In the

United States Court of Appeals
For the Seventh Circuit

No. 21-1704

JAMES A. EVANS,

Petitioner-Appellant,

v.

ANTHONY WILLS,

Respondent-Appellee.

Appeal from the United States District Court for the
Southern District of Illinois.
No. 3:19-cv-1290 — **David W. Dugan**, *Judge*.

ARGUED FEBRUARY 16, 2023 — DECIDED APRIL 27, 2023

Before RIPPLE, SCUDDER, and ST. EVE, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Following two criminal convictions under Illinois law, James Evans sought postconviction relief in an Illinois trial court. He did so in 2003. Yet twenty years later, his petition is still pending. In 2019, and fed up with the delay, Evans invoked 28 U.S.C. § 2254 and turned to federal court for relief. As he saw it, Illinois's postconviction relief process had proven "ineffective," thereby allowing him under the terms of § 2254(b)(1) to seek federal habeas relief

without waiting further for relief in the Illinois courts. We agree. The delay Evans has experienced of twenty years and counting is beyond the pale and indefensible. We therefore vacate the district court's judgment and remand.

I

The federalism principles underpinning the federal habeas statute require state prisoners to exhaust state remedies before seeking federal postconviction relief. See 28 U.S.C. § 2254(b)(1). When a state provides an outlet for postconviction relief—commonly shorthanded "state habeas" or "state postconviction review"—a prisoner must go through that process completely as well. See *Lane v. Richards*, 957 F.2d 363, 364–65 (7th Cir. 1992).

But the exhaustion requirement is neither ironclad nor unyielding. Congress envisioned circumstances, however rare, where there may exist "an absence of available State corrective process" or where state remedies prove "ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(B). Our case law makes clear that a state-law remedy can become ineffective or unavailable by virtue of delay if the delay is both inordinate and attributable to the state. See *Carter v. Buesgen*, 10 F.4th 715, 723–24 (7th Cir. 2021); *Lane*, 957 F.2d at 364–66.

Carter is a prime example of recent vintage. Marvin Carter waited for over four years for Wisconsin courts to rule on the merits of his direct appeal. See 10 F.4th at 716. We found such a prolonged delay not only "extreme" but also attributable to the state: first the court clerk's office failed to transmit necessary documents for months, and then the public defender's office requested a long series of extensions, each of which the Wisconsin Court of Appeals granted "in rote fashion." *Id.* at

716, 718. Carter's experience revealed a "systemic deficiency" in the Wisconsin court's handling of his case. *Id.* at 723. Although Carter's counsel had requested extension after extension, nobody—not the public defender's office, not the courts, not the attorney general, not anybody else—intervened. See *id.* at 723–24. On those facts, we had no difficulty concluding that Wisconsin's appellate process was "ineffective to protect rights secured by the United States Constitution" and allowed Carter to proceed straight to federal court under § 2254. *Id.* at 716, 723.

II

A

What James Evans has experienced over the last twenty years troubles us just as much. In 1998 Illinois authorities charged Evans with the murder of Nekemar Pearson. While awaiting trial, Evans asked his cousin and cellmate, Tommie Rounds, to kill two witnesses to Pearson's murder. Rounds secretly recorded those conversations for the authorities. State charges followed for soliciting murder, and in 1999 two separate juries convicted Evans of both murder and solicitation. He received consecutive sentences of 60 years for the murder and 47 years for soliciting murder. After Illinois courts affirmed both convictions on direct appeal, Evans took the next step available to him—filing a petition for postconviction relief in state court in 2003. He alleged that he was not only innocent but also that the prosecution had engaged in serious misconduct in both cases.

It is now 2023—some twenty years later—and the Illinois courts still have not resolved his claims for postconviction relief. This extraordinary delay has stemmed in no small part

from the state's own conduct, both in its capacity as a respondent to the litigation and as the state trial court itself. A few examples prove the point.

Take Evans's discovery requests. Evans alleged that the state manipulated the audiotapes of his conversations with Rounds and induced witnesses to perjure themselves at his solicitation trial. To prove those claims, Evans repeatedly asked the state to produce the tapes, beginning in at least December 2008. (Evans claims he had requested the tapes as early as 2005, but the record is unclear on that point.) And multiple times, the trial court ordered the state to comply. First the court issued an order in December 2008 instructing the state to "provide all copies" of the tapes. The state did not comply. Then, in June 2009, the court directed that since the litigation was "now six years old," "all … productions," including the tapes, "are to be completed immediately." The state still did not comply. In July 2010 the court found itself ordering the state to hand over the tapes yet again, this time within ten days. While the state may have produced some tapes after this order, it failed to produce others. It was not until June 2011—nearly a year past the ten-day deadline set forth in the July 2010 order and two-and-a-half years after the court's first order—that the state came forward with more of the missing tapes.

But that was not the end of Evans's discovery saga. While the state had produced some relevant tapes, Evans had still not received others. The trial court ordered the state to produce the remaining tapes in September 2011, but the state claimed that it did not have them in its possession. Retrieving them should not have been difficult: the trial court had the tapes (at least the ones introduced into evidence at Evans's

trials) in the underlying dockets for Evans's two cases and, by June 2011, was aware that the prosecutors had not located them. But another two years passed before the clerk's office gave Evans permission to review the exhibits. In a hearing in March 2012, the trial court alluded to why it took so long to find the tapes—it had forgotten to search the dockets for both of Evans's underlying trials because it had "overlooked the fact that you actually have two cases here." And despite the clerk's office apparently locating the exhibits in 2013, Evans still maintains that he has not received all the tapes.

Litigators know discovery can be tedious and time consuming. But the discovery process should not have brought Evans's pursuit of postconviction relief to a halt like this. Indeed, the trial court tried to tell Evans at least once that he did not need the tapes because the initial phases of the postconviction proceedings focused only on the parties' pleadings, not evidence. To our eye, the trial court was right: all Illinois law required Evans to do at that step of the postconviction proceedings was show that he had a sufficient basis for his claim. He remained free to request the same materials when the court turned to the merits. But Evans represented himself for a significant portion of the discovery period (from 2010 to 2012), and he did not appear to understand how the postconviction relief process worked. The trial court had also assured Evans that it would help him secure the materials he had requested, which he believed were central to his claims. Adding to the mixed messaging, the court told Evans in 2012 that the delay "isn't really your fault," that "the State's Attorney maybe hasn't been clear on who has what records," and that the court "want[ed] to get that [confusion] resolved." And so Evans's case remained in limbo.

It was not until July 2014, when the state filed its motion to dismiss, that the proceedings began to move toward the merits. At that point the trial court acted immediately, denying the motion in early August. But then the proceedings came to a standstill again. Neither side took any action to advance the litigation until the state moved for an evidentiary hearing in 2020—about eight months after Evans had filed his § 2254 habeas petition in federal court. So far as we can tell, the state court evidentiary hearing has yet to take place.

To be sure, the discovery process has not accounted for the entire delay. Other setbacks—continuances, cancelled hearings, attorney withdrawals over conflicts of interest, and lengthy periods of inactivity—have contributed significantly to the decades-long wait. Evans and his counsel caused many of those delays. The state caused many others. And the state trial court itself entered a significant number of continuances and hearing cancellations into the docket seemingly without explanation, leading to extended periods of dormancy, some reaching almost three years. By our measure, all involved bear at least some responsibility.

In 2018 Evans sought a writ of mandamus from the Illinois Supreme Court. After detailing his discovery challenges and the related production delays, he asked for an order directing the state to comply with the discovery requests and the circuit court to adjudicate his case. The court denied his motion.

Frustrated and out of options, Evans turned to federal court for relief in 2019. At that point it had been over 16 years since he first sought postconviction relief in Illinois state court. Evans contended that the exhaustion requirement otherwise mandated by § 2254(b)(1) no longer applied because Illinois's postconviction process had proved ineffective for

him in light of the inordinate delay he continued to experience in the state trial court. He even took care to explain how the delay had already prejudiced his case: two of the witnesses supporting his claims of prosecutorial misconduct had died during his pursuit of relief.

The state pressed a different narrative. It conceded that Evans's wait was inordinate. But it then picked apart the timeline piece by piece, claiming that Evans himself had caused almost all of that delay and therefore could not seek relief in federal court until the Illinois postconviction process had run its course.

The district court adopted the state's reasoning and found, without holding an evidentiary hearing, that the state bore responsibility for only seven months of the delay. It therefore dismissed Evans's petition for failure to exhaust state court remedies.

Evans now appeals.

B

A delay of twenty years and counting is inordinate. Indeed, just two years ago we described Marvin Carter's four-year wait, only a fraction of what Evans has faced, as "extreme and tragic." *Carter*, 10 F.4th at 716. We have reached the same conclusion for even shorter delays of three-and-a-half years, see *Lowe v. Duckworth*, 663 F.2d 42, 43 (7th Cir. 1981), or even just seventeen months, see *Dozie v. Cady*, 430 F.2d 637, 638 (7th Cir. 1970) (per curiam). The only question, then, is whether the delay Evans has experienced is meaningfully attributable to the state. It was—in both a narrow and a broad sense.

Start with a narrow view of what happened. The state bore responsibility for material portions of the total delay, a fact

that is most clear when we examine the discovery mess with the audiotapes. Remember that Evans had begun requesting the audiotapes by at least December 2008, and in all likelihood, even earlier. But the prosecutors were still turning over tapes in June 2011, almost three years later. Setting aside Evans's claim that this figure is an underestimate, a delay of nearly three years would qualify as inordinate by itself. See *id.*

This three-year delay was also unjustifiable. Clearly, the state was responsible for the delay—it was the state, not Evans, that fell short of its discovery obligations. See *Carter*, 10 F.4th at 723. Worse still, the state has failed to explain why it took so long to comply with a routine discovery request for a set of audiotapes. Its noncompliance is all the more unsettling when we consider the fact that Evans requested the tapes many times over, both through counsel and in letters that Evans himself filed with the Illinois trial court. For its part, the trial court ordered the state to comply repeatedly, setting deadlines that the state twice failed to meet.

We could conclude that the delay Evans faced was unjustifiable based on this three-year production delay alone. See *Mucie v. Missouri State Dep't of Corr.*, 543 F.2d 633, 636 (8th Cir. 1976) (finding ineffective process where "it appears the state has been unnecessarily … dilatory"). But as Evans observes, the state's contributions to the audiotape delay continued long after that point.

Although the prosecutors produced some tapes by June 2011, Evans did not receive permission to review others until September 2013. Here, too, the state played a major role in dragging this episode out. The exhibits that Evans requested were in the state trial court's possession all along—in the case

dockets maintained by the court. But the court—fully nine years into the litigation—had lost sight of the fact that Evans sought relief for two separate cases, and therefore failed to search both dockets for the missing exhibits. There is no way to see this part of the delay as attributable to anyone other than the state. See *Carter*, 10 F.4th at 723–24.

Now step back. A broader perspective of the situation only reinforces our conclusion. At a high level, Evans experienced a breakdown in the state's postconviction process. We see things that way not just because twenty years have now passed with Evans's case still pending, but also because the state court docket shows a general lack of action or urgency by all involved. The prosecutors seem intent on allowing the case to linger indefinitely, and the state court, as best we can tell, seems to have done nothing to move things along despite recognizing the barriers to relief that Evans faced. See *Story v. Kindt*, 26 F.3d 402, 406 (3d Cir. 1994) (concluding a state process was ineffective where the Pennsylvania "Court of Common Pleas neglected [the petitioner's] case for almost eight years" due to outdated docket management procedures).

True enough, Evans himself insisted on receiving all of the tapes before allowing the proceedings to move on to the merits. And he refused to budge when the state trial court explained that he did not need all of the tapes yet. But at some point, the delay—and Evans's confusion—should have spurred the state trial court and the defendants named in the state postconviction proceeding to act. See *Carter*, 10 F.4th at 723–24. Rather than take some step to move the litigation forward, however, it certainly seems the state continued to talk past Evans. What alarms us so much about all of this is that the state trial court and the prosecutor's office apparently

lacked a mechanism to break up the impasse or otherwise manage Evans's petition. The state's "seriously deficient" management of Evans's claims also rendered the postconviction relief process ineffective. *Story*, 26 F.3d at 406; see also *Carter*, 10 F.4th at 723 (finding ineffective process based on the "systemic deficiency" in the state's management of its appeals process).

C

For its part, the state would have us divvy up the proceedings into bits and pieces, and then measure who—Evans or the state—is responsible for a greater amount. We decline to turn § 2254(b)(1)(B) into a mechanical accounting exercise. The proper analysis cannot come from dividing up calendars or tallying delays in an Excel spreadsheet. No doubt Evans and his counsel contributed to some of the overall delay. See *Lane*, 957 F.3d at 365 (explaining that delays in collateral review that are caused by the petitioner's counsel are attributable to the petitioner and not the state). But there is no ignoring the state's responsibility for significant portions of the total delay—a fact it mostly fails to acknowledge. The state's role in this saga provides ample grounds to conclude that its remedies proved ineffective.

On a more granular level, the state suggests that Evans himself was responsible for the state's failure to comply with its discovery obligations. As the state observes, Evans's appointed counsel withdrew during the same time period. The state suggests that this withdrawal was the true cause of any delay, and therefore that Evans (and not the state) was at fault. Even if we disagree, the state tells us that the tapes were relevant solely to the solicitation conviction and therefore could

not excuse Evans's failure to exhaust state remedies for the murder conviction.

Both arguments are strained. The state has not explained why the withdrawal of Evans's attorney would have prevented the state from fulfilling its own, independent discovery obligations. As for the relevance of the tapes, Evans wanted them to bolster his overarching allegation—fully applicable to both of his convictions—that the state had engaged in prosecutorial misconduct.

We also need to pause on the district court's analysis below. The court does not seem to have rolled up its sleeves with the particulars of the factual record. One error in particular stands out. The district court accepted the state's contention that it had complied with Evans's discovery request for the tapes within two months. According to the state and the district court's version of events, the court first ordered production in July 2010, and the state complied by September 2010. But that timeline is inaccurate. The state court docket plainly shows that Evans had a court order for the production of the tapes by December 2008, not July 2010. And of course, the discovery issues—and the state's role in them—continued well past September 2010.

III

Who knows whether Evans will win or lose his pursuit of postconviction relief. That does not concern us in the least. Our focus is on why the standstill remains twenty years after Evans began his pursuit of relief in the Illinois courts. His circumstances remind us of what we emphasized just two short years ago, albeit in the direct appeals context: "The length of the delay should have sounded an alarm bell within the [state]

courts," and "even the Attorney General's office." *Carter*, 10 F.4th at 723. Instead, the state insists on "point[ing] its finger" at Evans while disclaiming its own responsibility for this procedural failure. *Id.* at 723–24.

Our role is not to supervise state courts. "Obviously, the state has no obligation to provide appellate or post-conviction remedies." *St. Pierre v. Cowan*, 217 F.3d 939, 949 (7th Cir. 2000) (discussing the application of due process to state postconviction relief). "[B]ut if it has chosen to do so," we may evaluate whether those remedies are "ineffective" within the meaning of § 2254(b)(1)(B)(ii). *Id.* And here, Illinois's postconviction remedies proved "ineffective" for Evans. Indeed, what Evans experienced was nothing short of a breakdown in state processes.

So, with an accompanying sense of urgency, we VACATE and REMAND the district court to review Evans's petition, consistent with this opinion.