

07-110 ARAVE V. HOFFMAN

DECISION BELOW:455 F3d 926

LOWER COURT CASE NUMBER: 02-99004

QUESTIONS PRESENTED:

Five weeks before his trial, Respondent Maxwell Hoffman rejected an offer by the state to recommend a life sentence if he would plead guilty to first-degree murder. Hoffman's attorney, William Wellman, recommended Hoffman reject the offer because the Ninth Circuit had earlier determined the Constitution required juries to find statutory aggravating factors, while in Idaho, judges made such findings. Wellman believed if Hoffman received a death sentence it would be reversed on appeal. However, in *Walton u. Arizona*, 497 U.S. 639 (1990), the Supreme Court determined the Constitution permits judges to find statutory aggravating factors. Nevertheless, the Ninth Circuit determined Wellman's representation was ineffective during plea negotiations because he "based his advice on incomplete research, and second, Wellman recommended that his client risk much in exchange for very little." The Ninth Circuit also concluded, "Hoffman's desire to have the State prove its case was not a principled stand against accepting a plea agreement," but "a misunderstanding of aiding and abetting liability led him to believe that the State was not likely to prove a first-degree murder charge against him."

1. Because the Ninth Circuit did not require Hoffman to prove Wellman's recommendation constituted "gross error" and mandated Wellman "be prescient about the direction the law will take," did the Ninth Circuit err by rejecting this Court's prohibition regarding the use of hindsight to conclude Hoffman established deficient performance?

2. Because Hoffman failed to allege he would have accepted the state's plea offer but for Wellman's advice and the Ninth Circuit determined Hoffman's decision to reject the offer was not a "principled stand," did the Ninth Circuit err by concluding Hoffman established prejudice?

CERT. GRANTED 11/5/2007

IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITION, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: "WHAT, IF ANY, REMEDY SHOULD BE PROVIDED FOR INEFFECTIVE ASSISTANCE OF COUNSEL DURING PLEA BARGAIN NEGOTIATIONS IF THE DEFENDANT WAS LATER CONVICTED AND SENTENCED PURSUANT TO A FAIR TRIAL?"