

Assigned counsel for a capital defendant had heard that his client had an unsavory background and a highly dysfunctional childhood. He was reluctant to delve into the details for fear that they might reflect poorly on his client, and he decided not to investigate. After his client was convicted, counsel presented a penalty phase defense that repeated the denials of the liability phase. The jury returned a death sentence. After exhausting state remedies, the defendant filed a post-conviction petition, arguing that his trial counsel rendered ineffective assistance of counsel by failing to investigate and present mitigating evidence of his sordid upbringing.

If the court finds a reasonable probability that the mitigating evidence, if presented, would have affected the jury's sentence, should the court grant the petition?

- A. No, because the decision not to probe into the defendant's background was part of the defense counsel's trial strategy. (16%)
- B. No, because defense counsel is required to adhere only to an objective standard of reasonableness in representing a criminal defendant in the penalty phase of a capital murder case. (15%)
- C. Yes, because defense counsel's failure to investigate a defendant's life history for mitigating evidence in the penalty phase of a capital murder trial constitutes ineffective assistance of counsel. (54%)
- D. Yes, because defense counsel is required to present any known mitigating factors in the penalty phase of a capital murder case. (13%)

Incorrect

Correct answer C

54% Answered correctly

04 mins, 31 secs Time Spent

2023 Version

## Explanation:

Criminal defendants can challenge their convictions directly (eg, appeal) and/or indirectly (eg, postconviction relief). The most common claim in a postconviction-relief proceeding is that the defendant had **ineffective assistance of counsel** at trial. Under the **Sixth Amendment**, all criminal defendants have the right to effective assistance of counsel. To protect that right, a defendant can have his/her conviction overturned by showing:

**deficient performance** – the attorney's representation fell below an objective professional standard of reasonableness *and*

**prejudice** – there is a reasonable probability that, but for that deficiency, the trial's outcome would have been different.

An attorney representing a defendant charged with a **capital offense** has a duty to conduct a reasonable investigation to determine if there are **mitigating facts** for the penalty phase that may lead to a different sentencing outcome. As a result, **failure to investigate** such facts constitutes **deficient performance**.

Here, defense counsel's performance was deficient because he failed to investigate the defendant's life history for mitigating facts (eg, his sordid upbringing) that could have been used during the penalty phase of the defendant's capital-murder trial. If the court finds a reasonable probability that these facts would have affected the jury's sentence (prejudice), then defense counsel's performance constituted ineffective assistance of counsel. Therefore, the court should grant the defendant's post-conviction petition.

**(Choice A)** Decisions made as part of defense counsel's trial strategy must be based on facts uncovered after a reasonable investigation (not seen here).

**(Choice B)** Defense counsel is required to adhere to an objective standard of reasonableness in representing a criminal defendant in every phase of a capital-murder case—which counsel failed to do here.

**(Choice D)** Defense counsel need not present all known mitigating evidence in the penalty phase of a capital-murder case but must conduct a reasonable investigation into such evidence.

## Educational objective:

To establish ineffective assistance of counsel, a criminal defendant must show that the attorney's deficient performance was prejudicial. In a capital-murder case, an attorney's failure to conduct a reasonable investigation to determine whether there are mitigating facts for the penalty phase constitutes deficient performance.

## References

Strickland v. Washington, 466 U.S. 668, 687 (1984) (setting out the requirements for an ineffective-assistance-of-counsel claim).

Wiggins v. Smith, 539 U.S. 510, 533–34 (2003) (explaining that counsel must conduct a reasonable investigation to determine mitigating evidence for the penalty phase of a capital case).

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### **Ineffective assistance of counsel (appellate & postconviction relief)**

