SUPREME COURT OF THE UNITED STATES

No. 01–1127

BILL LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, PETITIONER *v.* LEANDRO ANDRADE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 5, 2003]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case raises the issue whether the United States Court of Appeals for the Ninth Circuit erred in ruling that the California Court of Appeal's decision affirming Leandro Andrade's two consecutive terms of 25 years to life in prison for a "third strike" conviction is contrary to, or an unreasonable application of, clearly established federal law as determined by this Court within the meaning of 28 U. S. C. §2254(d)(1).

I

A

On November 4, 1995, Leandro Andrade stole five videotapes worth $84.70 from a Kmart store in Ontario, California. Security personnel detained Andrade as he was leaving the store. On November 18, 1995, Andrade entered a different Kmart store in Montclair, California, and placed four videotapes worth $68.84 in the rear waistband of his pants. Again, security guards apprehended Andrade as he was exiting the premises. Police subsequently arrested Andrade for these crimes.

These two incidents were not Andrade's first or only

encounters with law enforcement. According to the state probation officer's presentence report, Andrade has been in and out of state and federal prison since 1982. In January 1982, he was convicted of a misdemeanor theft offense and was sentenced to 6 days in jail with 12 months' probation. Andrade was arrested again in November 1982 for multiple counts of first-degree residential burglary. He pleaded guilty to at least three of those counts, and in April of the following year he was sentenced to 120 months in prison. In 1988, Andrade was convicted in federal court of "[t]ransportation of [m]arijuana," App. 24, and was sentenced to eight years in federal prison. In 1990, he was convicted in state court for a misdemeanor petty theft offense and was ordered to serve 180 days in jail. In September 1990, Andrade was convicted again in federal court for the same felony of "[t]ransportation of [m]arijuana," *ibid.*, and was sentenced to 2,191 days in federal prison. And in 1991, Andrade was arrested for a state parole violation—escape from federal prison. He was paroled from the state penitentiary system in 1993.

A state probation officer interviewed Andrade after his arrest in this case. The presentence report notes:

> "The defendant admitted committing the offense. The defendant further stated he went into the K-Mart Store to steal videos. He took four of them to sell so he could buy heroin. He has been a heroin addict since 1977. He says when he gets out of jail or prison he always does something stupid. He admits his addiction controls his life and he steals for his habit." *Id.,* at 25.

Because of his 1990 misdemeanor conviction, the State charged Andrade in this case with two counts of petty theft with a prior conviction, in violation of Cal. Penal Code Ann. §666 (West Supp. 2002). Under California law, petty theft with a prior conviction is a so-called "wobbler"

offense because it is punishable either as a misdemeanor or as a felony. *Ibid.*; cf. *Ewing* v. *California*, *ante*, at — (slip op., at 3–4) (plurality opinion). The decision to prosecute petty theft with a prior conviction as a misdemeanor or as a felony is in the discretion of the prosecutor. See *ante*, at — (slip op., at 4). The trial court also has discretion to reduce the charge to a misdemeanor at the time of sentencing. See *People* v. *Superior Court of Los Angeles Cty. ex rel. Alvarez*, 14 Cal. 4th 968, 979, 928 P. 2d 1171, 1177–1178 (1997); see also *Ewing* v. *California*, *ante*, at — (slip op., at 4).

Under California's three strikes law, any felony can constitute the third strike, and thus can subject a defendant to a term of 25 years to life in prison. See Cal. Penal Code Ann. §667(e)(2)(A) (West 1999); see also *Ewing* v. *California*, *ante*, at — (slip op., at 3). In this case, the prosecutor decided to charge the two counts of theft as felonies rather than misdemeanors. The trial court denied Andrade's motion to reduce the offenses to misdemeanors, both before the jury verdict and again in state habeas proceedings.

A jury found Andrade guilty of two counts of petty theft with a prior conviction. According to California law, a jury must also find that a defendant has been convicted of at least two serious or violent felonies that serve as qualifying offenses under the three strikes regime. In this case, the jury made a special finding that Andrade was convicted of three counts of first-degree residential burglary. A conviction for first-degree residential burglary qualifies as a serious or violent felony for the purposes of the three strikes law. Cal. Penal Code Ann. §§667.5, 1192.7 (West 1999); see also *Ewing* v. *California*, *ante*, at — (slip op., at 7). As a consequence, each of Andrade's convictions for theft under Cal. Penal Code Ann. §666 (West Supp. 2002) triggered a separate application of the three strikes law. Pursuant to California law, the judge sentenced Andrade

to two consecutive terms of 25 years to life in prison. See §§667(c)(6), 667(e)(2)(B). The State stated at oral argument that under the decision announced by the Supreme Court of California in *People* v. *Garcia*, 20 Cal. 4th 490, 976 P. 2d 831 (1999)—a decision that postdates his conviction and sentence—it remains "available" for Andrade to "file another State habeas corpus petition" arguing that he should serve only one term of 25 years to life in prison because "sentencing courts have a right to dismiss strikes on a count-by-count basis." Tr. of Oral Arg. 24.

B

On direct appeal in 1997, the California Court of Appeal affirmed Andrade's sentence of two consecutive terms of 25 years to life in prison. It rejected Andrade's claim that his sentence violates the constitutional prohibition against cruel and unusual punishment. The court stated that "the proportionality analysis" of *Solem* v. *Helm,* 463 U. S. 277 (1983), "is questionable in light of" *Harmelin* v. *Michigan*, 501 U. S. 957 (1991). App. to Pet. for Cert. 76. The court then applied our decision in *Rummel* v. *Estelle,* 445 U. S. 263 (1980), where we rejected the defendant's claim that a life sentence was "'grossly disproportionate' to the three felonies that formed the predicate for his sentence." *Id.,* at 265. The California Court of Appeal then examined Andrade's claim in light of the facts in *Rummel:* "Comparing [Andrade's] crimes and criminal history with that of defendant Rummel, we cannot say the sentence of 50 years to life at issue in this case is disproportionate and constitutes cruel and unusual punishment under the United States Constitution." App. to Pet. for Cert. 76–77.

After the Supreme Court of California denied discretionary review, Andrade filed a petition for a writ of habeas corpus in Federal District Court. The District Court denied his petition. The Ninth Circuit granted Andrade a certificate of appealability as to his claim that his sentence

violated the Eighth Amendment, and subsequently reversed the judgment of the District Court. 270 F. 3d 743 (2001).

The Ninth Circuit first noted that it was reviewing Andrade's petition under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214. Applying its own precedent, the Ninth Circuit held that an unreasonable application of clearly established federal law occurs "when our independent review of the legal question 'leaves us with a "firm conviction" that one answer, the one rejected by the [state] court, was correct and the other, the application of the federal law that the [state] court adopted, was erroneous—in other words that clear error occurred.'" 270 F. 3d, at 753 (alteration in original) (quoting *Van Tran* v. *Lindsey*, 212 F. 3d 1143, 1153–1154 (CA9 2000)).

The court then reviewed our three most recent major precedents in this area—*Rummel* v. *Estelle*, *supra*, *Solem* v. *Helm, supra,* and *Harmelin* v. *Michigan*, *supra.* The Ninth Circuit "follow[ed] the test prescribed by Justice Kennedy in *Harmelin*," concluding that "both *Rummel* and *Solem* remain good law and are instructive in *Harmelin*'s application." 270 F. 3d, at 766. It then noted that the California Court of Appeal compared the facts of Andrade's case to the facts of *Rummel*, but not *Solem*. 270 F. 3d, at 766. The Ninth Circuit concluded that it should grant the writ of habeas corpus because the state court's "disregard for *Solem* results in an unreasonable application of clearly established Supreme Court law," and "is irreconcilable with . . . *Solem*," thus constituting "clear error." *Id.,* at 766–767.

Judge Sneed dissented in relevant part. He wrote that "[t]he sentence imposed in this case is not one of the 'exceedingly rare' terms of imprisonment prohibited by the Eighth Amendment's proscription against cruel and unusual punishment." *Id.,* at 767 (quoting *Harmelin* v.

Michigan, *supra*, at 1001 (KENNEDY, J., concurring in part and concurring in judgment)). Under his view, the state court decision upholding Andrade's sentence was thus "not an unreasonable application of clearly established federal law." 270 F. 3d, at 772. We granted certiorari, 535 U. S. 969 (2002), and now reverse.

II

Andrade's argument in this Court is that two consecutive terms of 25 years to life for stealing approximately $150 in videotapes is grossly disproportionate in violation of the Eighth Amendment. Andrade similarly maintains that the state court decision affirming his sentence is "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. §2254(d)(1).

AEDPA circumscribes a federal habeas court's review of a state-court decision. Section 2254 provides:

> "(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States."

The Ninth Circuit requires federal habeas courts to review the state court decision *de novo* before applying the AEDPA standard of review. See, *e.g.*, *Van Tran* v. *Lindsey*, *supra*, at 1154–1155; *Clark* v. *Murphy*, 317 F. 3d 1038, 1044, n. 3 (CA9 2003). We disagree with this approach. AEDPA does not require a federal habeas court to

adopt any one methodology in deciding the only question that matters under §2254(d)(1)—whether a state court decision is contrary to, or involved an unreasonable application of, clearly established Federal law. See *Weeks* v. *Angelone,* 528 U. S. 225 (2000). In this case, we do not reach the question whether the state court erred and instead focus solely on whether §2254(d) forecloses habeas relief on Andrade's Eighth Amendment claim.

III

A

As a threshold matter here, we first decide what constitutes "clearly established Federal law, as determined by the Supreme Court of the United States." §2254(d)(1). Andrade relies upon a series of precedents from this Court—*Rummel* v. *Estelle,* 445 U. S. 263 (1980), *Solem* v. *Helm*, 463 U. S. 277 (1983), and *Harmelin* v. *Michigan*, 501 U. S. 957 (1991)—that he claims clearly establish a principle that his sentence is so grossly disproportionate that it violates the Eighth Amendment. Section 2254(d)(1)'s "clearly established" phrase "refers to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." *Williams* v. *Taylor*, 529 U. S. 362, 412 (2000). In other words, "clearly established Federal law" under §2254(d)(1) is the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision. See *id.,* at 405, 413; *Bell* v. *Cone,* 535 U. S. 685, 698 (2002). In most situations, the task of determining what we have clearly established will be straightforward. The difficulty with Andrade's position, however, is that our precedents in this area have not been a model of clarity. See *Harmelin* v. *Michigan*, 501 U. S., at 965 (opinion of SCALIA, J.); *id.,* at 996, 998 (KENNEDY, J., concurring in part and concurring in judgment). Indeed, in determining whether a particular sentence for a term of years can

violate the Eighth Amendment, we have not established a clear or consistent path for courts to follow. See *Ewing* v. *California*, *ante,* at — (slip op., at 8–11).

B

Through this thicket of Eighth Amendment jurisprudence, one governing legal principle emerges as "clearly established" under §2254(d)(1): A gross disproportionality principle is applicable to sentences for terms of years.

Our cases exhibit a lack of clarity regarding what factors may indicate gross disproportionality. In *Solem* (the case upon which Andrade relies most heavily), we stated: "It is clear that a 25-year sentence generally is more severe than a 15-year sentence, but in most cases it would be difficult to decide that the former violates the Eighth Amendment while the latter does not." 463 U. S., at 294 (footnote omitted). And in *Harmelin*, both JUSTICE KENNEDY and JUSTICE SCALIA repeatedly emphasized this lack of clarity: that "*Solem* was scarcely the expression of clear . . . constitutional law," 501 U. S., at 965 (opinion of SCALIA, J.), that in "adher[ing] to the narrow proportionality principle . . . our proportionality decisions have not been clear or consistent in all respects," *id.,* at 996 (KENNEDY, J., concurring in part and concurring in judgment), that "we lack clear objective standards to distinguish between sentences for different terms of years," *id.,* at 1001 (KENNEDY, J., concurring in part and concurring in judgment), and that the "precise contours" of the proportionality principle "are unclear," *id.,* at 998 (KENNEDY, J., concurring in part and concurring in judgment).

Thus, in this case, the only relevant clearly established law amenable to the "contrary to" or "unreasonable application of" framework is the gross disproportionality principle, the precise contours of which are unclear, applicable only in the "exceedingly rare" and "extreme" case. *Id.,* at 1001 (KENNEDY, J., concurring in part and concurring in

judgment) (internal quotation marks omitted); see also *Solem* v. *Helm*, *supra*, at 290; *Rummel* v. *Estelle*, *supra,* at 272.

IV

The final question is whether the California Court of Appeal's decision affirming Andrade's sentence is "contrary to, or involved an unreasonable application of," this clearly established gross disproportionality principle.

First, a state court decision is "contrary to our clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases" or "if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent." *Williams* v. *Taylor, supra,* at 405–406; see also *Bell* v. *Cone*, *supra,* at 694. In terms of length of sentence and availability of parole, severity of the underlying offense, and the impact of recidivism, Andrade's sentence implicates factors relevant in both *Rummel* and *Solem*. Because *Harmelin* and *Solem* specifically stated that they did not overrule *Rummel*, it was not contrary to our clearly established law for the California Court of Appeal to turn to *Rummel* in deciding whether a sentence is grossly disproportionate. See *Harmelin*, *supra,* at 998 (KENNEDY, J., concurring in part and concurring in judgment); *Solem*, *supra,* at 288, n. 13, 303–304, n. 32. Indeed, *Harmelin* allows a state court to reasonably rely on *Rummel* in determining whether a sentence is grossly disproportionate. The California Court of Appeal's decision was therefore not "contrary to" the governing legal principles set forth in our cases.

Andrade's sentence also was not materially indistinguishable from the facts in *Solem*. The facts here fall in between the facts in *Rummel* and the facts in *Solem*. *Solem* involved a sentence of life in prison without the

possibility of parole. 463 U. S., at 279. The defendant in *Rummel* was sentenced to life in prison with the possibility of parole. 445 U. S., at 267. Here, Andrade retains the possibility of parole. *Solem* acknowledged that *Rummel* would apply in a "similar factual situation." 463 U. S., at 304, n. 32. And while this case resembles to some degree both *Rummel* and *Solem*, it is not materially indistinguishable from either. Cf. *Ewing* v. *California*, *ante*, at — (slip op., at 6) (BREYER, J., dissenting) (recognizing a "twilight zone between *Solem* and *Rummel*"). Consequently, the state court did not "confron[t] a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arriv[e] at a result different from our precedent." *Williams* v. *Taylor*, 529 U. S., at 406.[1]

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[1] JUSTICE SOUTER argues that the possibility of Andrade's receiving parole in 50 years makes this case similar to the facts in *Solem* v. *Helm,* 463 U. S. 227 (1983). *Post,* at 2 (dissenting opinion). Andrade's sentence, however, is also similar to the facts in *Rummel* v. *Estelle,* 445 U. S. 263 (1980), a case that is also "controlling." *Post,* at 2. Given the lack of clarity of our precedents in *Solem*, *Rummel*, and *Harmelin* v. *Michigan,* 501 U. S. 957 (1991), we cannot say that the state court's affirmance of two sentences of 25 years to life in prison was contrary to our clearly established precedent. And to the extent that JUSTICE SOUTER is arguing that the similarity of *Solem* to this case entitles Andrade to relief under the unreasonable application prong of §2254(d), we reject his analysis for the reasons given *infra,* at 11–12. Moreover, it is not true that Andrade's "sentence can only be understood as punishment for the total amount he stole." *Post*, at 2. To the contrary, California law specifically provides that *each* violation of Cal. Penal Code Ann. §666 (West Supp. 2002) triggers a separate application of the three strikes law, if the different felony counts are "not arising from the same set of operative facts." §667(c)(6); see also §667(e)(2)(B). Here, Andrade was sentenced to two consecutive terms under California law precisely because the two thefts of two different Kmart stores occurring two weeks apart were two distinct crimes.

JUSTICE SOUTER, relying on *Robinson* v. *California,* 370 U. S. 660 (1962), also argues that in this case, it is "unrealistic" to think that a

Second, "[u]nder the 'unreasonable application' clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id.,* at 413. The "unreasonable application" clause requires the state court decision to be more than incorrect or erroneous. *Id.,* at 410, 412. The state court's application of clearly established law must be objectively unreasonable. *Id.,* at 409.

The Ninth Circuit made an initial error in its "unreasonable application" analysis. In *Van Tran* v. *Lindsey*, 212 F. 3d, at 1152–1154, the Ninth Circuit defined "objectively unreasonable" to mean "clear error." These two standards, however, are not the same. The gloss of clear error fails to give proper deference to state courts by conflating error (even clear error) with unreasonableness. See *Williams* v. *Taylor*, *supra,* at 410; *Bell* v. *Cone*, 535 U. S., at 699.

It is not enough that a federal habeas court, in its "independent review of the legal question" is left with a "'firm conviction'" that the state court was "'erroneous'" 270 F. 3d, at 753 (quoting *Van Tran* v. *Lindsey*, *supra*, at 1153–1154). We have held precisely the opposite: "Under §2254(d)(1)'s 'unreasonable application' clause, then, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly

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sentence of 50 years to life for Andrade is not equivalent to life in prison without parole. *Post,* at 3. This argument, however, misses the point. Based on our precedents, the state court decision was not contrary to, or an unreasonable application of, our clearly established law. Moreover, JUSTICE SOUTER's position would treat a sentence of life without parole for the 77-year-old person convicted of murder as equivalent to a sentence of life with the possibility of parole in 10 years for the same person convicted of the same crime. Two different sentences do not become materially indistinguishable based solely upon the age of the persons sentenced.

established federal law erroneously or incorrectly." *Williams* v. *Taylor*, 529 U. S., at 411. Rather, that application must be objectively unreasonable. *Id.,* at 409; *Bell* v. *Cone*, *supra*, at 699; *Woodford* v. *Visciotti*, 537 U. S. —, — (2002) *(per curiam)* (slip op., at 6).

Section 2254(d)(1) permits a federal court to grant habeas relief based on the application of a governing legal principle to a set of facts different from those of the case in which the principle was announced. See, *e.g., Williams* v. *Taylor*, *supra,* at 407 (noting that it is "an unreasonable application of this Court's precedent if the state court identifies the correct governing legal rule from this Court's cases but unreasonably applies it to the facts of the particular state prisoner's case"). Here, however, the governing legal principle gives legislatures broad discretion to fashion a sentence that fits within the scope of the proportionality principle—the "precise contours" of which "are unclear." *Harmelin* v. *Michigan*, 501 U. S., at 998 (KENNEDY, J., concurring in part and concurring in judgment). And it was not objectively unreasonable for the California Court of Appeal to conclude that these "contours" permitted an affirmance of Andrade's sentence.

Indeed, since *Harmelin*, several Members of this Court have expressed "uncertainty" regarding the application of the proportionality principle to the California three strikes law. *Riggs* v. *California*, 525 U. S. 1114, 1115 (1999) (STEVENS, J., joined by SOUTER and GINSBURG, JJ., respecting denial of certiorari) ("[T]here is some uncertainty about how our cases dealing with the punishment of recidivists should apply"); see also *id.,* at 1116 ("It is thus unclear how, if at all, a defendant's criminal record beyond the requisite two prior 'strikes' . . . affects the constitutionality of his sentence"); cf. *Durden* v. *California*, 531 U. S. 1184 (2001) (SOUTER, J., joined by BREYER, J., dissenting from denial of certiorari) (arguing that the Court should hear the three strikes gross disproportionality

issue on direct review because of the "potential for disagreement over application of" AEDPA).[2]

The gross disproportionality principle reserves a constitutional violation for only the extraordinary case. In applying this principle for §2254(d)(1) purposes, it was not an unreasonable application of our clearly established law for the California Court of Appeal to affirm Andrade's sentence of two consecutive terms of 25 years to life in prison.

V

The judgment of the United States Court of Appeals for the Ninth Circuit, accordingly, is reversed.

It is so ordered.

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[2] JUSTICE SOUTER would hold that Andrade's sentence also violates the unreasonable application prong of §2254(d)(1). *Post,* at 3–6. His reasons, however, do not change the "uncertainty" of the scope of the proportionality principle. We cannot say that the state court decision was an unreasonable application of this principle.