

09-658 PREMO V. MOORE

DECISION BELOW: 574 F.3d 1092

LOWER COURT CASE NUMBER: 04-15713

QUESTION PRESENTED:

1. This Court established in *Hill v. Lockhart* the standard for assessing, in a collateral challenge to a conviction that was based on a guilty or no-contest plea, whether an attorney's deficient performance requires reversal of a conviction. In *Arizona v. Fulminante*--a direct appellate review case--this Court reviewed all the evidence presented at trial and held that the erroneous admission of a coerced confession at the trial was not harmless.

a. If a collateral challenge is based on a defense attorney's decision not to move to suppress a confession prior to a guilty or no contest plea, does the *Fulminante* standard apply, even though no record of a trial is available for review?

b. Even if the *Fulminante* standard applies in that context, is it "clearly established Federal law" for purposes of 28 U.S.C. § 2254(d)(1)?

2. In Moore's underlying criminal case, he confessed to police that he personally shot the victim. He also confessed to two other people, and he ultimately pleaded no contest to murder. In his collateral challenge to his conviction, he alleged that his attorney should have moved to suppress the confession to police, but he offered no evidence that he would have insisted on going to trial had counsel done so. Did the Ninth Circuit err by granting federal habeas relief on Moore's ineffective-assistance-of-counsel claim?

JUSTICE KAGAN TOOK NO PART

CERT. GRANTED 3/22/2010