Syllabus

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

Syllabus

WILLIAMS *v.* TAYLOR, WARDEN

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

No. 99–6615. Argued February 28, 2000– Decided April 18, 2000

After petitioner was convicted of two capital murders and other crimes, he was sentenced to death. The Supreme Court of Virginia affirmed on direct appeal and later dismissed petitioner's state habeas corpus petition. He then sought federal habeas relief, requesting, among other things, an evidentiary hearing on three constitutional claims, which he had been unable to develop in the state-court proceedings. Those claims were that (1) the prosecution had violated *Brady* v. *Maryland*, 373 U. S. 83, in failing to disclose a report of a pretrial psychiatric examination of Jeffrey Cruse, petitioner's accomplice and the Commonwealth's main witness against petitioner; (2) the trial was rendered unfair by the seating of a juror who at *voir dire* had not revealed possible sources of bias; and (3) a prosecutor committed misconduct in failing to reveal his knowledge of the juror's possible bias. The District Court granted an evidentiary hearing on, *inter alia*, the latter two claims, but denied a hearing on the *Brady* claim. Before any hearing could be held, however, the Fourth Circuit granted the Commonwealth's requests for an emergency stay and for a writ of mandamus and prohibition, which were based on the argument that an evidentiary hearing was prohibited by 28 U. S. C. §2254(e)(2), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). On remand, the District Court vacated its order granting an evidentiary hearing and dismissed the petition, having determined petitioner could not satisfy §2254(e)(2)'s requirements. In affirming, the Fourth Circuit agreed with petitioner's argument that the statute would not apply if he had exercised diligence in state court, but held, among other things, that he had not been diligent and so had "failed to develop the factual basis of [his three] claim[s] in State court," §2254(e)(2). The court concluded that petitioner

could not satisfy the statute's conditions for excusing his failure to develop the facts and held him barred from receiving an evidentiary hearing.

Held: Under §2254(e)(2), as amended by AEDPA, a "fail[ure] to develop" a claim's factual basis in state court proceedings is not established unless there is lack of diligence, or some greater fault, attributable to the prisoner or his counsel. The statute does not bar the evidentiary hearing petitioner seeks on his juror bias and prosecutorial misconduct claims, but bars a hearing on his *Brady* claim because he "failed to develop" that claim's factual basis in state court and concedes his inability to satisfy the statute's further stringent conditions for excusing the deficiency. Pp. 6–22.

(a) Petitioner filed his federal habeas petition after AEDPA's effective date, so his case is controlled by §2254(e)(2)'s opening clause, which specifies that "[i]f the [federal habeas] applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim" unless the applicant makes specified showings. Pp. 6–8.

(b) The analysis begins with the language of the statute. Although "fail" is sometimes used in a neutral way, not importing fault or want of diligence, this is not the sense in which the word "failed" is used in §2254(e)(2). A statute's words must be given their ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import. *E.g., Walters* v. *Metropolitan Ed. Enterprises, Inc.*, 519 U. S. 202, 207. In its customary and preferred sense, "fail" connotes some omission, fault, or negligence on the part of the person who has failed to do something. If Congress had instead intended a "no-fault" standard, it would have had to do no more than use, in lieu of the phrase "has failed to," the phrase "did not." This interpretation has support in *Keeney* v. *Tamayo-Reyes*, 504 U. S. 1, 8, whose threshold standard of diligence is codified in §2254(e)(2)'s opening clause. The Court's interpretation also avoids putting §2254(e)(2) in needless tension with §2254(d), which authorizes habeas relief if the prisoner developed his claim in state court and can prove the state court's decision was "contrary to, or an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States." This Court rejects the Commonwealth's arguments for a "no-fault" reading: that treating the prisoner's lack of diligence in state court as a prerequisite for application of §2254(e)(2) renders a nullity of §2254(e)(2)(A)(ii)'s provision requiring the prisoner to show "a factual predicate [of his claim] could not have been previously discovered through the exercise of due diligence"; and that anything less than a no-fault understanding of §2254(e)(2) is contrary to AEDPA's purpose to further comity, final-

ity, and federalism principles. Pp. 8–15.

(c) Petitioner did not exercise the diligence required to preserve his claim that nondisclosure of Cruse's psychiatric report contravened *Brady*. The report, which mentioned Cruse had little recollection of the murders because he was intoxicated at the time, was prepared before petitioner was tried; yet it was not raised by petitioner until he filed his federal habeas petition. Given evidence in the record that his state habeas counsel knew of the report's existence and its potential importance, yet failed to investigate in anything but a cursory manner, this Court is not satisfied with petitioner's explanation that, although an investigator for his federal habeas counsel discovered the report in Cruse's court file, his state counsel had not seen the report when he reviewed the same file. Because this constitutes a failure to develop the factual basis of petitioner's *Brady* claim in state court, this Court must determine if the requirements in the balance of §2254(e)(2) are satisfied so that petitioner's failure is excused. Subparagraph (B) of §2254(e)(2) conditions a hearing upon a showing, by clear and convincing evidence, that no reasonable factfinder would have found petitioner guilty of capital murder but for the alleged constitutional error. Petitioner concedes he cannot make this showing, and the case has been presented to this Court on that premise. Accordingly, the Fourth Circuit's judgment barring an evidentiary hearing on this claim is affirmed. Pp. 15–18.

(d) However, petitioner has met the burden of showing he was diligent in efforts to develop the facts supporting his juror bias and prosecutorial misconduct claims in state court. Those claims are based on two questions posed by the trial judge at *voir dire*. First, the judge asked prospective jurors whether any of them was related to, *inter alios*, Deputy Sheriff Meinhard, who investigated the crime scene, interrogated Cruse, and later became the prosecution's first witness. Venire member Stinnett, who had divorced Meinhard after a 17-year marriage and four children, remained silent, thereby indicating the answer to the question was "no." Second, the judge asked whether any prospective juror had ever been represented by any of the attorneys in the case, including prosecutor Woodson. Stinnett again said nothing, although Woodson had represented her during her divorce from Meinhard. Later, Woodson admitted he knew Stinnett and Meinhard had been married and divorced, but stated that he did not consider divorced people to be "related" and that he had no recollection of having been involved as a private attorney in the divorce. Stinnett's silence after the first question could suggest to the factfinder an unwillingness to be forthcoming; this in turn could bear on her failure to disclose that Woodson had been her attorney. Moreover, her failure to divulge material information in response to

the second question was misleading as a matter of fact because Woodson was her counsel. Coupled with Woodson's own reticence, these omissions as a whole disclose the need for an evidentiary hearing. This Court disagrees with the Fourth Circuit's conclusion that petitioner's state habeas counsel should have discovered Stinnett's relationship to Meinhard and Woodson. The trial record contains no evidence which would have put a reasonable attorney on notice that Stinnett's nonresponse was a deliberate omission of material information, and counsel had no reason to believe Stinnett had been married to Meinhard or been represented by Woodson. Moreover, because state postconviction relief was no longer available at the time the facts came to light, it would have been futile for petitioner to return to the Virginia courts, so that he cannot be said to have failed to develop the facts in state court by reason of having neglected to pursue remedies available under Virginia law. The foregoing analysis establishes cause for any procedural default petitioner may have committed in not presenting these claims to the Virginia courts in the first instance. Questions regarding the standard for determining the prejudice that petitioner must establish to obtain relief on these claims can be addressed by the lower courts during further proceedings. These courts should take due account of the District Court's earlier decision to grant an evidentiary hearing based in part on its belief that Stinnett deliberately lied on *voir dire*. Pp. 18–22.

189 F. 3d 421, affirmed in part, reversed in part, and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.