

01-1862 WOODFORD v. GARCEAU

Ruling below: CA 9, 275 F.3d 769.

QUESTIONS PRESENTED

1. In *Lindh v. Murphy*, 521 U.S. 320 (1997), this Court held that the Antiterrorism and Effective Death Penalty Act (AEDPA) (28 U.S.C. § 2241, etseq.) did not apply to cases which commenced prior to the AEDPA 's April 24, 1996, effective date. The circuits are split as to when a capital case commences for purposes of triggering the AEDPA. With one exception, all the circuits to consider the issue have found the AEDPA applies if the actual petition was filed on or after the AEDPA's effective date. However, in the Ninth Circuit, the AEDPA does not apply to a federal petition filed on or after April 24, 1996, if motions for appointment of counsel and stay of execution were filed before that date. *Calderon v. United States District Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998) (en banc). What is the correct trigger event for the application of the AEDPA in capital cases?

~~2. The Ninth Circuit applied a new rule of constitutional law to reverse the capital conviction in this case. The Ninth Circuit was indisputably on notice, from a source other than the prosecution, of the application of *Teague v. Lane*, 489 U.S. 288 (1989), but did not address it. The failure to address *Teague* conflicts with the Fifth Circuit's holding that, even where *Teague* is not raised, it is an abuse of discretion not to consider it, absent a compelling, competing interest of justice. *Jackson v. Johnson*, 217 F.3d 360,361-63 (5th Cir. 2000).~~

~~— A. Did the Ninth Circuit abuse its discretion in failing to consider *Teague v. Lane*, 489 U.S. 288?~~

~~— B. Since the *Teague* issue is properly raised in the petition for certiorari, and presents a threshold issue for this Court's determination, should the Ninth Circuit's reversal of Garceau' s capital conviction, based on the application of a new rule of constitutional law be vacated by this Court?~~

CERT. GRANTED: 10/1/02

Limited to question 1 presented by the petition.