NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PARKE, WARDEN *v.* RALEY

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

No. 91–719. Argued October 5, 1992—Decided December 1, 1992

In 1986, respondent Raley was charged with robbery and with being a persistent felony offender under a Kentucky statute that enhances sentences for repeat felons. He moved to suppress the 1979 and 1981 guilty pleas that formed the basis for the latter charge, claiming that they were invalid because the records contained no transcripts of the proceedings and hence did not affirmatively show, as required by *Boykin* v. *Alabama,* 395 U.S. 238, that the pleas were knowing and voluntary. Under the state procedures governing the hearing on his motion, the ultimate burden of persuasion rested with the government, but a presumption of regularity attached to the judgments once the Commonwealth proved their existence, and the burden then shifted to Raley to produce evidence of their invalidity. As to the 1981 plea, Raley testified that, among other things, he signed a form specifying the charges to which he agreed to plead guilty and the judge at least advised him of his right to a jury trial. His suppression motion was denied, he was convicted, and he appealed. The Kentucky Court of Appeals found that Raley was fully informed of his rights in 1979 and inferred that he remained aware of them in 1981. Raley then filed a federal habeas petition. The District Court rejected his argument that the state courts had erred in shifting the burden of production to him, but the Court of Appeals reversed as to the 1981 plea, holding, *inter alia,* that where no transcript is available, the prosecution has the entire burden of establishing a plea's validity by clear and convincing evidence and no presumption of regularity attaches to the prior judgment.

Held:

1.Kentucky's burden-of-proof scheme is permissible under the Due Process Clause. Pp.5–14.

(a)``Tolerance for a spectrum of state procedures dealing

with [recidivism] is especially appropriate'' given the high rate of recidivism and the diversity of approaches that States have developed for addressing it. *Spencer* v. *Texas,* 385 U.S. 554, 566. Pp.5–7.

(b)The deeply rooted presumption of regularity that attaches to final judgments would be improperly ignored if the presumption of invalidity applied in *Boykin* to cases on direct review were to be imported to recidivism proceedings, in which final judgments are collaterally attacked. In the absence of an allegation of government misconduct, it cannot be presumed from the mere unavailability of a transcript on collateral review that a defendant was not advised of his rights. *Burgett* v. *Texas,* 389 U.S. 109, distinguished. The presumption of regularity makes it appropriate to assign a proof burden to the defendant even when a collateral attack rests on constitutional grounds. And the difficulty of proving the invalidity of convictions entered many years ago does not make it fundamentally unfair to place a burden of production on the defendant, since the government may not have superior access to evidence. Nor is Raley's position supported by the state courts' historical treatment of defendants in recidivism proceedings, the wide range of contemporary state practices regarding the allocation of the proof burden, or interpretations of analogous federal laws, see, *e. g., United States* v. *Gallman,* 907 F.2d 639, 643–645. Pp.8–13.

(c)Due process does not require the Commonwealth to prove the validity of a prior conviction by clear and convincing extra-record evidence. Even if *Boykin* had addressed the question of measure of proof, it would not necessarily follow that the same standard should apply in recidivism proceedings. Given the difficulties of proof for both sides, it is not fundamentally unfair to require something less than clear and convincing evidence when the government is assigned the burden of persuasion. There is no historical tradition setting the standard at this particular level, and contemporary practice is far from uniform. Pp.13–14.

2.The Kentucky courts properly concluded that Raley's 1981 guilty plea was valid. Their factual determinations are entitled to the presumption of correctness accorded state court factual findings under 28 U.S.C. §2254(d). *Marshall* v. *Lonberger,* 459 U.S. 422, 431–432. The Kentucky Court of Appeals fairly inferred from Raley's 1979 experience that he understood the consequences of his 1981 plea. See, *e. g., id.,* at 437. That, combined with his admission that he understood the charges against him and his self-serving testimony that he could not remember whether the trial judge advised him of other rights, satisfied every court that has considered the issue that the government carried its burden of persuasion under the Kentucky scheme. It cannot be said that this was error. Pp.14–16.

PARKE *v.* RALEY

Syllabus

945 F.2d 137, reversed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., filed an opinion concurring in the judgment.