

07-1114 CONE V. BELL

DECISION BELOW: 492 F3d 743

LOWER COURT CASE NUMBER: 99-5279

QUESTION PRESENTED:

On state post-conviction review, the Tennessee courts refused to consider petitioner's claim under *Brady v. Maryland*, 373 U.S. 83 (1963), on the ground that the claim had already been "previously determined" in the state system. On federal habeas, a divided panel of the Sixth Circuit held that the state courts' ruling precluded consideration of the Brady claim. The court of appeals reasoned (in conflict with decisions of five other circuits) that the claim had been "procedurally defaulted." The court of appeals further reasoned (widening an existing four-to-two circuit split) that the state courts' ruling was unreviewable. Seven judges dissented from the denial of rehearing en banc.

The question presented is whether petitioner is entitled to federal habeas review of his claim that the State suppressed material evidence in violation of *Brady v. Maryland*, which encompasses two sub-questions: 1. Is a federal habeas claim "procedurally defaulted" because it has been presented twice to the state courts? 2. Is a federal habeas court powerless to recognize that a state court erred in holding that state law precludes reviewing a claim?

CERT. GRANTED 6/23/2008