No. 19-6524

United States Court of Appeals
FOR THE FOURTH CIRCUIT

GARY WALL,
Petitioner - Appellant,

v.

WARDEN JEFFREY KISER,
Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia

APPELLANT'S REPLY BRIEF

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The State never contests that it acted unconstitutionally by revoking 270 days of Mr. Wall's accrued good-time credits. *See* Pet'r Br. 15–18. Nor does it contest that this habeas action represents Mr. Wall's first and only opportunity to challenge the legality of that revocation.[1] Instead, it argues *Teague v. Lane*, 489 U.S. 288 (1989), and *Wolff v. McDonnell*, 418 U.S. 539 (1974), bar this Court from applying its precedents to resolve Mr. Wall's legal claim. The State is wrong on both cases.

First, *Teague* generally bars federal habeas courts from announcing or applying new procedural rules to overturn final, judicially approved convictions and sentences. *Teague* rooted this bar in considerations of judicial finality and comity that have no place where, as here, a habeas petitioner has had no prior opportunity to challenge his detention as illegal. Rather than explaining how these considerations justify extending *Teague* beyond its postconviction-specific holding, the State

[1] The State emphasizes that Mr. Wall's disciplinary proceedings are "long-concluded," State Br. 21, but it never disputes that Mr. Wall's efforts to secure judicial review have been diligent and timely at every juncture.

divorces *Teague*'s holding from its reasoning and extends the case's bar on applying new procedural rules to cover *all* habeas cases, including those challenging detention decisions never before subject to judicial scrutiny. Such a broad reading cannot be correct.

Second, *Wolff*'s case-specific balancing approach to determining the remedies available to a particular plaintiff class under 42 U.S.C. § 1983 does not inform the relief available in habeas cases. *Wolff* explicitly distinguished the relief available under Section 1983 from the kind of habeas relief sought here. And *Teague* has since rejected a case-by-case prudential balancing approach to retroactivity in habeas. In any event, even under *Wolff*'s *ad hoc* balancing approach, Mr. Wall is still entitled to relief.

Because neither *Teague* nor *Wolff* bars this Court from correcting the constitutional error that extended Mr. Wall's sentence by nearly nine months, this Court should reverse and remand for further proceedings.

I. *Teague* Exclusively Addressed Postconviction Habeas, and the State Has Not Justified Extending Its Holding Here.

Without addressing the opinion's underlying reasoning or citing *any* precedent supporting its reading, the State claims *Teague v. Lane*, 489 U.S. 288 (1989), bars this Court from deciding Mr. Wall's unresolved

constitutional claim on the basis of existing law. State Br. 31–45. Because *Teague* interpreted "statutes conferring authority on the federal courts to award habeas relief to prisoners," the State argues, that case's limits on announcing or applying "new" procedural protections must constrain federal courts' "capacity to award relief" in all habeas cases. State Br. 35–36. But *Teague*'s holding was limited to postconviction habeas, and the State offers no reason to extend it to reach cases like Mr. Wall's, where, unlike in the postconviction context, a petitioner's only avenue for judicial review of a detention decision is federal habeas corpus.[2]

Teague's limits on federal courts' power to award habeas relief to unlawfully detained petitioners in the postconviction context were based exclusively on finality and comity concerns raised by vacating final criminal judgments. *See Teague*, 489 U.S. at 309–10 (plurality opinion). As *Teague* recognized, "the notion of legality must at some point include

[2] Despite claiming it would be "untenable" to interpret the scope of federal habeas review to "shapeshift[]" based on the circumstances of the detention under review, State Br. 36, even the State admits *Teague* itself was based on the habeas statutes' "authorization to adjust the scope of the writ in accordance with equitable and prudential considerations," State Br. 27 (quoting *Danforth v. Minnesota*, 552 U.S. 264, 278 (2008)).

the assignment of final competence to determine legality." *Id.* at 309 (quoting Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 450–51 (1963)). Where a state court has finally upheld a detention's legality, federal courts should not then require states to continually "marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." *Id.* at 310.

Mr. Wall's habeas action challenges a detention decision never before judicially *examined*, let alone approved. And the State never explains why *Teague*'s postconviction-specific finality and comity concerns limit federal habeas under these circumstances. The State points to nothing suggesting that state prison administrators enjoy the same final authority as state-court *judges* to ensure a challenged detention complies with federal law. *Compare Rose v. Lundy*, 455 U.S. 509, 518 (1982) (noting state courts are "bound to guard and protect rights secured by the Constitution" (quoting *Ex parte Royall*, 117 U.S. 241, 251 (1886))), *with Cleavinger v. Saxner*, 474 U.S. 193, 203–04 (1985) (observing prison discipline committees do not perform the same independent adjudicative function as judges). Similarly, the State

ignores this Court's recognition that judicial review of state prison disciplinary decisions does not raise the same comity concerns as collateral review of criminal judgments. *See* Pet'r Br. 19 (citing *Hamlin v. Warren*, 664 F.2d 29, 31 (4th Cir. 1981)). Indeed, the only time the State even mentions *Teague*'s underlying rationales is in a passing, inapposite reference to *Teague*'s discussion of the "costs" of relitigating criminal trials. *See* State Br. 25 (quoting *Teague*, 489 U.S. at 310 (plurality opinion)). But the State is not relitigating anything here: It is being asked, for the first time, to demonstrate that its revocation of Mr. Wall's good-time credit complied with federal law.

Tellingly, the State does not cite *any* case holding, or even suggesting, that *Teague*'s limitation on the scope of federal review applies to petitioners like Mr. Wall.[3] That is not surprising. Such an application would effectively deprive those petitioners of access to *any* court authorized to assess their federal claims under its contemporary understanding of the Constitution's demands. Given that federal habeas

[3] As Mr. Wall has explained, both the Ninth Circuit and this Court have suggested the opposite. *See* Pet'r Br. 19 & n.6 (first citing *Alvarenga-Villalobos v. Ashcroft*, 271 F.3d 1169, 1172 (9th Cir. 2001), then citing *Plyler v. Moore*, 129 F.3d 728, 735 n.9 (4th Cir. 1997)).

is meant to "preserv[e] for the state prisoner an expeditious federal forum for the vindication of his federally protected rights, if the State has denied redress," *Preiser v. Rodriguez*, 411 U.S. 475, 498 (1973), the State's broad reading of *Teague* cannot be correct.

Unable to find anything in *Teague* or its progeny that justifies extending the case's postconviction-specific limits to detention decisions being judicially scrutinized for the first time, the State claims that allowing this Court to apply its current, independent understanding of due process to Mr. Wall's case would lead to unjustifiable disparities. State Br. 37–42. But the disparities the State deems absurd are perfectly sensible.

First, the State claims awarding habeas relief here would treat "prisoners who complain about procedural deficiencies in prison disciplinary proceedings" more favorably than "those complaining about inadequate safeguards in their criminal trials." State Br. 37 (italics omitted). According to the State, "[i]t would be more than a bit strange" if "procedural due process violations at trial go unremedied in federal habeas review, while similar violations in prison disciplinary proceedings may be redressed." *Id.*

There is nothing strange about it. Between trial, direct appeal, and certiorari review in the U.S. Supreme Court, criminal defendants have multiple opportunities to obtain *de novo* consideration of their federal due process claims before their convictions and sentences become final. In contrast, Mr. Wall's *only* avenue to argue that revocation of his good-time credit violated federal law is federal habeas corpus.[4] Thus, the issue here is not whether constitutional violations in disciplinary proceedings should have *more* remedies than violations at trial, but whether someone whose prison sentence was unconstitutionally extended nine months by state prison administrators should have a chance to seek *any* remedy at all.

Second, the State claims that reading *Teague* to apply only to cases challenging judicially authorized detention means that, "despite making

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[4] As the State acknowledges, State Br. 39, the Virginia Supreme Court held it lacked jurisdiction under *Carroll v. Johnson*, 685 S.E.2d 647 (Va. 2009), to hear Mr. Wall's federal claims, *see* J.A. 26. Citing one pre-*Carroll* case, the State claims that, notwithstanding *Carroll*, Virginia courts might be able to review good-time credit revocations in *other* cases. *See* State Br. 40 (citing *Shambaugh v. Johnson*, 72 Va. Cir. 409 (Fairfax Cty. Cir. Ct. Jan. 30, 2007)). But whether the Virginia Supreme Court's jurisdictional holding here was right or wrong under Virginia law, Virginia's courthouse doors were undisputedly closed to Mr. Wall's claims.

the same arguments to federal courts applying the same statute and bound by the same precedent, . . . two petitioners would get different results" depending on whether they were previously allowed to pursue their claims in state court. *See* State Br. 42. And such divergence, the State claims, is untenable because a federal court's habeas authority cannot "depend on the rules of the State in which the claim arose." State Br. 38.

But disparate results arising from aspects of state-court process have long been an accepted feature of federal habeas. Indeed, the Supreme Court has incorporated state courts' procedural rules into prudential doctrines affecting the availability of federal habeas relief. *See Lee v. Kemna*, 534 U.S. 362, 375 (2002) (discussing procedural default); *Fay v. Noia*, 372 U.S. 391, 419–20 (1963) (discussing the history of the exhaustion requirement), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977). And Congress has followed suit. As even the State admits, State Br. 42, the 1996 Antiterrorism and Effective Death Penalty Act limits the scope of federal habeas review if a petitioner's federal claim was previously "adjudicated on the merits in State court proceedings," 28 U.S.C. § 2254(d). Far from being arbitrary,

disparate results arising from features of state judicial review reflect the very concern that animated the *Teague* Court: namely, that federal habeas should not be a vehicle for undermining the integrity of state-court processes.

Ultimately, the State seeks to insulate its prison disciplinary decisions from due process scrutiny in *any* court, except where a constitutional violation happens to be virtually indistinguishable from one described in a past precedent. *See Lambrix v. Singletary*, 520 U.S. 518, 538 (1997) (holding that federal courts cannot grant relief for a due process violation under *Teague* unless that result is "*dictated*" by existing precedent, *i.e.*, unless "*no other* interpretation" of that precedent is reasonable). This result, if accepted, would extend beyond the prison disciplinary context and would presumably extend to *all* detainees—state or federal—being held without judicial process. *See* Pet'r Br. 21 (citing *United States v. Martinez*, 139 F.3d 412, 416 (4th Cir. 1998)). Nothing in *Teague* contemplates such sweeping limitations on the scope of judicial relief for unlawful administrative detention decisions. This Court should reject the State's attempt to twist *Teague*'s respect for state-court process

into an invitation to bar petitioners like Mr. Wall from any meaningful judicial process whatsoever.

II. *Wolff*'s Outdated, Case-Specific Retroactivity Analysis Does Not Govern in Habeas Cases.

Unable to explain why *Teague* bars this Court from exercising its habeas power to correct the unconstitutional extension of Mr. Wall's detention, the State bases its remaining argument on a Section 1983 case that placed no limitations on federal habeas. According to the State, *Wolff v. McDonnell*, 418 U.S. 539 (1974), forecloses retroactive application of "new procedural rules affecting inquiries into infractions of prison discipline" and so bars relief here. State Br. 22–23 (quoting *Wolff*, 418 U.S. at 573). Wrong. Not only did *Wolff* expressly distinguish Section 1983 relief from habeas relief, but it also applied a retroactivity analysis similar to one *Teague* rejected for habeas claims. It therefore has no bearing on Mr. Wall's claim. Even if *Wolff* applies, Mr. Wall's habeas claim would not be barred because his case presents none of the case-specific administrability concerns present in *Wolff*.

Wolff considered what relief was available to inmates at a state correctional institution who had successfully challenged certain prison disciplinary procedures in a prison-wide class action under 42 U.S.C.

§ 1983. *Wolff*, 418 U.S. at 553; *see also McDonnell v. Wolff*, 342 F. Supp. 616, 617 (D. Neb. 1972). As a threshold matter, the Court dismissed claims for restoration of good-time credits that had been revoked under the challenged procedures, pointing out that such relief could be ordered only in habeas proceedings. *Id.* at 554–55. The Court then held that the plaintiffs could pursue money damages and declaratory relief under Section 1983 for past due process violations.[5] *Id.* It declined, however, to order the expungement of potentially large numbers of past misconduct findings. *Id.* at 574. Concerned about the potential "burden on federal and state officials" of a ruling that could require blanket expungement of all disciplinary records ever assembled under pre-*Wolff*

[5] In *Cox v. Cook*, 420 U.S. 734 (1975) (per curiam), the Supreme Court later held that the new procedural protections announced in *Wolff* could not apply retroactively to support a damages award under Section 1983 against individual prison officials who acted in "good-faith reliance" on pre-*Wolff* disciplinary procedures, *id.* at 736. The Court's ruling in *Cox* was consistent with then-emerging principles of qualified immunity, which at that time generally barred damages remedies against state actors acting in good faith on a reasonable understanding of the law's demands. *Cf. Pierson v. Ray*, 386 U.S. 547, 555–57 (1967) (recognizing a good-faith defense for police officers). Rather than precluding retroactive relief entirely, *Cox* left open the possibility of retrospective money damages in cases where prison officials acted in bad faith. *Cf. Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982) (observing that, prior to 1982, qualified immunity was not available to state officials acting in subjective bad faith).

disciplinary procedures—not just in the single prison at issue, but potentially across the entire country—the *Wolff* Court "d[id] not think that error was so pervasive . . . under the old procedures as to warrant this cost or result." *Id.*

Wolff's case-specific analysis of which equitable remedies to award as part of a class action brought under Section 1983 has no bearing on the scope of the federal habeas power. *Preiser v. Rodriguez*, 411 U.S. 475 (1973), expressly distinguished relief under Section 1983 from habeas relief, a remedy "explicitly and historically designed to provide the means for a state prisoner to attack the validity of his confinement," *id.* at 489. In *Wolff*, therefore, the Supreme Court pointedly declined to address the merits of the plaintiffs' claims for restoration of improperly revoked good-time credits, which it held could only be sought in habeas. *Wolff*, 418 U.S. at 554 (citing *Preiser*, 411 U.S. at 500). The *Wolff* Court's reluctance to order a *different* remedy—expungement of all relevant records for every inmate at an entire institution—thus says nothing about the scope of a federal court's acknowledged authority to order individualized habeas relief for an unconstitutionally detained inmate.

Morrissey v. Brewer, 408 U.S. 471 (1972)—the case upon which *Wolff* relied to limit the scope of the retrospective remedies available under Section 1983, *see Wolff*, 418 U.S. at 573–74—confirms the distinction. In *Morrissey*, two petitioners sought federal habeas relief, claiming their parole had been revoked without due process. *Morrissey*, 408 U.S. at 472–73. After holding that constitutional due process protections apply to parole revocation, *id.* at 482, the *Morrissey* Court announced requirements "applicable to future revocations of parole," *id.* at 490. But the *Morrissey* Court never once suggested that the habeas petitioners before it were ineligible to receive the benefit of the newly announced procedural protections. To the contrary, it remanded for a determination of whether the petitioners had received revocation hearings "meet[ing] the standards laid down in th[e] opinion"—a step that would have been unnecessary had those standards been incapable of retroactive application in habeas. *Id.* In reading *Morrissey* to bar certain retrospective relief under Section 1983, the *Wolff* Court could not have read the case to bar the sort of habeas relief it expressly contemplated.

Moreover, fifteen years after *Wolff* was decided, the Supreme Court confirmed in *Teague* that the sort of *ad hoc* balancing approach to retroactivity that *Wolff* adopted in the Section 1983 context is inappropriate in habeas. *Teague* discussed at length the problems with the so-called *Linkletter* standard, the then-existing standard for determining whether to apply a new rule retroactively in postconviction habeas proceedings. *Teague*, 489 U.S. at 302–05. Similar to *Wolff*'s balancing approach, the *Linkletter* standard required a case-by-case examination of, among other things, the purpose of the new rule and the administrative effects of retroactive application. *Id.* at 302. This balancing approach, *Teague* admitted, had "not led to consistent results" and had caused "disparate treatment of similarly situated defendants." *Id.* at 302–03. In response to these prior inconsistencies, the *Teague* Court disapproved *Linkletter*'s methodology in the habeas context.[6] *Id.* at 305.

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[6] The *only* case the State has identified that applies *Wolff*'s retroactivity test in the habeas context, the out-of-circuit *Sanchez v. Miller*, 792 F.2d 694 (7th Cir. 1986), predates *Teague*. Tellingly, the State does not even bother to cite *McNair v. McCune*, 527 F.2d 874 (4th Cir. 1975) (per curiam), the only case in which *this* Court has ever mentioned *Wolff's* retroactivity discussion in the habeas context, *see id.* at 875. The one-sentence reference to *Wolff* in *McNair*, a 1975 (pre-*Teague*) per curiam

By asking this Court to extend *Wolff*'s balancing test into the habeas context, it is the State that seeks a "return to the bad old days" of the *Linkletter*-style inquiry rejected in *Teague*. *See* State Br. 43. Under the *Wolff* rule the State proposes, this Court would ask whether a prison hearing officer's failure to consult available video evidence "so undermine[s] the legitimacy of prior disciplinary hearings as to warrant imposing the burden of retroactivity on prison officials." State Br. 30 (quoting *Sanchez v. Miller*, 792 F.2d 694, 703 (7th Cir. 1986)). The State offers the Court no tools for conducting this rootless inquiry. It fails to explain how a disciplinary hearing retains its legitimacy in the face of a hearing officer's unjustified refusal to view readily available video evidence of a critical, disputed event. Nor does the State explain why granting Mr. Wall habeas relief in this case would create any insurmountable administrative burden.

Even if this Court were to conduct the State's proposed balancing inquiry, the outcome would favor Mr. Wall. As this Court's decision in *Lennear v. Wilson*, 937 F.3d 257 (4th Cir. 2019), makes clear, refusing to

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opinion *reversing* a denial of habeas relief, was unnecessary to the result and offered no reasoning that would support applying *Wolff*'s retroactivity discussion outside the Section 1983 context.

review videotape evidence undermines the legitimacy of a prison disciplinary hearing by "effectively depriv[ing]" a detainee of "potentially critical 'evidence contradicting statements of prison staff,'" *id.* at 272 (quoting *Howard v. U.S. Bur. of Prisons*, 487 F.3d 808, 814 (10th Cir. 2007)). Moreover, granting habeas relief here would have a minimal effect on prison administration, for Mr. Wall seeks individual relief as one of the few people who: (a) lost accrued good-time credit prior to *Lennear* after unsuccessfully requesting consideration of video evidence; (b) timely raised and exhausted a due process claim in state court; (c) received no merits decision there; (d) filed a timely federal habeas petition raising the issue; and (e) remain in custody. The modest relief Mr. Wall seeks stands in contrast to the relief sought in *Wolff*, which would have required expunging all misconduct findings for all inmates at a state facility. *See Wolff*, 418 U.S. at 573–74.

This Court should resist the State's invitation to engage in freewheeling speculation over the hypothetical administrative effects of honoring Mr. Wall's constitutional rights. *Preiser* held that federal habeas provides a remedy for inmates whose good-time credits have been unconstitutionally revoked. Far from undermining that holding, *Wolff*

took pains to reinforce it. *Wolff* should not be read to foreclose a remedy it expressly declined to consider.

CONCLUSION

The State concedes that if neither *Teague* nor *Wolff* forecloses habeas relief in this case, this Court must remand. State Br. 45. Although the State argues, for the first time on appeal, that some unspecified institutional concerns may have justified prison officials' failure to consider undisputedly probative video evidence or that this failure may have been harmless, State Br. 45–47, the State properly acknowledges that it must present these arguments—if preserved—to the district court in the first instance, State Br. 45.[7] Because neither *Teague* nor *Wolff* bars application of the due process principles that resolve this case, this Court should reverse the dismissal of Mr. Wall's habeas petition and remand for further proceedings in the district court.

[7] The State references testimony Mr. Wall's disciplinary hearing officers gave in a pending Section 1983 suit. State Br. 11, 47. But the magistrate judge who heard that testimony made no credibility findings as to the hearing officers, and the district court presiding over the Section 1983 suit has yet to act on the magistrate judge's report and recommendation. State Br. 11 n.1.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,509 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I, Nicolas Sansone, certify that on June 26, 2020, a copy of Appellant's Reply Brief was served on counsel for Appellee via the Court's ECF system.

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