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Opinion No. 11-23

Constitutionality of Repeal of Post-Conviction Procedure Act

QUESTION

Would the General Assembly's repeal of Tennessee's Post-Conviction Procedure Act, Tenn. Code Ann. §§ 40-30-101 to -313 (2006), infringe any right of state prisoners under the state or federal constitutions?

OPINION

No. Although repeal of the Post-Conviction Procedure Act would raise significant questions regarding the adequacy of corrective process in the state courts, the weight of authority suggests that there is no constitutional entitlement to state post-conviction procedures.

ANALYSIS

Tennessee's Post-Conviction Procedure Act was first enacted in 1967 following the United States Supreme Court's decision in *Case v. Nebraska*, 381 U.S. 336 (1965) (per curiam). *See* 1967 Tenn. Pub. Acts, ch. 310; *House v. State*, 911 S.W.2d 705, 709 (Tenn. 1995) (noting that the state's post-conviction law was passed in response to *Case*). In *Case,* the Court granted certiorari to decide whether the Fourteenth Amendment requires that the States afford state prisoners some adequate corrective process for the hearing and determination of claims of violation of federal constitutional guarantees. *Case*, 381 U.S. at 337. After certiorari was granted, however, Nebraska became the seventh state to enact a statute providing a post-conviction procedure. *Id.* The Court therefore left open the question, remanding the case to the state court for reconsideration in light of the supervening statute. *Id.* In a concurring opinion, Justice Brennan lauded Nebraska's action, indicating that adequate state procedures, in tandem with doctrinal constraints on the federal writ of habeas corpus, promote state primacy in the administration of the criminal law, achieve judicial economies, and enhance the finality of state court determinations of federal constitutional questions. *Id.* at 345 (Brennan, J., concurring); *see also id.* at 340 (Clark, J., concurring) ("This will enable prisoners to „air out' their claims in the state courts and will stop the rising conflict presently being generated between federal and state courts.").

As presently formulated, Tennessee's Post-Conviction Procedure Act allows petitioners to present constitutional claims, such as claims of ineffective assistance of counsel or violations of *Brady v. Maryland*, 373 U.S. 83 (1963), that could not have been litigated in connection with

the original trial or direct appeal. *See, e.g.,* Tenn. Code Ann. §§ 40-30-103 (setting forth grounds for relief); -106(f) (providing for dismissal of claims that have been waived or previously determined). Findings made by a state post-conviction court are thereafter accorded a measure of deference when a prisoner seeks federal review of constitutional claims by means of a petition for a writ of habeas corpus. Provided that the State affords a "corrective process," a petitioner must exhaust the remedies available in state court in order to have consideration of his claims in a federal habeas court. *See* 28 U.S.C. § 2254(b). For claims fairly presented to the state courts, habeas relief may not be granted unless the state-court decision was "contrary to, or involved an unreasonable application of" clearly established federal law, or was based on an "unreasonable determination of the facts." *See id.* § 2254(d). These strictures are thought to secure to the States many of the advantages that Justice Brennan envisioned in his *Case* concurrence: they channel the resolution of claims to the state courts—"the most appropriate forum for resolution of factual issues in the first instance"—contribute to the finality of convictions by decreasing the opportunities to relitigate them, and allow state courts to correct their own errors, thereby reducing the "inevitable friction" that results when a federal habeas court overturns either the factual or legal conclusions reached by the state-court system. *See, e.g., Keeney v. Tamayo-Reyes*, 504 U.S. 1, 7-9 (1992).

In 1987, the United States Supreme Court had occasion to touch upon the question presented in *Case*. In *Pennsylvania v. Finley*, the Court held that there was no federal constitutional right to counsel for indigent prisoners seeking state post-conviction relief. *Finley*, 481 U.S. 551, 555 (1987). In so doing, the Court observed that "States have no obligation to provide this avenue of relief . . . ." *Id.* at 557; *see also United States v. MacCollom*, 426 US. 317, 323 (1976) (plurality opinion) ("The Due Process Clause of the Fifth Amendment . . . certainly does not establish any right to collaterally attack a final judgment of conviction."). Two years later, a plurality of the Court held that *Finley* applies to those inmates under sentence of death as well as to other inmates, reiterating that "State collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal." *Murray v. Giarratano*, 492 U.S. 1, 10 (1989) (plurality opinion). The Tennessee Supreme Court has cited *Giarratano* with approval, repeatedly recognizing that post-conviction procedures are not constitutionally required. *Reid v. State*, 197 S.W.3d 694, 700 & n.3 (Tenn. 2006). "In Tennessee, the Post-Conviction Procedure Act is a statutory remedy, and the nature and availability of post-conviction relief lies within the discretion of the legislature." *Id.* at 700 (footnote omitted); *see Pike v. State*, 164 S.W.3d 257, 262 (Tenn. 2005) (same).

In view of these decisions, "[i]t now appears that the state does not have to have a post-conviction process." Dwight Aarons, *Adjudicating Claims of Innocence for the Capitally Condemned in Tennessee: Embracing a Truth Forum*, 76 Tenn. L. Rev. 511, 548 (2009). Nevertheless, the *Giarratano* line of cases may not be fully dispositive of the question. While these decisions establish, for example, that there is no constitutional right to counsel during post-conviction proceedings, none squarely addresses the question presented in *Case,* and, in the federal cases, statements to the effect that Due Process requires no state collateral proceedings appear either in what is arguably dicta or in plurality opinions. *See Finley*, 481 U.S. at 556 (stating that the "procedures followed by respondent's habeas counsel fully comported with fundamental fairness," perhaps rendering the subsequent statement regarding the State's

obligations to provide an avenue for relief inessential to the outcome); *MacCollom*, 426 U.S. at 323 (plurality opinion); *Giarratano*, 492 U.S. at 10 (plurality opinion); *compare Young v. Ragen*, 337 U.S. 235, 239 (1949) ("We recognize the difficulties with which the Illinois Supreme Court is faced in adapting available state procedures to the requirement that prisoners be given some clearly defined method by which they may raise claims of denial of federal rights. Nevertheless, that requirement must be met."). Still, the tenor of these decisions suggests that modern courts are unlikely to view the Due Process Clause as a source of institutional constraints on state legislatures respecting the availability of post-conviction relief. *See, e.g., District Attorney's Office v. Osborne* 129 S.Ct. 2308, 2320 (2009) (declining to constitutionalize procedures for DNA testing, and stating that "[f]ederal courts may upset a State's post-conviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided"). Repeal of the Post-Conviction Procedure Act would not, moreover, result in a complete absence of corrective process; state prisoners still could pursue motions for new trial, *see* Tenn. R. Crim. P. 33, state writs of habeas corpus, *see* Tenn. Const. art. I, §15, and writs of error *coram nobis*, *see* Tenn. Code Ann. § 40-26-105. *But see Case*, 381 U.S. at 338 (Clark, J., concurring) (characterizing such remedies as being "entirely inadequate"). Rather, the unavailability of the procedures presently set forth in Title 40, Chapter 30 would allow litigants to argue that they had not been afforded meaningful corrective process in individual cases, thereby presenting greater opportunities for the reversal of convictions. In particular, the absence of post-conviction relief at the state level would likely channel a greater number of constitutional claims into the federal habeas courts, where they could receive plenary consideration. Although this would shift certain costs from the state-court system to the federal judiciary (which result is unlikely to be met with equanimity there, *see id.*), it would also undermine the State's interests in the finality of its criminal judgments, in addressing allegations of error or misconduct in its own courts, and in acting as first arbiter of questions of constitutional criminal law.

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