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 Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION *v.* FRETWELL

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

No. 91–1393. Argued November 3, 1992—Decided January 25, 1993

An Arkansas jury convicted respondent Fretwell of capital felony murder and sentenced him to death, finding, *inter alia,* the aggravating factor that the murder, which occurred during a robbery, was committed for pecuniary gain. On direct appeal, Fretwell argued that his sentence was unconstitutional under the then-existing Eighth Circuit precedent of *Collins* v. *Lockhart,* 754 F. 2d 258, because it was based on an aggravating factor that duplicated an element of the underlying felony—murder in the course of a robbery. However, the State Supreme Court declined to consider whether to follow *Collins* because Fretwell had not objected to the aggravator's use during the sentencing phase, and that court later rejected a state habeas corpus challenge in which he raised an ineffective assistance of counsel claim. The District Court conditionally vacated his sentence on federal habeas, holding that counsel's failure to raise the *Collins* objection amounted to prejudice under *Strickland* v. *Washington,* 466 U. S. 668, in which deficient performance and prejudice were identified as the two components of any ineffective assistance claim. Although the Court of Appeals had overruled *Collins,* it affirmed, reasoning that the trial court would have sustained a *Collins* objection had it been made at Fretwell's trial and the jury would not have sentenced him to death.

Held: Counsel's failure to make the *Collins* objection during the sentencing proceeding did not constitute prejudice within the meaning of *Strickland* v. *Washington, supra.* To show prejudice under *Strickland,* a defendant must demonstrate that counsel's errors are so serious as to deprive him of a trial whose result is unfair or unreliable, *id.,* at 687, not merely that the outcome

would have been different. Unfairness or unreliability does not result unless counsel's ineffectiveness deprives the defendant of a substantive or procedural right to which the law entitles him. The sentencing proceeding's result in the present case was neither unfair nor unreliable, because the Court of Appeals, which had decided *Collins* in 1985, overruled it in *Perry* v. *Lockhart,* 871 F. 2d 1384, 4 years later. Thus, respondent suffered no prejudice from his counsel's deficient performance. Contrary to Fretwell's argument, prejudice is not determined under the laws existing at the time of trial. Although contemporary assessment of counsel's conduct is used when determining the deficient performance component of the *Strickland* test, the prejudice component, with its focus on fairness and reliability, does not implicate the same concerns that motivated the former component's adoption: that 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. The instant holding is not inconsistent with the retroactivity rule announced in *Teague* v. *Lane,* 489 U. S. 288, 310. The circumstances that gave rise to that rule do not apply to claims raised by a federal habeas petitioner, who has no interest in the finality of the state court judgment under which he was incarcerated and, unlike the States, ordinarily has no claim of reliance on past judicial precedent as a basis for his actions. Pp. 3–8.

LOCKHART *v.* FRETWELL

Syllabus

946 F. 2d 571, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. O'CONNOR, J., and THOMAS, J., filed concurring opinions. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined.