



State and Local Government

by Caroline Johnson Levine

The Sovereignty of the States Requires a Doubly Deferential Review

Federal courts may provide litigants with additional opportunities to review state court decisions in limited circumstances. However, in *habeas* petitions, federal courts are required to use a “doubly deferential” standard of review, which grants deference to state court decisions. The U.S. Supreme Court recently issued a unanimous decision in *Burt v. Titlow*,¹ which determined that state court decisions are entitled to the benefit of deference in federal *habeas* reviews.

during a subsequent dinner with Titlow, at which time Titlow again recounted the details surrounding Donald’s death and asked Chahine to serve as an alibi for her and Billie.”⁴

Titlow and Rogers were arrested for murder, resulting in Titlow’s agreement to plead guilty to a reduced crime of manslaughter with a lighter sentence of 7 to 15 years in prison. Titlow’s plea agreement required her to testify against Rogers in Rogers’ first-degree murder trial. Importantly, Titlow’s defense attorney extensively reviewed

“State courts are adequate forums for the vindication of federal rights. ‘[T]he States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause. Under this system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.’”

—Justice Samuel Alito²

Vonlee Titlow conspired with her aunt, Billie Rogers, to murder Rogers’ husband. Titlow and Rogers accomplished the crime by smothering Donald Rogers with a pillow. Titlow and Rogers told law enforcement officers that they had been gambling at a casino and returned home to discover the victim’s dead body in the kitchen. The officers felt “that several aspects of the crime scene and of the women’s behavior appeared inconsistent with what Titlow and Billie were telling them. Although Donald’s body was taken to the medical examiner’s office, no autopsy was ever performed. The medical examiner initially determined that the cause of Donald’s death was a heart attack, with arterial sclerotic cardiovascular disease (related to his alcoholism) as a contributing factor. His body was cremated before any further examination was conducted.”³

The evidence of the murderous episode only came to light because Titlow detailed the events to her boyfriend, Danny Chahine. Subsequently, Chahine informed law enforcement officers that Titlow and Rogers smothered the decedent with a pillow and in exchange, Rogers provided Titlow with \$70,260 and a new car. “After his interview with the police, Chahine agreed to wear an audio recording device

the state’s evidence with Titlow prior to the entry of her plea colloquy. Titlow “understood the evidence could support a conviction for first-degree murder [and the] Michigan trial court approved the plea bargain.”⁵

Three days prior to Titlow’s anticipated testimony against Rogers, Titlow retained a new defense attorney, Frederick Toca, and attempted to renegotiate and reduce the previously agreed-upon prison sentence. However, when the attempts to renegotiate were refused by the prosecution, Titlow withdrew her guilty plea and refused to testify against Rogers. Rogers’ jury trial proceeded without Titlow’s testimony, and Rogers was found not guilty of the murder. Subsequently, Titlow proceeded to trial and was found guilty of second-degree murder and sentenced to a range of between 20 and 40 years in prison.

Titlow appealed her conviction by claiming that her defense attorney, Toca, incorrectly advised a “withdrawal of the guilty plea without taking time to learn more about the case, thereby failing to realize the strength of the State’s evidence and providing ineffective assistance of counsel.”⁶ The Michigan Court of Appeals rejected her claims, and Titlow filed a federal *habeas* petition under the Antiterrorism and

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Effective Death Penalty Act (AEDPA) in the federal district court. The district court upheld the state court's decision, and Titlow appealed to the Sixth Circuit Court of Appeals.

The Sixth Circuit reversed the previous court's decisions and held that Toca provided ineffective assistance of counsel and "found that the factual predicate for the state court's decision—that the withdrawal of the plea was based on respondent's assertion of innocence—was an unreasonable interpretation of the factual record, given Toca's explanation at the withdrawal hearing that 'the decision to withdraw Titlow's plea was based on the fact that the State's plea offer was substantially higher than the Michigan guidelines for second-degree murder.'" The state appealed the Sixth Circuit Court of Appeals' decision to the U.S. Supreme Court.

In *Burt v. Titlow*, the Supreme Court provided the doubly deferential standard that must be considered by federal courts prior to overturning state court findings. "AEDPA instructs that, when a federal habeas petitioner challenges the factual basis for a prior state-court decision rejecting a claim, the federal court may overturn the state court's decision only if it was 'based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" The prisoner bears the burden of rebutting the state court's factual findings 'by clear and convincing evidence.' Further, "a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." "AEDPA likewise imposes a highly deferential standard for reviewing claims of legal error by the state courts: A writ of habeas corpus may issue only if the state court's decision 'was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by' this Court."

Importantly, the Supreme Court asserted that the "AEDPA recognizes a foundational principle of our federal system: State courts are adequate forums for the vindication of federal rights." The doubly deferential standard of review fundamentally requires federal courts to provide consideration to the earnest efforts of the state courts. Therefore, when "a state prisoner asks a federal court to set aside a sentence due to ineffective assistance of counsel during plea bargaining, our cases require that the federal court use a 'doubly deferential' standard of review that gives both the state court and the defense attorney the benefit of the doubt."

The Supreme Court found that prisoners who have litigated constitutional claims in state courts cannot require additional litigation in federal courts unless demonstrable error can be proven. "Recognizing the duty and ability of our state-court colleagues to adjudicate claims of constitutional wrong, AEDPA erects a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court. AEDPA requires 'a state prisoner [to] show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error ... beyond any possibility for fair-minded disagreement.' 'If this standard is difficult to meet'—and it is—"that is because it was meant to be." We will not lightly conclude that a State's criminal justice system has experienced the 'extreme malfunctio[n]' for which federal habeas relief is the remedy."

The Supreme Court analyzed the factual findings of the Michigan Court of Appeals and found that the record fully supported the state court's decision and "that there was no factual or legal justification for overturning the state court's decision." Importantly, the Court held that a prisoner's defense counsel should be "strongly presumed

to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Further, the burden to "show that counsel's performance was deficient rests squarely on the defendant." Therefore, assertions without evidence cannot defeat the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." Further, "[v]iewing the record as a whole, we conclude that the Sixth Circuit improperly set aside a 'reasonable state-court determinatio[n] of fact in favor of its own debatable interpretation of the record.'"

The Supreme Court reversed the Sixth Circuit because "in this case, the Sixth Circuit failed to apply that doubly deferential standard by refusing to credit a state court's reasonable factual finding and by assuming that counsel was ineffective where the record was silent. Because AEDPA and *Strickland v. Washington* do not permit federal judges to so casually second-guess the decisions of their state-court colleagues or defense attorneys."

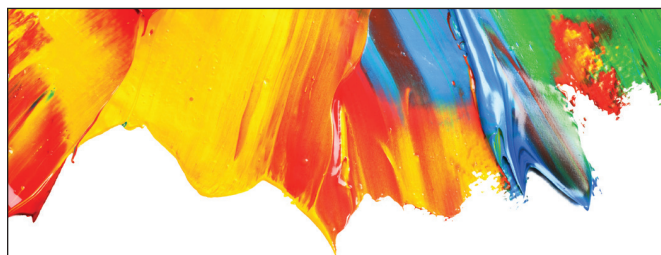
In *Burt v. Titlow*, the U.S. Supreme Court has outlined the doubly deferential standard of review for federal courts to rely upon when presented with a federal habeas petition. Therefore, it is clear that the sovereignty of the states vest state courts with the power to properly adjudicate constitutional claims and controversies. ☉

Endnotes

¹*Burt v. Titlow*, 571 U.S. ___, 134 S.Ct. 10, 15 (2013) (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458, 110 S.Ct. 792, 107 L.Ed.2d 887 (1990)).

²*Id.*

Sovereignty continued on page 16



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