SUPREME COURT OF THE UNITED STATES

No. 03–287

REGINALD A. WILKINSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL., PETITIONERS *v.* WILLIAM DWIGHT DOTSON ET AL.

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

[March 7, 2005]

JUSTICE KENNEDY, dissenting.

In this case, the Court insists that an attack on parole proceedings brought under Rev. Stat. §1979, 42 U. S. C. §1983, may not be dismissed on the grounds that habeas corpus is the exclusive remedy for such claims. The primary reason offered for the Court's holding is that an order entitling a prisoner to a new parole proceeding might not result in his early release. That reason, however, applies with equal logic and force to a sentencing proceeding. And since it is elementary that habeas is the appropriate remedy for challenging a sentence, something must be quite wrong with the Court's own first premise.

Everyone knows that when a prisoner succeeds in a habeas action and obtains a new sentencing hearing, the sentence may or may not be reduced. The sentence can end up being just the same, or perhaps longer. The prisoner's early release is by no means assured simply because the first sentence was found unlawful. Yet no one would say that an attack on judicial sentencing proceedings following conviction may be raised through an action under §1983. The inconsistency in the Court's treatment of sentencing proceedings and parole proceedings is thus difficult to justify. It is, furthermore, in tension with our

precedents. For these reasons, I write this respectful dissent.

Challenges to parole proceedings are cognizable in habeas. Here respondents challenge parole determinations that not only deny release (or eligibility for consideration for release) but also guarantee continued confinement until the next scheduled parole proceeding. See *ante*, at 1–2 (majority opinion). If a parole determination is made in a proceeding flawed by errors of constitutional dimensions, as these respondents now allege, their continued confinement may well be the result of constitutional violation. Respondents thus raise a cognizable habeas claim of being "in custody in violation of the Constitution." 28 U. S. C. §2241(c)(3); see also 1 R. Hertz & J. Liebman, Federal Habeas Corpus Practice and Procedure §9.1, pp. 431–437, and n. 33 (4th ed. 2001) (noting that "[t]he range of claims cognizable in federal habeas corpus" includes challenges to "the duration of sentence (including on the basis of parole, good time, and other prison- or administratively, as opposed to court-administered rules)" and citing numerous cases to that effect). In recognition of this elementary principle, this Court and the courts of appeals have adjudicated the merits of many parole challenges in federal habeas corpus proceedings. See, *e.g.*, *California Dept. of Corrections* v. *Morales*, 514 U. S. 499 (1995); *Mickens-Thomas* v. *Vaughn*, 321 F. 3d 374 (CA3 2003); *Nulph* v. *Faatz*, 27 F. 3d 451 (CA9 1994) *(per curiam); Fender* v. *Thompson*, 883 F. 2d 303 (CA4 1989).

My concerns with the Court's holding are increased, not diminished, by the fact that the Court does not seem to deny that respondents' claims indeed could be cognizable in habeas corpus proceedings. JUSTICE SCALIA's concurring opinion suggests otherwise, because respondents seek a form of relief (new parole hearings) unavailable in habeas. *Ante*, at 2. But the common practice of granting a conditional writ—ordering that a State release the pris-

oner or else correct the constitutional error through a new hearing—already allows a habeas court to compel the type of relief JUSTICE SCALIA supposes to be unavailable. See *Hilton* v. *Braunskill*, 481 U. S. 770, 775 (1987) ("Federal habeas corpus practice, as reflected by the decisions of this Court, indicates that a court has broad discretion in conditioning a judgment granting habeas relief").

Because habeas is available for parole challenges like respondents', *Preiser* v. *Rodriguez*, 411 U. S. 475 (1973), thus requires a holding that it also provides the exclusive vehicle for them. In *Preiser*, the Court held that challenges to "the very fact or duration of [a prisoner's] confinement," as opposed to "the conditions of . . . prison life," must be brought in habeas, not under 42 U. S. C. §1983. 411 U. S., at 499–500. The language of §1983, to be sure, is capacious enough to include a challenge to the fact or duration of confinement; *Preiser*, nonetheless, established that because habeas is the most specific applicable remedy it should be the exclusive means for raising the challenge. *Id.,* at 489. Respondents' challenges to adverse parole system determinations relate not at all to conditions of confinement but rather to the fact and duration of confinement. See *Butterfield* v. *Bail*, 120 F. 3d 1023, 1024 (CA9 1997) ("[A] challenge to the procedures used in the denial of parole necessarily implicates the validity of the denial of parole and, therefore, the prisoner's continuing confinement"). Straightforward application of *Preiser* and the cases after it would yield the conclusion that these claims must be brought in habeas.

The majority's contrary holding, permitting parole determination challenges to go forward under §1983, is not based on any argument that these claims should be characterized as challenges to conditions of confinement rather than to its fact or duration. That argument is unavailable to the Court. The majority must say instead that respondents' claims do not fall into the "'core of ha-

beas.'" *Ante*, at 8. For this, it gives two reasons.

The first is that success on the claims will not necessarily entitle respondents to immediate release. *Ante*, at 7. This, as noted at the very outset, proves far too much. If the Court's line of reasoning is sound, it would remove from the "core of habeas" any challenge to an unconstitutional sentencing procedure.

The second reason, that success on the claims does not necessarily imply the invalidity of respondents' convictions or sentences, *ante*, at 7–8, is both misplaced and irrelevant. It is misplaced, because it takes out of context the test employed in *Heck* v. *Humphrey*, 512 U. S. 477 (1994), and in *Edwards* v. *Balisok*, 520 U. S. 641 (1997). In both those cases there was a temptation to seek only relief unavailable in habeas, such as damages (and declaratory relief serving as a predicate to damages), and thus to do an end run around *Preiser*. *Heck*, *supra*, at 481; *Balisok*, *supra*, at 643–644; see also *Muhammad* v. *Close*, 540 U. S. 749 (2004) *(per curiam)* (recognizing that damages are unavailable in habeas). Today's case does not present that problem. The fact that respondents' claims do not impugn the validity of their convictions or sentences is also irrelevant. True, respondents' contentions have nothing to do with their original state-court convictions or sentencing determinations. Stating this fact, however, gets the Court no closer to resolving whether parole determinations themselves are subject to direct challenge only in habeas. That is why we have held that administrative decisions denying good-time credits are subject to attack only in habeas. *Preiser*, *supra*, at 477, 500; *Balisok*, *supra*, at 643–644.

The Court makes it a point to cite a sentence fragment from *Close*, observing that "'the incarceration that matters under *Heck* is the incarceration ordered by the original judgment of conviction,'" *ante*, at 9 (quoting 540 U. S., at 751, n. 1). That statement, however, is inapplicable even on its own terms, because it addresses the *Heck* problem,

not this one. Furthermore, even apart from *Heck*'s inapplicability to this case, the full sentence from which the majority takes the quotation makes clear that the Court in *Close* was contrasting confinement *per se* with "special disciplinary confinement for infraction of prison rules," 540 U. S., at 751, n. 1. That simply is not at issue here. In sum, neither of the majority's stated principles can justify its deviation from the holding *Preiser* demands.

Today's ruling blurs the *Preiser* formulation. It is apparent that respondents' challenges relate not at all to conditions of confinement but solely to its duration. Notwithstanding *Preiser*'s direction that challenges to the fact or duration of confinement should be restricted to habeas, the Court's decision will allow numerous §1983 challenges to state parole system determinations that do relate solely to the duration of the prisoners' confinement.

It is unsurprising, then, that 18 States have filed an *amicus* brief joining with Ohio in urging the opposite result, see Brief for Alabama et al. as *Amici Curiae*. Today's decision allows state prisoners raising parole challenges to circumvent the state courts. Compare 28 U. S. C. §2254(b)(1)(A) (providing that a person in custody pursuant to a state-court judgment must in general exhaust all "remedies available in the courts of the State" before seeking federal habeas relief) with 42 U. S. C. §1997e(a) (requiring only that a prisoner exhaust administrative remedies before bringing a §1983 action to challenge "prison conditions"). Parole systems no doubt have variations from State to State. It is within the special province and expertise of the state courts to address challenges to their own state parole determinations in the first instance, particularly because many challenges raise state procedural questions. Today the Court, over the objection of many States, deprives the federal courts of the invaluable assistance and frontline expertise found in the state courts.

For the reasons given above, I would reverse.