SUPREME COURT OF THE UNITED STATES

No. 91–1393

A. L. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, PETITIONER *v.* BOBBY RAY FRETWELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[January 25, 1993]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we decide whether counsel's failure to make an objection in a state criminal sentencing proceeding —an objection that would have been supported by a decision which subsequently was overruled—constitutes "prejudice" within the meaning of our decision in *Strickland* v. *Washington*, 466 U. S. 668 (1984). Because the result of the sentencing proceeding in this case was rendered neither unreliable nor fundamentally unfair as a result of counsel's failure to make the objection, we answer the question in the negative. To hold otherwise would grant criminal defendants a windfall to which they are not entitled.

In August 1985, an Arkansas jury convicted respondent Bobby Ray Fretwell of capital felony murder. During the penalty phase, the State argued that the evidence pre-sented during the guilt phase established two aggravating factors: (1) the murder was committed for pecuniary gain, and (2) the murder was committed to facilitate respondent's escape. Finding the existence of the first of these factors, and no mitigating factors, the jury sentenced respondent to death.

On direct appeal, respondent argued, *inter alia*, that his sentence should be reversed in light of *Collins* v.

Lockhart, 754 F. 2d 258 (CA8), cert. denied, 474 U. S. 1013 (1985). In that case the Court of Appeals for the Eighth Circuit held that a death sentence is unconstitutional if it is based on an aggravating factor that duplicates an element of the underlying felony, because such a factor does not genuinely narrow the class of persons eligible for the death penalty. Accordingly, respondent argued that his death sentence was unconstitutional because pecuniary gain is an element of the underlying felony in his capital felony murder conviction—-murder in the course of a robbery. The Arkansas Supreme Court declined to consider whether to follow *Collins* because respondent failed to object to the use of the pecuniary gain aggravator during the sentencing proceeding. Rejecting the remainder of respondent's claims, the Arkansas Supreme Court affirmed both the conviction and the death sentence. *Fretwell* v. *State*, 289 Ark. 91, 708 S. W. 2d 630 (1986). Respondent then filed a state habeas corpus challenge, arguing that trial counsel was ineffective for failing to raise the *Collins* objection. The Arkansas Supreme Court rejected the claim because the Arkansas courts had not passed on the *Collins* question at the time of respondent's trial. *Fretwell* v. *State*, 292 Ark. 96, 97, 728 S. W. 2d 180, 181 (1987).

Respondent filed a petition seeking federal habeas corpus relief under 28 U. S. C. §2254 in the United States District Court for the Eastern District of Arkansas. Among other things, he argued that his trial counsel did not perform effectively because he failed to raise the *Collins* objection. The District Court held that counsel "had a duty to be aware of all law relevant to death penalty cases," and that failure to make the *Collins* objection amounted to prejudice under *Strickland* v. *Washington*, *supra*. 739 F. Supp. 1334, 1337 (ED Ark. 1990). The District Court granted habeas relief and conditionally vacated respondent's death sentence. *Id.*, at 1338.

The Court of Appeals affirmed by a divided vote, 946 F. 2d 571 (CA8 1991), even though it had two years earlier overruled its decision in *Collins* in light of our decision in *Lowenfield* v. *Phelps*, 484 U. S. 231 (1988). See *Perry* v. *Lockhart*, 871 F. 2d 1384 (CA8), cert. denied, 493 U. S. 959 (1989). The majority believed that the Arkansas trial court was bound under the Supremacy Clause to obey the Eighth Circuit's interpretation of the Federal Constitution. Based on this belief, it reasoned that had counsel made the objection, the trial court would have sustained the objection and the jury would not have sentenced respondent to death. The court remanded, ordering the district court to sentence respondent to life imprisonment without the possibility of parole. It held that since respondent was entitled to the benefit of *Collins* at the time of his original sentencing proceeding, it would only "perpetuate the prejudice caused by the original sixth amendment violation" to resentence him under current law. 946 F. 2d, at 578.

The dissenting judge argued that *Strickland* prejudice involves more than a determination that the outcome would have been different—-it also involves the concepts of reliability and fairness. 946 F. 2d, at 579 ("By focusing only on the probable effect of counsel's error at the time of Fretwell's sentencing,

the majority misses the broader and more important point that his sentencing proceeding reached neither an unreliable nor an unfair result"). We granted certiorari, 504 U. S. —— (1992), and now reverse.

Our decisions have emphasized that the Sixth Amendment right to counsel exists "in order to protect the fundamental right to a fair trial." *Strickland* v. *Washington, supra,* at 684; *Nix* v. *Whiteside*, 475 U. S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); *United States* v. *Cronic*, 466 U. S. 648, 653 (1984) ("Without counsel, the right to a trial itself would be of little avail") (internal quotation marks and footnote omitted); *United States* v. *Morrison*, 449 U. S. 361, 364 (1981) (the right to counsel "is meant to assure fairness in the adversary criminal process"). Thus, "the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated." *United States* v. *Cronic, supra,* at 658.

The test formulated in *Strickland* for determining whether counsel has rendered constitutionally ineffective assistance reflects this concern. In *Strickland*, we identified the two components to any ineffective assistance claim: (1) deficient performance and (2) prejudice.[1] Under our decisions, a criminal defendant alleging prejudice must show "that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland,* 466 U. S., at 687; see also *Kimmelman* v. *Morrison*, 477 U. S. 365, 374 (1986)

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[1]Petitioner concedes that counsel's performance was deficient. He therefore focusses his argument exclusively on the prejudice component.

("The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect"); *Nix* v. *Whiteside, supra,* at 175. Thus, an analysis focussing solely on mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable, is defective.[2] To set aside a conviction or sentence solely because the outcome would have been different but for counsel's error may grant the defendant a windfall to which the law does not entitle him. *See Cronic, supra,* at 658.

Our decision in *Nix* v. *Whiteside*, *supra*, makes this very point. The respondent in that case argued that he received ineffective assistance because his counsel refused to cooperate in presenting perjured testimony. Obviously, had the respondent presented false testimony to the jury, there might have been a reasonable probability that the jury would not have returned a verdict of guilty. Sheer outcome determination, however, was not sufficient to make out a claim under the Sixth Amendment. We held that "as a matter of law, counsel's conduct . . . cannot establish the prejudice required for relief under the

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[2]Contrary to the dissent's suggestion, today's decision does not involve or require a harmless error inquiry. Harmless error analysis is triggered only *after* the reviewing court discovers that an error has been committed. And under *Strickland* v. *Washington*, 466 U. S. 668 (1984), an error of constitutional magnitude occurs in the Sixth Amendment context only if the defendant demonstrates (1) deficient performance and (2) prejudice. Our opinion does nothing more than apply the case-by-case prejudice inquiry that has always been built into the *Strickland* test. Since we find no constitutional error, we need not, and do not, consider harmlessness.

second strand of the *Strickland* inquiry." 475 U. S., at 175. The touchstone of an ineffective assistance claim is the fairness of the adversary proceeding, and "in judging prejudice and the likelihood of a different outcome, `[a] defendant has no entitlement to the luck of a lawless decisionmaker.'" *Ibid.* (quoting *Strickland, supra,* at 695); see also *Nix* v. *Whiteside, supra,* at 186–187 (BLACKMUN, J., concurring in judgment) ("To the extent that Whiteside's claim rests on the assertion that he would have been acquitted had he been able to testify falsely, Whiteside claims a right the law simply does not recognize. . . . Since Whiteside was deprived of neither a fair trial nor any of the specific constitutional rights designed to guarantee a fair trial, he has suffered no prejudice").[3]

The result of the sentencing proceeding in the present case was neither unfair nor unreliable. The Court of Appeals, which had decided *Collins* in 1985, overruled it in *Perry* four years later.[4] Had the trial

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[3]The dissent's attempt to distinguish *Nix* v. *Whiteside*, 475 U. S. 157 (1986), is unpersuasive because it ignores the reasoning employed by the Court. In *Nix*, we did not reject the respondent's claim of prejudice because perjury is "perhaps a paradigmatic example" of lawlessness. *Post*, at 7. Rather, we held that the respondent could not show *Strickland* prejudice merely by demonstrating that the outcome would have been different but for counsel's behavior. *Nix, supra,* at 175–176. Contrary to the dissent's suggestion, this reasoning was not invoked to resolve the factual oddity of one case, but rather represents a straightforward application of the rule of law announced in *Strickland*. *Nix*, *supra*, at 175–176.

[4]Respondent argues that *Collins* v. *Lockhart,* 754 F. 2d 258 (CA8), cert. denied, 474 U. S. 1013 (1985), is still good law despite our decision in *Lowenfield* v. *Phelps,* 484 U. S. 231 (1988), and urges us to decide this question as a threshold matter. We decline the

court chosen to follow *Collins*, counsel's error would have "deprived respondent of the chance to have the state court make an error in his favor." Brief for United States as *Amicus Curiae* 10.[5]

Respondent argues that the use of hindsight is inappropriate in determining "prejudice" under *Strickland*, and that this element should be determined under the laws existing at the time of trial. For support, he relies upon language used in *Strickland* in discussing the first part of the necessary showing—deficient performance. We held that in order to determine whether counsel performed below the level expected from a reasonably competent attorney, it is necessary to "judge . . . counsel's challenged conduct on the facts of the particular

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invitation. A premise underlying the question presented was that *Collins* had been properly overruled by the Eighth Circuit. Because respondent "failed to bring [his] objections to the premise underlying the questio[n] presented to our attention in [his] opposition to the petition for certiorari," we decide that question based on the Eighth Circuit's view that *Collins* is no longer good law. *Eastman Kodak Co.* v. *Image Technical Services, Inc.*, 504 U. S. ___, ___ n. 10 (1992).

[5]As an alternative argument, the Solicitor General relies upon the language of the habeas corpus statute, 28 U. S. C. §2254(a), which provides that habeas relief may issue only if the applicant "is in custody in violation of the Constitution or laws or treaties of the United States." According to the Solicitor General, because *Lowenfield* was decided at the time respondent petitioned for federal habeas relief, he could not argue that he was currently in custody in violation of the Constitution. Because of our disposition of the case on the basis of *Strickland* v. *Washington, supra*, we do not address this contention.

case, viewed as of the time of counsel's conduct." *Strickland*, 466 U. S., at 690.

Ineffective assistance of counsel claims will be raised only in those cases where a defendant has been found guilty of the offense charged, and from the perspective of hindsight there is a natural tendency to speculate as to whether a different trial strategy might have been more successful. We adopted the rule of contemporary assessment of counsel's conduct because a more rigid requirement "could dampen the ardor and impair the independence of defense counsel, discourage the acceptance of assigned cases, and undermine the trust between attorney and client." *Ibid*. But the "prejudice" component of the *Strickland* test does not implicate these concerns. It focusses on the question whether counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair. *Id*., at 687; see *Kimmelman*, 477 U. S., at 393 (POWELL, J., concurring). Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him. As we have noted, it was the premise of our grant in this case that *Perry* was correctly decided, *i.e.,* that respondent was not entitled to an objection based on "double counting." Respondent therefore suffered no prejudice from his counsel's deficient performance.

The dissent contends that this holding is inconsistent

with the retroactivity rule announced in *Teague* v. *Lane*, 489 U. S. 288, 310 (1989), but we think otherwise. *Teague* stands for the proposition that new constitutional rules of criminal procedure will not be announced or applied on collateral review. *Id.*, at 310. As the dissent acknowledges, *post*, at 11–12, this retroactivity rule was motivated by a respect for the States' strong interest in the finality of criminal convictions, and the recognition that a State should

not be penalized for relying on "the constitutional standards that prevailed at the time the original proceedings took place." *Teague*, *supra*, at 306 (plurality opinion) (internal citations omitted). "The `new rule' principle therefore validates reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions." *Butler* v. *McKellar*, 494 U. S. 407, 414 (1990).

A federal habeas petitioner has no interest in the finality of the state court judgment under which he is incarcerated: indeed, the very purpose of his habeas petition is to overturn that judgment. Nor does such a petitioner ordinarily have any claim of reliance on past judicial precedent as a basis for his actions that corresponds to the State's interest described in the quotation from *Butler*, *supra*. The result of these differences is that the State will benefit from our *Teague* decision in some federal habeas cases, while the habeas petitioner will not. This result is not, as the dissent would have it, a "windfall" for the State, but instead is a perfectly logical limitation of *Teague* to the circumstances which gave rise to it. *Cessante ratione legis, cessat et ipsa lex*.

The judgment of the Court of Appeals is

Reversed.