

Post-Conviction

Ineffective Assistance of Counsel

Harrington v. Richter, 562 U.S. ___ (Jan. 19, 2011) (<http://www.supremecourt.gov/opinions/10pdf/09-587.pdf>). The Court reversed the Ninth Circuit, which had held that the state court unreasonably applied existing law when rejecting the defendant's claim that his counsel was deficient by failing to present expert testimony on serology, pathology, and blood spatter patterns; the defendant had asserted that this testimony would have confirmed his version of how the events in question occurred. The Court concluded that it was at least arguable that a reasonable attorney could decide to forgo inquiry into the blood evidence under the circumstances, which included, among other things, the fact that counsel had reason to question the truth of the defendant's version of the events. The Court also rejected the Ninth Circuit's conclusion that counsel was deficient because he had not expected the prosecution to offer expert testimony and therefore was unable to offer expert testimony of his own in response. The Court concluded that although counsel was mistaken in thinking the prosecution would not present forensic testimony, the prosecution itself did not expect to make that presentation and had made no preparations for doing so on the eve of trial. For this reason alone, the Court concluded, it is at least debatable whether counsel's error was so fundamental as to call the fairness of the trial into doubt. Finally, the Court concluded that it would not have been unreasonable for the state court to conclude that the defendant failed to establish prejudice. Justice Kagan did not participate in the consideration or decision of the case.

Premo v. Moore, 562 U.S. ___ (Jan. 19, 2011) (<http://www.supremecourt.gov/opinions/10pdf/09-658.pdf>). The Court reversed the Ninth Circuit, which had held that the state court unreasonably applied existing law when rejecting the defendant's claim that counsel was ineffective by failing to file a motion to suppress the defendant's confession to police before advising him to accept a plea offer. Counsel had explained that he discussed the plea bargain with the defendant without first challenging the confession to the police because suppression would serve little purpose given that the defendant had made full and admissible confessions to two other private individuals, both of whom could testify. The state court would not have been unreasonable to accept this explanation. Furthermore, the Court held, the state court reasonably could have determined that the defendant would have accepted the plea agreement even if his confession had been ruled inadmissible. Justice Kagan did not participate in the consideration or decision of the case.