

A defendant was convicted of fraud after a jury trial in state court. The conviction was affirmed on direct appeal.

The defendant timely moved for postconviction relief under the Sixth Amendment on the ground that his attorney had provided ineffective assistance of counsel. The trial judge, after a hearing, found that the attorney had performed deficiently by failing to raise a proper objection that would have resulted in exclusion of important prosecution evidence.

What more, if anything, must the trial court find in order to sustain the defendant's Sixth Amendment claim?

- A. Nothing more, because the unjustifiable failure to object to important prosecution evidence is structural error.
- B. That the attorney was court-appointed and not privately retained.
- C. That there is a reasonable probability that the trial's outcome would have been different if the attorney had objected.
- D. That there is clear and convincing evidence that the trial's outcome would have been different if the attorney had objected.

Explanation:

Criminal defendants can challenge their convictions directly (eg, appeal) and/or indirectly (eg, postconviction relief). To obtain **postconviction relief**, a defendant must file a petition in the trial court. The trial court will then hold a hearing and decide whether the defendant's conviction should be overturned.

The most common claim in a postconviction relief proceeding is that the defendant had **ineffective assistance of counsel** at trial. Under the **Sixth Amendment**—applied to the states through the Fourteenth Amendment's due process clause—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 performance during the trial fell below professional standards *and*

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

Here, the defendant timely moved for postconviction relief for ineffective assistance of counsel. After the postconviction relief hearing, the trial judge found that the defendant's attorney had failed to raise an objection that would have excluded important prosecution evidence (deficient performance). But to sustain the defendant's Sixth Amendment claim, the trial judge must *also* find that there is a reasonable probability that the trial's outcome would have been different had the attorney objected (prejudice).

(Choice A) **Structural errors** are presumptively harmful since they affect the entire framework of a criminal trial and render it fundamentally unfair. As a result, these errors require automatic reversal on appeal. However, ineffective assistance of counsel is not a structural error because an attorney's misconduct (eg, failure to object) may be harmless. Therefore, the defendant must prove that his/her counsel's performance was deficient and prejudicial.

(Choice B) Criminal defendants are guaranteed effective assistance of counsel under the Sixth Amendment, regardless of whether their attorney was court-appointed or privately retained.

(Choice D) Ineffective assistance of counsel only requires a reasonable probability (ie, a *likely* chance)—not clear and convincing evidence (ie, a *substantially* likely chance)—that the defendant would not have been convicted had his/her attorney been competent.

Educational objective:

Under the Sixth Amendment, defense counsel was ineffective when (1) his/her performance was deficient and (2) there is a reasonable probability that the trial's outcome would have been different absent the deficient performance.

References

U.S. Const. amend. VI (right to effective assistance of counsel).

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

Weaver v. Massachusetts, 137 S. Ct. 1899, 1910–12 (2017) (holding that postconviction relief claim of ineffective assistance of counsel requires showing of deficient performance and prejudice).

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Ineffective assistance of counsel (appellate & postconviction relief)

