

A state constitution provides that in every criminal trial "the accused shall have the right to confront all witnesses against him face to face." A defendant was convicted in state court of child abuse based on testimony from a six-year-old child. The child testified while she was seated behind one-way glass, which allowed the defendant to see the child but did not allow the child to see the defendant. The defendant appealed his conviction to the state's highest court, claiming that the inability of the child to see the defendant while she testified violated both the United States Constitution and the state constitution. Without addressing the federal constitutional issue, the state's highest court reversed the defendant's conviction and ordered a new trial. The court held that "the constitution of this state is clear, and it requires that while testifying in a criminal trial, a witness must be able to see the defendant." The state petitioned the United States Supreme Court for a writ of certiorari.

On which ground should the United States Supreme Court DENY the state's petition?

- A. A state may not seek appellate review in the United States Supreme Court of the reversal of a criminal conviction by its highest court.
- B. The decision of the state's highest court requires a new trial, and therefore it is not a final judgment.
- C. The decision of the state's highest court was based on an adequate and independent state ground.
- D. The Sixth Amendment to the United States Constitution does not require that a witness against a criminal defendant be able to see the defendant while the witness testifies.

Explanation:

The **U.S. Supreme Court** (SCOTUS) has discretion to review a highest state court judgment that turns on *federal* law. But SCOTUS **must decline to review a state court judgment based on state grounds** that are:

- **adequate** – the state grounds **fully resolve the matter** such that the application of federal law would not affect the outcome of the case *and*
- **independent** – it is clear from the opinion that the state court **did not rely on federal law** in reaching its conclusion.

Here, the defendant appealed his conviction to the state's highest court, claiming violations of both the U.S. Constitution and the state constitution. Without addressing the *federal* constitutional issue, the court reversed his conviction on the ground that the *state* constitution clearly requires that a witness be able to see a criminal defendant while testifying. Since the court's decision was based on an adequate and independent state ground, SCOTUS should deny the state's petition for a writ of certiorari (ie, request for appellate review).

(Choice A) A state *may* seek appellate review in the Supreme Court of the reversal of a criminal conviction by the state's highest court. But SCOTUS must decline to review the reversal if it rests on adequate and independent state grounds.

(Choice B) Although the decision of the state's highest court requires a new trial, it *is* a final judgment since it fully resolves the confrontation issue—ie, whether witnesses must be able to see criminal defendants while testifying—and that issue will not arise on retrial.

(Choice D) A criminal defendant's Sixth Amendment right to confront adverse witnesses does not require that a witness be able to see the defendant while testifying. But here, SCOTUS would not reach the merits of the defendant's Sixth Amendment claim since the decision of the state's highest court was based entirely on *state* law.

Educational objective:

The U.S. Supreme Court cannot review a state court judgment based on state-law grounds that are adequate (ie, the state grounds fully resolve the matter) AND independent (ie, the state court did not rely on federal law).

References

- Michigan v. Long, 463 U.S. 1032, 1041 (1983) (holding that a state supreme court judgment rests on adequate and independent state-law grounds if the state court makes a plain statement to that effect).
- 4 Am. Jur. 2d Appellate Review § 44 (2019) (explaining the plain statement rule).

Jurisdiction of United States Supreme Court

