federal *habeas* proceedings even "when the state appellate court failed to recognize the error and did not review it for harmlessness under the 'harmless beyond a reasonable doubt' standard set forth in *Chapman v. California* . . . ." [203]

A fourth rule was devised to prevent successive "abusive" or defaulted *habeas* petitions. Federal courts are barred from hearing such claims unless the defendant can show by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found him *eligible* for the death penalty under applicable state law.[204]

The Antiterrorism and Effective Death Penalty Act of 1996 prohibits federal *habeas* relief based on claims that were adjudicated on the merits in state court unless the state decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." [205] The Court's decision in *Bell v. Cone*,[206] rejecting a claim that an attorney's failure to present mitigating evidence during the capital sentencing phase of a trial and his waiver of a closing argument at sentencing should entitle a condemned prisoner to relief, illustrates how these restrictions can operate to defeat challenges to state-imposed death sentences.[207]

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curiam). In Hedgpeth v. Pulido, 129 S. Ct. 530 (2008) (per curiam), the Court held that a reviewing court should apply *Brecht's* "substantial and injurious effect" standard where conviction was based on a general verdict after jury had been instructed on alternative theories of guilt and may have relied on an invalid one.

[203] Fry v. Pliler, 551 U.S. 112, 114 (2007).

[204] Sawyer v. Whitley, 505 U.S. 333 (1992). The focus on eligibility limits inquiry to elements of the crime and to aggravating factors, and thereby prevents presentation of mitigating evidence. Here the court was barred from considering an allegation of ineffective assistance of counsel for failure to introduce the defendant's mental health records as a mitigating factor at sentencing.

[205] 28 U.S.C. § 2254(d)(1).

[206] 535 U.S. 685 (2002).

[207] The state court's decision, which applied the rule from Strickland v. Washington, 466 U.S. 668 (1984), rather than the rule from United States v. Cronic, 466 U.S. 648 (1984), to hold that the attorney's performance was not constitutionally inadequate, was not "contrary to" clearly established law. *Cronic* had held that there are some situations, *e.g.*, when counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing," so presumptively unfair as to obviate the need to show actual prejudice to the defendant's case. *See* "Effective Assistance of Counsel" under Sixth Amendment. The Bell v. Cone Court emphasized the word "entirely," noting that the petitioner challenged the defense attorney's performance only "at specific points" in the process. Nor was the second statutory test met. *Strickland*, a "highly deferential" test asking whether an attorney's performance fell below an "objective standard of reasonableness," was not "unreasonably applied." The attorney could reasonably have concluded that evidence presented during the guilt phase of the trial was still "fresh" to the jury, and that repetition through the presentation of mitigating evidence or through a closing statement was unnecessary to counter the state's presentation of aggravating circumstances justifying a death sentence.