

A woman was charged with stealing from her employer. Her lawyer advised her to plead guilty, citing overwhelming evidence that included a video recording of her confession and multiple witnesses. The woman repeatedly asked whether a guilty plea might lead to her deportation because she had come to the United States as a child and had lawful permanent resident status but not citizenship. The lawyer assured the woman that the charge would not result in deportation and emphasized the unusually favorable terms of the plea bargain. The woman accepted the plea offer.

At the end of the woman's short prison term, immigration authorities informed her that the conviction required her deportation. The woman filed a motion to vacate the plea, citing ineffective assistance of counsel.

How is the court likely to rule?

- A. Counsel was ineffective, and under the circumstances, the woman suffered prejudice even though there was only a remote chance of success at trial.
- B. Counsel was ineffective, but the woman suffered no prejudice because she admitted guilt when tendering the plea.
- C. Counsel was not ineffective, because a criminal attorney is not required to provide advice about the collateral consequences of conviction.
- D. Counsel was not ineffective, because there was overwhelming evidence of guilt.

Incorrect

Correct answer A

Collecting Statistics

01 min, 39 secsTime Spent

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Explanation:

Under the **Sixth Amendment**, applied to the states through the Fourteenth Amendment due process clause, criminal defendants have the right to effective **assistance of counsel** at trial. A defendant can challenge his/her conviction by arguing that his/her counsel was **ineffective** 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.

Defense counsel must **inform the defendant** of the possibility that a **guilty plea may affect** the defendant's **immigration status**, and failure to do so constitutes deficient performance. And even when there is overwhelming evidence of guilt, this deficient performance prejudices the defendant if there is a **reasonable probability** that, but for the deficient performance, the defendant **would have gone to trial** instead of accepting the guilty plea.

Here, the lawyer failed to inform the woman that her guilty plea could lead to deportation and falsely assured her that it would not do so. Had the lawyer's performance not been deficient, the woman likely would have rejected the plea offer because the threat of deportation is such a severe penalty that it is reasonable for a defendant to risk trial. That is why, although there was overwhelming evidence of the woman's guilt, the attorney's deficient performance prejudiced her **(Choices B & D)**. Therefore, the court is likely to rule that her counsel was ineffective.

(Choice C) A criminal defense attorney generally is not required to provide advice about the collateral consequences of conviction. However, the Supreme Court has specifically held that an attorney must advise a client about the possibility of collateral immigration consequences.

Educational objective:

Under the Sixth Amendment, defense counsel was ineffective when (1) his/her performance was deficient (eg, failed to inform the defendant that a guilty plea may affect the defendant's immigration status) and (2) there is a reasonable probability that, but for this deficient performance, the trial's outcome would have been different.

References

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

Padilla v. Kentucky, 559 U.S. 356, 369 (2010) (holding that an attorney's performance is deficient when the attorney fails to inform the defendant that accepting a plea offer may affect the defendant's immigration status).

Lee v. United States, 137 S. Ct. 1958, 1968–69 (2017) (holding that a defendant is prejudiced if the defendant would have rejected a plea offer had the attorney informed the defendant about the possibility of deportation).

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Ineffective assistance of counsel (appellate & postconviction relief)

