

Criminal Procedure Counsel Issues

Lee v. United States, 582 U.S. ____ (June 23, 2017). By wrongly advising the defendant that a guilty plea to a drug charge would not result in deportation, counsel rendered ineffective assistance of counsel (IAC) in connection with the defendant's plea. After he was charged with possessing ecstasy with intent to distribute, the defendant feared that a criminal conviction might affect his status as a lawful permanent resident. His attorney assured him that the Government would not deport him if he pleaded guilty. As a result the defendant, who had no real defense to the charge, accepted a plea that carried a lesser prison sentence than he would have faced at trial. The defendant's attorney was wrong: The conviction meant that the defendant was subject to mandatory deportation. Before the Court, the Government conceded that the defendant received objectively unreasonable representation when counsel assured him that he would not be deported if he pleaded guilty. The question before the Court was whether the defendant could show prejudice as a result. The Court noted that when an IAC claim involves a claim of attorney error during the course of a legal proceeding—for example, that counsel failed to raise an objection at trial or to present an argument on appeal—a defendant raising such a claim can demonstrate prejudice by showing a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. This case, however was different. The Court explained:

But in this case counsel's "deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself." When a defendant alleges his counsel's deficient performance led him to accept a guilty plea rather than go to trial, we do not ask whether, had he gone to trial, the result of that trial "would have been different" than the result of the plea bargain. That is because, while we ordinarily "apply a strong presumption of reliability to judicial proceedings," "we cannot accord" any such presumption "to judicial proceedings that never took place."

We instead consider whether the defendant was prejudiced by the "denial of the entire judicial proceeding . . . to which he had a right." As we held in *Hill v. Lockhart*, when a defendant claims that his counsel's deficient performance deprived him of a trial by causing him to accept a plea, the defendant can show prejudice by demonstrating a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." (citations omitted).

The Court rejected the dissent's argument that the defendant must also show that he would have been better off going to trial. It conceded "[t]hat is true when the defendant's decision about going to trial turns on his prospects of success and those are affected by the attorney's error—for instance, where a defendant alleges that his lawyer should have but did not seek to suppress an improperly obtained confession." The Court found that the error at issue was different. Here, the defendant "knew, correctly, that his prospects of acquittal at trial were grim, and his attorney's error had nothing to do with that. The error was instead one that affected [the defendant's] understanding of the consequences of pleading guilty." And here, the defendant argues that he never would have accepted a guilty plea had he known that he would be deported as a result; the defendant insists he would have gambled on trial, risking more jail time for whatever small chance there might be of an acquittal that would let him remain in the United States. Considering this claim, the Court rejected the Government's request for a per se rule that a defendant with no viable defense cannot show prejudice from the denial of his right to trial. Instead it held: "In the unusual circumstances of this case, we conclude that [the defendant] has adequately demonstrated a reasonable probability that he would have rejected the plea had he known that it would lead to mandatory deportation."