S. 335, 342–345 (1980). The basis for *Coleman* was not that Coleman had hired his own counsel, but that the State owed him no obligation to provide one. See 501 U. S., at 754. It would be utterly perverse, of course, to penalize the State for *providing* habeas petitioners with representation, when the State could avoid equitable tolling by providing none at all.

tical, to the attorney's error in *Lawrence*. The relevant time period extends at most from November 10, 2005—when the Florida Supreme Court affirmed the denial of Holland's state habeas petition[6]—to December 15, 2005, the latest date on which §2244(d)'s limitations period could have expired.[7] Within that period, Collins could have alerted Holland to the Florida Supreme Court's decision, and either Collins or Holland himself could have filed a timely federal habeas application. Collins did not do so, but instead filed a petition for certiorari several months later.

Why Collins did not notify Holland or file a timely federal application for him is unclear, but none of the plausible explanations would support equitable tolling. By far the most likely explanation is that Collins made exactly the same mistake as the attorney in *Lawrence*—*i.e.*, he assumed incorrectly that the pendency of a petition for certiorari in this Court seeking review of the denial of Holland's state habeas petition would toll AEDPA's time bar under §2244(d)(2). In December 2002, Collins had explained to Holland by letter that if his state habeas petition was denied *and* this Court denied certiorari in that proceeding, Holland's claims "*will then be ripe* for presentation in a petition for writ of habeas corpus in federal court." App. 61 (emphasis added). Holland himself interprets that statement as proof that, at that time, "Collins was under the belief that [Holland's] time to file

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[6]The Florida Supreme Court did not issue its mandate, and the limitations period did not resume, see *Lawrence*, 549 U. S., at 331, until December 1, 2005. But once the Florida Supreme Court issued its decision (with the mandate still to come), Collins could have notified Holland, who in turn could have filed a *pro se* federal application.

[7]The parties dispute when Holland's state habeas petition was filed, and thus when the limitations period expired. Brief for Petitioner 4–5, and n. 4; Brief for Respondent 8, 9, n. 7. The discrepancy is immaterial, but I give Holland the benefit of the doubt.

his federal habeas petition would continue to be tolled until this Court denied certiorari" in his state postconviction proceeding. Pet. for Cert. 12, n. 10. That misunderstanding would entirely account for Collins's conduct—filing a certiorari petition instead of a habeas application, and waiting nearly three months to do so. But it would also be insufficient, as *Lawrence* held it was, to warrant tolling.

The other conceivable explanations for Collins's failure fare no better. It may be that Collins believed—as he explained to Holland in a January 2006 letter, after Holland had informed him that a certiorari petition in a state postconviction proceeding would not stop the clock—that the certiorari petition in Holland's *direct* appeal also did not toll the time bar. Consequently, Collins wrote, Holland's time to file a federal application had expired even before Collins was appointed. App. 78–79. As the Court explains, *ante*, at 8, this view too was wrong, but it is no more a basis for equitable tolling than the attorney's misunderstanding in *Lawrence*.

Or it may be that Collins (despite what he wrote to Holland) correctly understood the rule but simply neglected to notify Holland; perhaps he missed the state court's ruling in his mail, or perhaps it simply slipped his mind. Such an oversight is unfortunate, but it amounts to "garden variety" negligence, not a basis for equitable tolling. *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 96 (1990). Surely it is no more extraordinary than the attorney's error in *Lawrence*, which rudimentary research and arithmetic would have avoided.

The Court insists that Collins's misconduct goes beyond garden-variety neglect and mine-run miscalculation. *Ante*, at 19. But the only differences it identifies had no effect on Holland's ability to file his federal application on time. The Court highlights Collins's nonresponsiveness while Holland's state postconviction motions were still

pending. *Ante*, at 19–20. But even taken at face value, Collins's silence *prior* to November 10, 2005, did not prevent Holland from filing a timely federal application once the Florida courts were finished with his case. The Court also appears to think significant Collins's correspondence with Holland in January 2006, *after* the limitations period had elapsed. *Ante*, at 5–10, 20. But unless Holland can establish that the time-bar should be tolled due to events *before* December 15, 2005, any misconduct by Collins after the limitations period elapsed is irrelevant. Even if Collins's conduct before November 10 and after December 15 was "extraordinary," Holland has not shown that it "stood in his way and prevented timely filing." *Lawrence*, 549 U. S., at 336 (internal quotation marks omitted).

For his part, Holland now asserts that Collins did not merely forget to keep his client informed, but deliberately deceived him. As the Court of Appeals concluded, however, Holland did not allege deception in seeking equitable tolling below. See 539 F. 3d 1334, 1339 (CA11 2008) *(per curiam)*.[8] In any event, the deception of which he complains consists only of Collins's assurance early in the representation that he would protect Holland's ability to assert his claims in federal court, see App. 55, 62, coupled with Collins's later failure to do so. That, of course, does not by itself amount to deception, and Holland offers no evidence that Collins meant to mislead him. Moreover, Holland can hardly claim to have been caught off guard. Collins's failures to respond to Holland's repeated requests for information *before* the State Supreme Court ruled gave Holland even greater reason to suspect that Collins had fallen asleep at the switch. Holland indeed was under no

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[8] Holland insists that he did allege deception below, see Brief for Petitioner 31, n. 29, but cites only a conclusory allegation in an unrelated motion (a motion for appointment of new counsel). See App. 194. His reply to the State's response to the order to show cause, drafted by new counsel, did not allege deception. 1 Record, Doc. 35.

illusion to the contrary, as his repeated efforts to replace Collins reflect.[9]

B

Despite its insistence that *Lawrence* does not control this case, the Court does not actually hold that Holland is entitled to equitable tolling. It concludes only that the Eleventh Circuit applied the wrong rule and remands the case for a re-do. That would be appropriate if the Court identified a legal error in the Eleventh Circuit's analysis and set forth the proper standard it should have applied.

The Court does neither. It rejects as "too rigid," *ante,* at 17, the Eleventh Circuit's test—which requires, beyond ordinary attorney negligence, "an allegation and proof of bad faith, dishonesty, divided loyalty, mental impairment or so forth on the lawyer's part," 539 F. 3d, at 1339. But the Court never explains why that "or so forth" test, which explicitly leaves room for other kinds of egregious attorney

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[9]The concurrence argues that Holland's allegations suffice because they show, if true, that Collins "essentially 'abandoned'" Holland by failing to respond to Holland's inquiries, and therefore ceased to act as Holland's agent. *Ante*, at 6 (ALITO, J., concurring in part and concurring in judgment). But Collins's failure to communicate has no bearing unless it ended the agency relationship before the relevant window. The concurrence does not explain why it would—does not contend, for example, that Collins's conduct amounted to disloyalty or renunciation of his role, which *would* terminate Collins's authority, see Restatement (Second) of Agency §§112, 118 (1957). Collins's alleged nonresponsiveness did not help Holland's cause, but it was no more "adverse to [Holland's] interest" or "beyond [Holland's] control," *ante*, at 6, 7 (internal quotation marks omitted), and thus no more a basis for holding Holland harmless from the consequences of his counsel's conduct, than mine-run attorney mistakes, cf. *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 96 (1990). The concurrence also relies upon Holland's requests to replace Collins with new appointed counsel. But if those requests could prevent imputing Collins's acts to Holland, every habeas applicant who unsuccessfully asks for a new state-provided lawyer (but who does not seek to proceed *pro se* when that request is denied) would not be bound by his attorney's subsequent acts.

error, is insufficiently elastic.

Moreover, even if the Eleventh Circuit had adopted an entirely inflexible rule, it is simply untrue that, as the Court appears to believe, *ante*, at 17, all general rules are *ipso facto* incompatible with equity. We have rejected that canard before, see, *e.g., Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 321–322 (1999), and we have relied on the existence of general rules regarding equitable tolling in particular, see, *e.g., Young*, 535 U. S., at 53. As we observed in rejecting ad hoc equitable *restrictions* on habeas relief, "the alternative is to use each equity chancellor's conscience as a measure of equity, which alternative would be as arbitrary and uncertain as measuring distance by the length of each chancellor's foot." *Lonchar*, 517 U. S., at 323.

Consistent with its failure to explain the error in the Eleventh Circuit's test, the Court offers almost no clue about what test that court should have applied. The Court unhelpfully advises the Court of Appeals that its test is too narrow, with no explanation besides the assertion that its test left out cases where tolling might be warranted, and no precise indication of what those cases might be. *Ante*, at 18 ("[A]t least sometimes, professional misconduct that fails to meet the Eleventh Circuit's standard could nonetheless amount to egregious behavior and create an extraordinary circumstance that warrants equitable tolling"). The Court says that "courts can easily find precedents that can guide their judgments," *ibid.*, citing several Court of Appeals opinions that (in various contexts) permit tolling for attorney error—but notably omitting opinions that disallow it, such as the Seventh Circuit's opinion in *Powell* v. *Davis*, 415 F. 3d 722, 727 (2005), which would have "guide[d] . . . judgmen[t]" precisely where this court arrived: "[A]ttorney misconduct, whether labeled negligent, grossly negligent, or willful, is attributable to the client and thus is not a circumstance beyond a petitioner's

control that might excuse an untimely petition." *Ibid.* (internal quotation marks omitted).

The only thing the Court offers that approaches substantive instruction is its implicit approval of "fundamental canons of professional responsibility," articulated by an ad hoc group of legal-ethicist *amici* consisting mainly of professors of that least analytically rigorous and hence most subjective of law-school subjects, legal ethics. *Ante*, at 20. The Court does not even try to justify importing into equity the "prevailing professional norms" we have held implicit in the right to counsel, *Strickland*, 466 U. S., at 688. In his habeas action Holland has no right to counsel. I object to this transparent attempt to smuggle *Strickland* into a realm the Sixth Amendment does not reach.

C

The Court's refusal to articulate an intelligible rule regarding the only issue actually before us stands in sharp contrast to its insistence on deciding an issue that is *not* before us: whether Holland satisfied the second prerequisite for equitable tolling by demonstrating that he pursued his rights diligently, see *Pace*, 544 U. S., at 418–419. As the Court admits, only the District Court addressed that question below; the Eleventh Circuit had no need to reach it. More importantly, it is not even arguably included within the question presented, which concerns only whether an attorney's gross negligence can constitute an "extraordinary circumstance" of the kind we have held essential for equitable tolling. Pet. for Cert. i. Whether tolling is *ever* available is fairly included in that question, but whether Holland has overcome an additional, independent hurdle to tolling is not.

The Court offers no justification for deciding this distinct issue. The closest it comes is its observation that the State "does not defend" the District Court's ruling regarding diligence. *Ante*, at 20. But the State had no reason to

do so—any more than it had reason to address the merits of Holland's habeas claims. Nor, contrary to the Court's implication, has the State conceded the issue. The footnote of the State's brief which the Court cites did just the opposite: After observing that only the extraordinary-circumstance prong of the equitable-tolling test is at issue, the State (perhaps astutely apprehensive that the Court might ignore that fact) added that "to the extent the Court considers the matter" of Holland's diligence, "Respondent relies on the findings of the district court below." Brief for Respondent 38, n. 19. The Court also cites a statement by the State's counsel at oral argument, Tr. of Oral Arg. 43, and Holland's counsel's characterization of it as a concession, *id.*, at 52. But the remark, in context, shows only that the State does not dispute diligence *in this Court*, where the only issue is extraordinary circumstances:

> "Well, that goes to the issue . . . of diligence, of course, which is not the issue we're looking at. We're looking at the extraordinary circumstances, not the diligence. . . .
> "[W]e'll concede diligence for the moment . . . . " *Id.*, at 43.

Notwithstanding the Court's confidence that the District Court was wrong, it is not even clear that Holland acted with the requisite diligence. Although Holland repeatedly contacted Collins and the state courts, there were other reasonable measures Holland could have pursued. For example, as we suggested in *Pace, supra*, at 416—decided while Holland's state habeas petition was still pending—Holland might have filed a "'protective'" federal habeas application and asked the District Court to stay the federal action until his state proceedings had concluded. He also presumably could have checked the court records in the prison's writ room—from which he eventually learned of the state court's decision, 539 F. 3d, at 1337—on a more

regular basis. And he could have sought permission from the state courts to proceed *pro se* and thus remove Collins from the equation.[10] This is not to say the District Court was correct to conclude Holland was not diligent; but the answer is not as obvious as the Court would make it seem.

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The Court's impulse to intervene when a litigant's lawyer has made mistakes is understandable; the temptation to tinker with technical rules to achieve what appears a just result is often strong, especially when the client faces

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[10] Holland made many *pro se* filings in state court (which were stricken because Holland was still represented), and he sought to have new counsel appointed in Collins's place, but did not seek to proceed *pro se*. The Court does not dispute this, nor does Holland. The most he asserts is that one of the *pro se* motions he filed, if granted, would have *entitled* him to proceed *pro se*, see Brief for Petitioner 50–51—an assertion he appears not to have made in the District Court, see 1 Record, Doc. 35, at 15. The concurrence equates that assertion with an allegation that he actually sought to litigate his case on his own behalf. *Ante*, at 6. It is not the same. The filing Holland refers to, see Brief for Petitioner 12, and n. 13, like his earlier filings, requested that Collins be *replaced* by new counsel. App. 149–163. The motion also asked for a hearing pursuant to *Nelson* v. *State*, 274 So. 2d 256, 259 (Fla. App. 1973), to show Collins's poor performance, App. 149–150, but that did not amount to a request to proceed *pro se*. *Nelson* held that a defendant *facing trial* who seeks to discharge his court-appointed counsel for ineffectiveness is entitled to a hearing to determine if new counsel is required. 274 So. 2d, at 259. If the defendant fails to make that showing, but "continues to demand a dismissal of his court appointed counsel," *Nelson* explained that "a trial judge may in his discretion discharge counsel and require the defendant to proceed to trial without representation by court appointed counsel." *Ibid.;* see also *Hardwick* v. *State*, 521 So. 2d 1071, 1074–1075 (Fla. 1988). There is no reason why requesting that procedure in state habeas proceedings should be construed as a request to proceed *pro se*. Holland, unlike a defendant still facing trial, did not need permission to fire Collins, since there was no right to representation to waive. Once his request for a new attorney was denied, Holland himself could have informed Collins that his services were no longer required.

a capital sentence. But the Constitution does not empower federal courts to rewrite, in the name of equity, rules that Congress has made. Endowing unelected judges with that power is irreconcilable with our system, for it "would literally place the whole rights and property of the community under the arbitrary will of the judge," arming him with "a despotic and sovereign authority," 1 J. Story, Commentaries on Equity Jurisprudence §19, p. 19 (14th ed. 1918). The danger is doubled when we disregard our own precedent, leaving only our own consciences to constrain our discretion. Because both the statute and *stare decisis* foreclose Holland's claim, I respectfully dissent.