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

HERRERA *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMNAL JUSTICE, INSTITUTIONAL DIVISION

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

No. 91–7328. Argued October 7, 1992—Decided January 25, 1993

On the basis of proof which included two eyewitness identifications, numerous pieces of circumstantial evidence, and petitioner Herrera's handwritten letter impliedly admitting his guilt, Herrera was convicted of the capital murder of Police Officer Carrisalez and sentenced to death in January 1982. After pleading guilty, in July 1982, to the related capital murder of Officer Rucker, Herrera unsuccessfully challenged the Carrisalez conviction on direct appeal and in two collateral proceedings in the Texas state courts, and in a federal habeas petition. Ten years after his conviction, he urged in a second federal habeas proceeding that newly discovered evidence demonstrated that he was ``actually innocent'' of the murders of Carrisalez and Rucker, and that the Eighth Amendment's prohibition against cruel and unusual punishment and the Fourteenth Amendment's due process guarantee therefore forbid his execution. He supported this claim with affidavits tending to show that his now-dead brother had committed the murders. The District Court, *inter alia,* granted his request for a stay of execution so that he could present his actual innocence claim and the supporting affidavits in state court. In vacating the stay, the Court of Appeals held that the claim was not cognizable on federal habeas absent an accompanying federal constitutional violation.

Held: Herrera's claim of actual innocence does not entitle him to federal habeas relief. Pp. 6–28.

(a) Herrera's constitutional claim for relief based upon his newly discovered evidence of innocence must be evaluated in light of the previous 10 years of proceedings in this case. In criminal cases, the trial is the paramount event for determining

the defendant's guilt or innocence. Where, as here, a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the constitutional presumption of innocence disappears. Federal habeas courts do not sit to correct errors of fact, but to ensure that individuals are not imprisoned in violation of the Constitution. See, *e.g., Moore* v. *Dempsey,* 261 U. S. 86, 87–88. Thus, claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the course of the underlying state criminal proceedings. See *Townsend* v. *Sain,* 372 U. S. 293, 317. The rule that a petitioner subject to defenses of abusive or successive use of the habeas writ may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence, see, *e.g., Sawyer* v. *Whitley,* 505 U. S. ___, ___, is inapplicable in this case. For Herrera does not seek relief from a procedural error so that he may bring an independent constitutional claim challenging his conviction or sentence, but rather argues that he is entitled to habeas relief because new evidence shows that his conviction is factually incorrect. To allow a federal court to grant him typical habeas relief—a conditional order releasing him unless the State elects to retry him or vacating his death sentence—would in effect require a new trial 10 years after the first trial, not because of any constitutional violation at the first trial, but simply because of a belief that in light of his new found evidence a jury might find him not guilty at a second trial. It is far from clear that this would produce a more reliable determination of guilt or innocence, since the passage of time only diminishes the reliability of criminal adjudications. *Jackson* v. *Virginia,* 443 U. S. 307, *Ford* v. *Wainwright,* 477 U. S. 399, and *Johnson* v. *Mississippi,* 486 U. S. 578, distinguished. Pp. 6–15.

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(b) Herrera's contention that the Fourteenth Amendment's due process guarantee supports his claim that his showing of innocence entitles him to a new trial, or at least to a vacation of his death sentence, is unpersuasive. Because state legislative judgments are entitled to substantial deference in the criminal procedure area, criminal process will be found lacking only where it offends some principle of justice so rooted in tradition and conscience as to be ranked as fundamental. See, *e.g., Patterson* v. *New York,* 432 U. S. 197, 202. It cannot be said that the refusal of Texas—which requires a new trial motion based on newly discovered evidence to be made within 30 days of imposition or suspension of sentence—to entertain Herrera's new evidence eight years after his conviction transgresses a principle of fundamental fairness, in light of the Constitution's silence on the subject of new trials, the historical availability of new trials based on newly discovered evidence, this Court's amendments to Federal Rule of Criminal Procedure 33 to impose a time limit for filing new trial motions based on newly discovered evidence, and the contemporary practice in the States, only nine of which have no time limits for the filing of such motions. Pp. 15–20.

(c) Herrera is not left without a forum to raise his actual innocence claim. He may file a request for clemency under Texas law, which contains specific guidelines for pardons on the ground of innocence. History shows that executive clemency is the traditional ``fail safe'' remedy for claims of innocence based on new evidence, discovered too late in the day to file a new trial motion. Pp. 20–26.

(d) Even assuming, for the sake of argument, that in a capital case a truly persuasive post-trial demonstration of ``actual innocence'' would render a defendant's execution unconstitutional and warrant federal habeas relief if there were no state avenue open to process such a claim, Herrera's showing of innocence falls far short of the threshold showing which would have to be made in order to trigger relief. That threshold would necessarily be extraordinarily high because of the very disruptive effect that entertaining such claims would have on the need for finality in capital cases, and the enormous burden that having to retry cases based on often stale evidence would place on the States. Although not without probative value, Herrera's affidavits are insufficient to meet such a standard, since they were obtained without the benefit of cross-examination and an opportunity to make credibility determinations; consist, with one exception, of hearsay; are likely to have been presented as a means of delaying Herrera's sentence; were produced not at the trial, but over eight years

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later and only after the death of the alleged perpetrator, without a satisfactory explanation for the delay or for why Herrera pleaded guilty to the Rucker murder; contain inconsistencies, and therefore fail to provide a convincing account of what took place on the night of the murders; and do not overcome the strong proof of Herrera's guilt that was presented at trial. Pp. 26–28.

954 F. 2d 1029, affirmed.

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