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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* KINDLER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08–992. Argued November 2, 2009—Decided December 8, 2009

Respondent Kindler was convicted of capital murder in Pennsylvania state court, and the jury recommended a death sentence. Kindler filed postverdict motions challenging his conviction and sentence, but before the trial court could consider the motions or the jury's death recommendation, Kindler escaped and fled to Canada. The state trial court subsequently dismissed Kindler's postverdict motions because of his escape. Canadian authorities ultimately captured Kindler and held him in jail pending extradition. But before Kindler could be transferred from Canadian custody, he escaped again, this time remaining at large for more than two years. He was eventually recaptured and transferred to the United States. Once back in this country, Kindler sought to reinstate his postverdict motions, but the trial court denied relief, holding that the judge who had dismissed the motions had not abused his discretion under Pennsylvania's fugitive forfeiture law. Kindler argued on direct appeal that the trial court erred in declining to address the merits of his postverdict motions, but the Pennsylvania Supreme Court affirmed. Kindler's claims were rejected on state habeas, and he sought federal habeas relief. Under the adequate state ground doctrine, a federal habeas court will not review a claim rejected by a state court "if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman* v. *Thompson*, 501 U. S. 722, 729. The District Court nonetheless granted Kindler's habeas petition, determining that the state fugitive forfeiture rule did not provide an adequate basis to bar federal review of Kindler's habeas claims. The Third Circuit affirmed, and the Commonwealth petitioned for certiorari. It argued that the Third

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Circuit had held the state fugitive forfeiture rule automatically inadequate because the state courts had discretion in applying it, and the Commonwealth sought review of that holding. The Court granted that petition.

Held: A state procedural rule is not automatically "inadequate" under the adequate state ground doctrine—and therefore unenforceable on federal habeas review—because the state rule is discretionary rather than mandatory. The question whether a state procedural ruling is adequate is itself a question of federal law. *Lee* v. *Kemna*, 534 U. S. 362, 375. This Court has framed the adequacy inquiry by asking whether the state rule was "firmly established and regularly followed." *Id.*, at 376. A discretionary state procedural rule can serve as an adequate ground to bar federal habeas review even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others. A contrary holding would pose an unnecessary dilemma for the States: They could preserve flexibility by granting courts discretion to excuse procedural errors, but only at the cost of undermining the finality of state-court judgments. Or States could preserve the finality of their judgments by withholding such discretion, but only at the cost of precluding any flexibility in applying the rules. If forced to choose, many States would opt for mandatory rules to avoid the high costs of plenary federal review. That would be unfortunate in many cases, as discretionary rules are often desirable. The federal system, for example, often grants the trial judge broad discretion when his ringside perspective at the main event offers him a comparative advantage in decisionmaking. The States have followed suit. Given the federalism and comity concerns motivating the adequate state ground doctrine in the habeas context, see *Coleman, supra,* at 730, this Court should not disregard discretionary state procedural rules that are in place in nearly every State and are substantially similar to those given full force in federal courts. Cf. *Francis* v. *Henderson*, 425 U. S. 536, 541–542. Pp. 7–9.

542 F. 3d 70, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case. KENNEDY, J., filed a concurring opinion, in which THOMAS, J., joined.