ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY *v.* BENNETT

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 99–1238. Argued October 10, 2000—Decided November 7, 2000

A New York trial court orally denied respondent's 1995 motion to vacate his state conviction. Subsequently, the Federal District Court dismissed respondent's federal habeas petition as untimely, noting that it was filed more than one year after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). In reversing and remanding, the Second Circuit concluded that 28 U. S. C. § 2244(d)(2), which tolls AEDPA's limitations period during the time that a "properly filed" application for state postconviction relief is pending, also tolls the 1-year grace period which the Circuit has allowed for the filing of applications challenging pre-AEDPA convictions; that, in the absence of a written order, respondent's 1995 motion was still pending under § 2244(d)(2); and that the 1995 motion was properly filed because it complied with rules governing whether an application for state postconviction relief is "recognized as such" under state law. It thus rejected petitioner's contention that the 1995 application was not properly filed because the claims it contained were procedurally barred under New York law.

Held: That respondent's application for state postconviction relief contained procedurally barred claims does not render it improperly filed under § 2244(d)(2). An application is "filed," as that term is commonly understood, when it is delivered to, and accepted by, the appropriate court officer for placement into the official record; and it is "properly filed" when its delivery and acceptance are in compliance with the applicable laws and rules governing filings, *e. g.,* requirements concerning the form of the document, applicable time limits upon its delivery, the court and office in which it must be lodged, and payment of a filing fee. By construing "properly filed application" to mean application "raising claims that are not mandatorily procedurally barred," petitioner elides the difference between an "application" and a "claim." The state procedural bars at issue set forth conditions to obtaining relief, rather than conditions to filing. Pp. 8–11.

199 F. 3d 116, affirmed.

Scalia, J., delivered the opinion for a unanimous Court.

It is also obvious that the TSSAA is not an entity created and controlled by the government for the purpose of fulfilling a government objective, as was Amtrak in *Lebron* v. *National Railroad Passenger Corporation,* 513 U. S. 374, 394 (1995). See also *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia,* 353 U. S. 230 (1957) *(per curiam)* (holding that a state agency created under state law was a state actor). Indeed, no one claims that the State of Tennessee played any role in the creation of the TSSAA as a private corporation in 1925. The TSSAA was designed to fulfill an objective—the organization of interscholastic athletic tournaments—that the government had not contemplated, much less pursued. And although the board of control currently is composed of public school officials, and although public schools currently account for the majority of the TSSAA's membership, this is not required by the TSSAA's constitution.

In addition, the State of Tennessee has not "exercised coercive power or . . . provided such significant encouragement [to the TSSAA], either overt or covert," *Blum,* 457 U. S., at 1004, that the TSSAA's regulatory activities must in law be deemed to be those of the State. The State has not promulgated any regulations of interscholastic sports, and nothing in the record suggests that the State has encouraged or coerced the TSSAA in enforcing its recruiting rule. To be sure, public schools do provide a small portion of the TSSAA's funding through their membership dues, but no one argues that these dues are somehow conditioned on the TSSAA's enactment and enforcement of recruiting rules.[5]

[5] The majority emphasizes that public schools joining the TSSAA "give up sources of their own income to their collective association" by allowing the TSSAA "to charge for admission to their games." *Ante,* at 299. However, this would be equally true whenever a State contracted with a private entity: The State presumably could provide the same service for profit, if it so chose. In *Rendell-Baker* v. *Kohn,* 457 U. S. 830 (1982), for example, the State could have created its own school for students with special needs and charged for admission. Or in *Blum* v. *Yaretsky,* 457

der, criminal possession of a weapon, reckless endangerment, criminal possession of stolen property, and unauthorized use of a motor vehicle. The Appellate Division affirmed, and the New York Court of Appeals denied leave to appeal. After unsuccessfully pursuing state postconviction relief in 1991, respondent in 1995 moved *pro se* to vacate his judgment of conviction. On November 30, 1995, the state trial court denied the motion in an oral decision on the record; no reasons were given. Respondent claims never to have received a copy of a written order reflecting the denial, despite several written requests.

In February 1998, respondent filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of New York, alleging, *inter alia,* that the state trial court's refusal to allow a defense witness to testify deprived him of his right to a fair trial and his right to present witnesses in his own defense, that his absence from a pretrial hearing violated due process, and that his trial counsel was constitutionally ineffective in failing to object to allegedly improper remarks made by the prosecutor in summation. The District Court summarily dismissed the petition as untimely, noting that it had been filed more than one year and nine months after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214.

The United States Court of Appeals for the Second Circuit reversed and remanded. 199 F. 3d 116 (1999). The panel first concluded that 28 U. S. C. § 2244(d)(2) (1994 ed., Supp. IV), which tolls AEDPA's 1-year period of limitation on habeas corpus applications by state prisoners, should also toll the 1-year grace period (commencing on AEDPA's effective date of April 24, 1996), which the Second Circuit has allowed for the filing of habeas corpus applications challenging pre-AEDPA convictions. See *Ross* v. *Artuz,* 150 F. 3d 97, 98 (CA2 1998). The panel assumed, for purposes of the appeal,

These cases, therefore, cannot support the majority's "entwinement" theory. Only *Evans* speaks of entwinement at all, and it does not do so in the same broad sense as does the majority.[7] Moreover, these cases do not suggest that the TSSAA's activities can be considered state action, whether the label for the state-action theory is "entwinement" or anything else.

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Because the majority never defines "entwinement," the scope of its holding is unclear. If we are fortunate, the majority's fact-specific analysis will have little bearing beyond this case. But if the majority's new entwinement test develops in future years, it could affect many organizations that foster activities, enforce rules, and sponsor extracurricular competition among high schools—not just in athletics, but in such diverse areas as agriculture, mathematics, music, marching bands, forensics, and cheerleading. Indeed, this entwinement test may extend to other organizations that are composed of, or controlled by, public officials or public entities, such as firefighters, policemen, teachers, cities, or coun-

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ties to racially segregated groups. *Id.*, at 566. The city, we determined, was "engaged in an elaborate subterfuge" to circumvent a court order desegregating the city's recreational facilities. *Id.*, at 567. The grant of exclusive authority was little different from a formal agreement to run a segregated recreational program. *Ibid.* Thus, although we quoted the "entwined" language from *Evans* v. *Newton*, 382 U. S. 296 (1966), we were not using the term in the same loose sense the majority uses it today. And there is certainly no suggestion that the TSSAA has structured its recruiting rule specifically to evade review of an activity that previously was deemed to be unconstitutional state action.

[7] The majority's reference to *National Collegiate Athletic Assn.* v. *Tarkanian*, 488 U. S. 179 (1988), as foreshadowing this case, *ante*, at 297–298, also does not support its conclusion. Indeed, the reference to *Tarkanian* is ironic because it is not difficult to imagine that application of the majority's entwinement test could change the result reached in that case, so that the National Collegiate Athletic Association's actions could be found to be state action given its large number of public institution members that virtually control the organization.

II

Petitioner contends here, as he did below, that an application for state postconviction or other collateral review is not "properly filed" for purposes of § 2244(d)(2) unless it complies with all mandatory state-law procedural requirements that would bar review of the merits of the application. We disagree.

An application is "filed," as that term is commonly understood, when it is delivered to, and accepted by, the appropriate court officer for placement into the official record. See, *e. g., United States* v. *Lombardo,* 241 U. S. 73, 76 (1916) ("A paper is filed when it is delivered to the proper official and by him received and filed"); Black's Law Dictionary 642 (7th ed. 1999) (defining "file" as "[t]o deliver a legal document to the court clerk or record custodian for placement into the official record"). And an application is "*properly* filed" when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. These usually prescribe, for example, the form of the document, the time limits upon its delivery,[2] the court and office in which it must be lodged, and the requisite filing fee. See, *e. g., Habteselassie* v. *Novak,* 209 F. 3d 1208, 1210–1211 (CA10 2000); 199 F. 3d, at 121 (case below); *Villegas* v. *Johnson,* 184 F. 3d 467, 469–470 (CA5 1999); *Lovasz* v. *Vaughn,* 134 F. 3d 146, 148 (CA3 1998). In some jurisdictions the filing requirements also include, for example, preconditions imposed on particular abusive filers, cf. *Martin* v. *District of Columbia Court of*

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such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him; . . . ." N. Y. Crim. Proc. Law §§ 440.10(2)(a) and (c) (McKinney 1994).

[2] We express no view on the question whether the existence of certain exceptions to a timely filing requirement can prevent a late application from being considered improperly filed. See, *e. g., Smith* v. *Ward,* 209 F. 3d 383, 385 (CA5 2000).

Appeals, 506 U. S. 1 (1992) *(per curiam)*, or on all filers generally, cf. 28 U. S. C. § 2253(c) (1994 ed., Supp. IV) (conditioning the taking of an appeal on the issuance of a "certificate of appealability"). But in common usage, the question whether an application has been "properly filed" is quite separate from the question whether the claims *contained in the application* are meritorious and free of procedural bar.

Petitioner contends that such an interpretation of the statutory phrase renders the word "properly," and possibly both words ("properly filed"), surplusage, since if the provision omitted those words, and tolled simply for "[t]he time during which a[n] . . . application for State post-conviction [relief] is pending," it would necessarily condition tolling on compliance with filing requirements of the sort described above. That is not so. If, for example, an application is erroneously accepted by the clerk of a court lacking jurisdiction, or is erroneously accepted without the requisite filing fee, it will be *pending*, but not *properly filed*.

Petitioner's interpretation is flawed for a more fundamental reason. By construing "properly filed application" to mean "application raising claims that are not mandatorily procedurally barred," petitioner elides the difference between an "application" and a "claim." Only individual *claims*, and not the application containing those claims, can be procedurally defaulted under state law pursuant to our holdings in *Coleman* v. *Thompson*, 501 U. S. 722 (1991), and *Wainwright* v. *Sykes*, 433 U. S. 72 (1977), which establish the sort of procedural bar on which petitioner relies. Compare § 2244(b)(1) ("A *claim presented* in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed") with § 2244(b)(3)(A) ("Before a second or successive *application* permitted by this section 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" (emphases added)). See also *O'Sullivan* v. *Boerckel*,

526 U. S. 838, 839–840 (1999) ("In this case, we are asked to decide whether a state prisoner must *present* his *claims* to a state supreme court in a petition for discretionary review in order to satisfy the exhaustion requirement" (emphases added)). Ignoring this distinction would require judges to engage in verbal gymnastics when an application contains some claims that are procedurally barred and some that are not. Presumably a court would have to say that the application is "properly filed" *as to* the nonbarred claims, and not "properly filed" *as to* the rest. The statute, however, refers only to "properly filed" applications and does not contain the peculiar suggestion that a single application can be both "properly filed" and not "properly filed." Ordinary English would refer to certain *claims* as having been properly *presented* or *raised*, irrespective of whether the application containing those claims was properly filed.

Petitioner's remaining arguments are beside the point. He argues, for example, that tolling for applications that raise procedurally barred claims does nothing to enable the exhaustion of available state remedies—which is the object of § 2244(d)(2). Respondent counters that petitioner's view would trigger a flood of protective filings in federal courts, absorbing their resources in threshold interpretations of state procedural rules. Whatever merits these and other policy arguments may have, it is not the province of this Court to rewrite the statute to accommodate them. We hold as we do because respondent's view seems to us the only permissible interpretation of the text—which may, for all we know, have slighted policy concerns on one or the other side of the issue as part of the legislative compromise that enabled the law to be enacted.

III

The state procedural bars at issue in this case—N. Y. Crim. Proc. Law §§ 440.10(2)(a) and (c) (McKinney 1994)—simply prescribe a rule of decision for a court confronted

with claims that were "previously determined on the merits upon an appeal from the judgment" of conviction or that could have been raised on direct appeal but were not: "[T]he court must deny" such claims for relief. Neither provision purports to set forth a condition to filing, as opposed to a condition to obtaining relief. Motions to vacate that violate these provisions will not be successful, but they have been properly delivered and accepted so long as the filing conditions have been met. Consequently, the alleged failure of respondent's application to comply with §§ 440.10(2)(a) and (c) does not render it "[im]properly filed" for purposes of § 2244(d)(2). The judgment of the Court of Appeals must therefore be affirmed.

It is so ordered.