

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

FLORIDA *v.* NIXON

## CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 03–931. Argued November 2, 2004—Decided December 13, 2004

Respondent Nixon was arrested for a brutal murder. Questioned by the police, Nixon described in graphic detail how he had kidnaped and killed his victim. After gathering overwhelming evidence of his guilt, the State indicted Nixon for first-degree murder and related crimes. Assistant public defender Corin, assigned to represent Nixon, filed a plea of not guilty and deposed all of the State’s potential witnesses. Satisfied that Nixon’s guilt was not subject to reasonable dispute, Corin commenced plea negotiations, but the prosecutors refused to recommend a sentence other than death. Faced with the inevitability of going to trial on a capital charge, and a strong case for the prosecution, Corin concluded that his best course would be to concede Nixon’s guilt, thereby preserving credibility for penalty phase evidence of Nixon’s mental instability, and for defense pleas to spare Nixon’s life. Corin several times attempted to explain this strategy to Nixon, but Nixon remained unresponsive, never verbally approving or protesting the proposed strategy. Overall, Nixon gave Corin very little, if any, assistance or direction in preparing the case.

When trial began, Nixon engaged in disruptive behavior and absented himself from most of the proceedings. In his opening statement, Corin acknowledged Nixon’s guilt and urged the jury to focus on the penalty phase. During the State’s case in chief, Corin objected to the introduction of crime scene photographs as unduly prejudicial, cross-examined witnesses for clarification, and contested several aspects of the jury instructions. In his closing argument, Corin again conceded Nixon’s guilt, declaring that he hoped to persuade the jury during the penalty phase that Nixon should not be sentenced to death. The jury found Nixon guilty on all counts. At the penalty phase, Corin argued to the jury that Nixon was not “an intact human being” and had committed the murder while afflicted with multiple

## Syllabus

mental disabilities. Corin called as witnesses relatives and friends who described Nixon's childhood emotional troubles and his erratic behavior preceding the murder. Corin also presented expert testimony concerning Nixon's antisocial personality, history of emotional instability and psychiatric care, low IQ, and possible brain damage. In his closing argument, Corin emphasized Nixon's youth, the psychiatric evidence, and the jury's discretion to consider any mitigating circumstances; urged that, if not sentenced to death, Nixon would never be released; maintained that the death penalty was not appropriate for a person with Nixon's impairments; and asked the jury to spare Nixon's life. The jury recommended, and the trial court imposed, the death penalty.

The Florida Supreme Court ultimately reversed, holding that a defense attorney's concession that his client committed murder, made without the defendant's express consent, automatically ranks as prejudicial ineffective assistance of counsel necessitating a new trial under the standard announced in *United States v. Cronin*, 466 U. S. 648. Corin's concession, according to that court, was the functional equivalent of a guilty plea in that it allowed the prosecution's guilt-phase case to proceed essentially without opposition. Under *Boykin v. Alabama*, 395 U. S. 238, 242–243, consent to a guilty plea cannot be inferred from silence; similarly, the Florida court stated, a concession of guilt at trial requires a defendant's affirmative, explicit acceptance, without which counsel's performance is presumably inadequate. While acknowledging that Nixon was very disruptive and uncooperative at trial and that Corin's strategy may have been in Nixon's best interest, the court nevertheless declared that silent acquiescence is not enough: Counsel conceding a defendant's guilt is inevitably ineffective if the defendant does not expressly approve counsel's course.

*Held:* Counsel's failure to obtain the defendant's express consent to a strategy of conceding guilt in a capital trial does not automatically render counsel's performance deficient. Pp. 10–16.

(a) The Florida Supreme Court erred in requiring Nixon's affirmative, explicit acceptance of Corin's strategy because it mistakenly deemed Corin's statements to the jury the functional equivalent of a guilty plea. Despite Corin's concession of Nixon's guilt, Nixon retained the rights accorded a defendant in a criminal trial. Cf. *id.*, at 242–243, and n. 4. The State was obliged to present during the guilt phase competent, admissible evidence establishing the essential elements of the crimes with which Nixon was charged. That aggressive evidence would thus be separated from the penalty phase, enabling the defense to concentrate that portion of the trial on mitigating factors. Further, the defense reserved the right to cross-examine witnesses for the prosecution and could endeavor, as Corin did, to ex-

## Syllabus

clude prejudicial evidence. Furthermore, in the event of errors in the trial or jury instructions, a concession of guilt would not hinder the defendant's right to appeal. Corin was obliged to, and in fact several times did, explain his proposed trial strategy to Nixon. Nixon's characteristic silence each time information was conveyed to him did not suffice to render unreasonable Corin's decision to concede guilt and to home in, instead, on the life or death penalty issue. Pp. 10–12.

(b) Counsel's effectiveness should not be evaluated under the *Cronic* standard, but under the standard prescribed in *Strickland v. Washington*, 466 U. S. 668, 688: Did counsel's representation "[a]ll below an objective standard of reasonableness?" The Florida Supreme Court's erroneous equation of Corin's concession strategy to a guilty plea led it to apply the wrong standard. The court first presumed deficient performance, then applied the presumption of prejudice that *Cronic* reserved for situations in which counsel has entirely failed to function as the client's advocate, 466 U. S., at 659. Corin's concession of Nixon's guilt does not rank as such a failure. *Id.*, at 666. Although a concession of guilt in a run-of-the-mine trial might present a closer question, the gravity of the potential sentence in a capital trial and the proceeding's two-phase structure vitally affect counsel's strategic calculus. Attorneys representing capital defendants face daunting challenges in developing trial strategies: Prosecutors are more likely to seek the death penalty, and to refuse to accept a plea to a life sentence, when the evidence is overwhelming and the crime heinous. Counsel therefore may reasonably decide to focus on the trial's penalty phase, at which time counsel's mission is to persuade the trier that his client's life should be spared. Defense counsel must strive at the guilt phase to avoid a counterproductive course. Mounting a "defendant did not commit the crime" defense risks destroying counsel's penalty phase credibility and may incline the jury against leniency for the defendant. In a capital case, counsel must consider in conjunction both the guilt and penalty phases in determining how best to proceed. When counsel informs the defendant of the strategy counsel believes to be in the defendant's best interest and the defendant is unresponsive, counsel's strategic choice is not impeded by any blanket rule demanding the defendant's explicit consent. Instead, if counsel's strategy, given the evidence bearing on the defendant's guilt, satisfies the *Strickland* standard, that is the end of the matter; no tenable claim of ineffective assistance would remain. Pp. 12–16.

857 So. 2d 172, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except REHNQUIST, C. J., who took no part in the decision of the case.