SUPREME COURT OF THE UNITED STATES

Syllabus

CASPARI, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER, ET AL. *v.* BOHLEN

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

No. 92–1500. Argued December 6, 1993—Decided February 23, 1994

The state trial judge sentenced respondent as a persistent offender following his conviction on three robbery counts, but the Missouri Court of Appeals reversed the sentence because there was no proof of prior convictions, as is necessary to establish persistent-offender status under state law. On remand, the trial judge resentenced respondent as a persistent offender based on evidence of prior felony convictions, rejecting his contention that allowing the State another opportunity to prove such convictions violated the Double Jeopardy Clause. In affirming, the State Court of Appeals agreed that there was no double jeopardy bar, as did the Federal District Court, which denied respondent's habeas corpus petition. However, in reversing, the Federal Court of Appeals extended the rationale of *Bullington* v. *Missouri,* 451 U. S. 430, a capital case, to hold that the Double Jeopardy Clause prohibits a State from subjecting a defendant to successive noncapital sentence enhancement proceedings. The court ruled that taking that step did not require the announcement of a ``new rule'' of constitutional law, and thus that granting habeas relief to respondent would not violate the nonretroactivity principle of *Teague* v. *Lane,* 489 U. S. 288, which prohibits such relief based on a rule announced after the defendant's conviction and sentence became final.

Held:

1. Because the State argued in the certiorari petition, as it had in the courts below and as it does in its brief on the merits,

that the nonretroactivity principle barred the relief sought by respondent, this Court must apply *Teague* analysis before considering the merits of respondent's claim. See *Graham* v. *Collins,* 506 U. S. ___, ___. The *Teague* issue is a necessary predicate to the resolution of the primary question presented in the petition: whether the Double Jeopardy Clause should apply to successive noncapital sentence enhancement proceedings. Pp. 4–5.

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2. The Court of Appeals erred in directing the District Court to grant respondent habeas relief because doing so required the announcement and application of a new rule in violation of *Teague* and subsequent cases. Pp. 5–13.

(a) Under those precedents, a court must proceed in three steps: (1) it must ascertain the date on which the conviction and sentence became final for *Teague* purposes; (2) it must determine whether a state court considering the defendant's claim on that date would have felt compelled by existing precedent to conclude that the rule sought was required by the Constitution; and (3), even if it determines that the defendant seeks the benefit of a new rule, it must decide whether that rule falls within one of the two narrow exceptions to the nonretroactivity principle. Pp. 5–6.

(b) Respondent's conviction and sentence became final for purposes of retroactivity analysis on January 2, 1986, the date on which the 90-day period for filing a certiorari petition elapsed following exhaustion of the availability of direct appeal to the state courts. See *Griffith* v. *Kentucky,* 479 U. S. 314, 321, n. 6. P. 6.

(c) The Federal Court of Appeals announced a new rule in this case. A reasonable jurist reviewing this Court's precedents as of January 2, 1986, would not have considered the application of the Double Jeopardy Clause to a noncapital sentencing proceeding to be dictated by precedent. At that time, the Court had not so applied the Clause, cf., *e.g., United States* v. *DiFrancesco,* 449 U. S. 117, 133–135; *Bullington, supra,* and *Arizona* v. *Rumsey,* 467 U. S. 203, distinguished, and indeed several of the Court's decisions pointed in the opposite direction, see, *e.g., Strickland* v. *Washington,* 466 U. S. 668. Moreover, two Federal Courts of Appeals and several state courts had reached conflicting holdings on the issue. Because that conflict concerned a development in the law over which reasonable jurists could disagree, *Sawyer* v. *Smith,* 497 U. S. 227, 234, the Court of Appeals erred in resolving it in respondent's favor. To the limited extent this Court's cases decided subsequent to January 2, 1986, have any relevance to the *Teague* analysis, they are entirely consistent with the foregoing new rule determination. Pp. 7–12.

(d) Neither of the two narrow exceptions to the nonretroactivity principle applies in this case. First, imposing a double jeopardy bar here would not place respondent's conduct beyond the power of the criminal law-making authority, since he is still subject to imprisonment on each of his robbery convictions, regardless of whether he is sentenced as a persistent offender. Second, applying the Double Jeopardy Clause in these circumstances would not constitute a watershed

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criminal rule, since persistent-offender status is a fact objectively ascertainable on the basis of readily available evidence, and subjecting a defendant to a second proceeding at which the State has the opportunity to show the requisite number of prior convictions is not unfair and will enhance the proceeding's accuracy by ensuring that the determination is made on the basis of competent evidence. Pp. 12–13.

3. Because of the resolution of this case on *Teague* grounds, the Court need not reach the questions whether the Double Jeopardy Clause applies to noncapital sentencing, whether Missouri's persistent-offender scheme is sufficiently trial-like to invoke double jeopardy protections, or whether *Bullington* should be overruled. P. 13.

979 F. 2d 109, reversed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. STEVENS, J., filed a dissenting opinion.