

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

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**PREMO, SUPERINTENDENT, OREGON STATE
PENITENTIARY *v.* MOORE****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 09–658. Argued October 12, 2010—Decided January 19, 2011

Respondent Moore and two accomplices attacked and bloodied Kenneth Rogers, tied him up, and threw him in the trunk of a car before driving into the Oregon countryside, where Moore fatally shot him. Afterwards, Moore and one accomplice told Moore’s brother and the accomplice’s girlfriend that they had intended to scare Rogers, but that Moore had accidentally shot him. Moore and the accomplice repeated this account to the police. On the advice of counsel, Moore agreed to plead no contest to felony murder in exchange for the minimum sentence for that offense. He later sought postconviction relief in state court, claiming that he had been denied effective assistance of counsel. He complained that his lawyer had not moved to suppress his confession to police in advance of the lawyer’s advice that Moore considered before accepting the plea offer. The court concluded the suppression motion would have been fruitless in light of Moore’s other admissible confession to two witnesses. Counsel gave that as his reason for not making the motion. He added that he had advised Moore that, because of the abuse Rogers suffered before the shooting, Moore could be charged with aggravated murder. That crime was punishable by death or life in prison without parole. These facts led the state court to conclude Moore had not established ineffective assistance of counsel under *Strickland v. Washington*, 466 U. S. 668. Moore sought federal habeas relief, renewing his ineffective-assistance claim. The District Court denied the petition, but the Ninth Circuit reversed, holding that the state court’s conclusion was an unreasonable application of clearly established law in light of *Strickland* and was contrary to *Arizona v. Fulminante*, 499 U. S. 279.

Held: Moore was not entitled to the habeas relief ordered by the Ninth

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Circuit. Pp. 4–17.

(a) Under 28 U. S. C. §2254(d), federal habeas relief may not be granted with respect to any claim a state court has adjudicated on the merits unless, among other exceptions, the state-court decision denying relief involves “an unreasonable application” of “clearly established Federal law, as determined by” this Court. The relevant federal law is the standard for ineffective assistance of counsel under *Strickland*, which requires a showing of “both deficient performance by counsel and prejudice.” *Knowles v. Mirzayance*, 556 U. S. ___, ___. Pp. 4–6.

(b) The state-court decision was not an unreasonable application of either part of the *Strickland* rule. Pp. 6–16.

(1) The state court would not have been unreasonable to accept as a justification for counsel’s action that suppression would have been futile in light of Moore’s other admissible confession to two witnesses. This explanation confirms that counsel’s representation was adequate under *Strickland*, so it is unnecessary to consider the reasonableness of his other justification—that a suppression motion would have failed. Plea bargains involve complex negotiations suffused with uncertainty, and defense counsel must make strategic choices in balancing opportunities—pleading to a lesser charge and obtaining a lesser sentence—and risks—that the plea bargain might come before the prosecution finds its case is getting weaker, not stronger. Failure to respect the latitude *Strickland* requires can create at least two problems. First, the potential for distortions and imbalance that can inhere in a hindsight perspective may become all too real; and habeas courts must be mindful of their limited role, to assess deficiency in light of information then available to counsel. Second, ineffective-assistance claims that lack necessary foundation may bring instability to the very process the inquiry seeks to protect because prosecutors must have assurances that a plea will not be undone in court years later. In applying and defining the *Strickland* standard—reasonable competence in representing the accused—substantial deference must be accorded to counsel’s judgment. The absence of a developed and extensive record and well-defined prosecution or defense case creates a particular risk at the early plea stage. Here, Moore’s prospects at trial were anything but certain. Counsel knew that the two witnesses presented a serious strategic concern and that delaying the plea for further proceedings might allow the State to uncover additional incriminating evidence in support of a capital prosecution. Under these circumstances, counsel made a reasonable choice. At the very least, the state court would not have been unreasonable to so conclude. The Court of Appeals relied further on *Fulminante*, but a state-court adjudication of counsel’s per-

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formance under the Sixth Amendment cannot be “contrary to” *Fulminante*, for *Fulminante*—which involved the admission of an involuntary confession in violation of the Fifth Amendment—says nothing about *Strickland*’s effectiveness standard. Pp. 6–12.

(2) The state court also reasonably could have concluded that Moore was not prejudiced by counsel’s actions. To prevail in state court, he had to demonstrate “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U. S. 52, 59. Deference to the state court’s prejudice determination is significant, given the uncertainty inherent in plea negotiations. That court reasonably could have determined that Moore would have accepted the plea agreement even if his second confession had been ruled inadmissible. The State’s case was already formidable with two witnesses to an admissible confession, and it could have become stronger had the investigation continued. Moore also faced the possibility of grave punishments. Counsel’s bargain for the minimum sentence for the crime of conviction was thus favorable, and forgoing a challenge to the confession may have been essential to securing that agreement. Again, the state court’s finding could not be contrary to *Fulminante*, which does not speak to *Strickland*’s prejudice standard or contemplate prejudice in the plea bargain context. To the extent *Fulminante*’s harmless-error analysis sheds any light on this case, it suggests that the state court’s prejudice determination was reasonable. Pp. 12–16.

574 F. 3d 1092, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, BREYER, ALITO, and SOTOMAYOR, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment. KAGAN, J., took no part in the consideration or decision of the case.