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Wood Vs. Allen

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Court : US Supreme Court

Decided On : May-17-2010

Appeal No. : 08-9156

Appellant : Wood

Respondent : Allen

Judgement :

Wood v. Allen - 08-9156 (2010)

SYLLABUS
OCTOBER TERM, 2009
WOOD V. ALLEN

SUPREME COURT OF THE UNITED STATES

WOOD *v* . ALLEN, COMMISSIONER, ALABAMADEPARTMENT OF CORRECTIONS, et al.

certiorari to the united states court of appeals for the eleventh circuit

No. 08-9156.Argued November 4, 2009-Decided January 20, 2010

Under 28 U. S. C. 2254(d)(2), a federal court may grant a state prisoner habeas relief if his claim was adjudicated on the merits in state court and resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Under 2254(e)(1), a determination of a factual issue made by a State court [is] presumed to be correct, and the petitioner has the burden of rebutting the presumption of correctness by clear and convincing evidence.

Petitioner Wood was convicted of capital murder and sentenced to death in Alabama state court. Two of his court-appointed attorneys, Dozier and Ralph, had significant trial experience, but the third, Trotter, had only recently been admitted to the bar. After exhausting his appeals, Wood sought postconviction relief under Alabama Rule of Criminal Procedure 32, arguing, among other things, that he was mentally retarded and not eligible for the death penalty, and that his trial counsel were ineffective because they failed to investigate and present evidence of his mental deficiencies during the trials penalty phase. The Rule 32 court conducted evidentiary hearings and denied the claims initially and on remand. As to the mental retardation claim, it found that Wood had not shown deficits in his adaptive functioning. As to the ineffective-assistance-of-counsel claim, it concluded that he had not established that his counsels performance was deficient or that any deficiency prejudiced his defense. In so doing, it made a factual finding that counsel had made a strategic decision not to pursue evidence of Woods alleged retardation. Observing that counsel had asked Dr. Kirkland to conduct a mental evaluation, had thoroughly reviewed his report, and had determined that no further investigation was warranted, the court additionally held that counsel appeared to have made a strategic decision not to present their limited mental-deficiency evidence to the jury because having Dr. Kirkland testify was not in Woods best interest. It also found no reasonable probability of a different outcome had the evidence developed in the Rule 32 proceedings been presented at trial. Woods subsequently sought federal habeas relief under 2254. The District Court rejected all but his ineffective-assistance-of-counsel claim. The District Court concluded that the state courts finding that counsel made a strategic decision was an unreasonable determination of the facts. The court further held that counsels performance was deficient and had prejudiced Wood, and that the state courts

contrary holdings were an unreasonable application of federal law under *Strickland* v. *Washington* , 466 U. S. 668 . Reversing, the Eleventh Circuit held that the state courts rejection of Woods ineffective-assistance claim was neither an unreasonable application of clearly established law nor based on an unreasonable determination of the facts. With respect to the facts, it concluded that the evidence in the Rule 32 hearings supported the state courts strategic-decision finding, and it agreed with the state courts legal conclusion that counsels strategic decision was reasonable and that Wood had failed to show prejudice. Woods certiorari petition raises the questions (1) whether, in order to obtain relief under 2254(d)(2), a petitioner must establish only that the state-court factual determination on which the decision was based was unreasonable, or whether 2254(e)(1) additionally requires a petitioner to rebut a presumption that the determination was correct with clear and convincing evidence; and (2) whether the state courts strategic-decision determination was reasonable.

HELD

1. Even under Woods reading of 2254(d)(2), the state courts conclusion that his counsel made a strategic decision not to pursue or present evidence of his mental deficiencies was not an unreasonable determination of the facts in light of the evidence presented in the state-court proceedings. This Court need not reach the question whether 2254(e)(1) applies in every case presenting a challenge under 2254(d)(2), see Rice v. *Collins* , 546 U. S. 333 , 339, because its view of the state courts factual determination here does not depend on an interpretative difference regarding the relationship between those provisions. While [t]he term unreasonable is difficult to define, *Williams* v. *Taylor* , 529 U. S. 362 , 410, it suffices to say that a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance. See *Rice, supra,* at 341-342. Here, the state-court record shows that all of Woods counsel read the Kirkland report. Trotter testified that Dozier told him that nothing in the report merited further investigation, a recollection supported by the attorneys contemporaneous letters; and Trotter told the sentencing judge that counsel did not intend to introduce the report to the jury. This evidence can fairly be read to support the Rule 32 courts factual determination that counsels

failure to pursue or present evidence of Woods mental deficiencies was not mere oversight or neglect but the result of a deliberate decision to focus on other defenses. Most of the contrary evidence Wood highlights- *e.g.,* that Dozier and Ralph put the inexperienced Trotter in charge of the penalty phase proceedings- speaks not to whether counsel made a strategic decision, but to whether counsels judgment was reasonable, a question not before this Court. Any evidence plausibly inconsistent with the strategic-decision finding does not suffice to show that the finding was unreasonable. Pp. 8-12.

2. Because Woods argument that the state court unreasonably applied *Strickland* in rejecting his ineffective-assistance claim on the merits is not fairly included in the questions presented under this Courts Rule 14.1(a), it will not be addressed here. Pp. 12-13.

542 F. 3d 1281, affirmed.

Sotomayor, J., delivered the opinion of the Court, in which Roberts, C. J., and Scalia, Thomas, Ginsburg, Breyer, and Alito, JJ., joined. Stevens, J., filed a dissenting opinion, in which Kennedy, J., joined.

Wood v. Allen - 08-9156 (2010)

OPINION OF THE COURT
WOOD V. ALLEN
558 U. S. ____ (2010)

SUPREME COURT OF THE UNITED STATES
NO. 08-9156

HOLLY WOOD, PETITIONER *v.* RICHARD F. ALLEN,COMMISSIONER, ALABAMA DEPARTMENT OFCORRECTIONS, et al.

on writ of certiorari to the united states court ofappeals for the eleventh circuit

[January 20, 2010]

Justice Sotomayor delivered the opinion of the Court.

The Antiterrorism and Effective Death Penalty Act of 1996 contains two provisions governing federal-court review of state-court factual findings. Under 28 U. S. C. 2254(d)(2), a federal court may not grant a state prisoners application for a writ of habeas corpus based on a claim already adjudicated on the merits in state court unless that adjudication resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Under 2254(e)(1), a determination of a factual issue made by a State court shall be presumed to be correct, and the petitioner shall have the burden of rebutting the presumption of correctness by clear and convincing evidence. In this case, petitioner, a capital defendant, challenges the key factual finding made by the Alabama state court that denied his application for postconviction relief: that his attorneys failure to pursue and present mitigating evidence of his borderline mental retardation was a strategic decision rather than a negligent omission. Petitioner argues that the state courts finding was unreasonable under 2254(d)(2) and that, in denying his federal habeas petition, the Court of Appeals for the Eleventh Circuit erroneously conflated this standard with that of 2254(e)(1), which petitioner contends is not applicable in cases, such as this one, not involving a separate federal habeas evidentiary hearing.

We granted certiorari to address the relationship between 2254(d)(2) and (e)(1). We conclude, however, that the state courts factual determination was reasonable even under petitioners reading of 2254(d)(2), and therefore we need not address that provisions relationship to 2254(e)(1). Accordingly, we affirm the judgment of the Court of Appeals on that basis.

I

In 1993, petitioner Holly Wood broke into the home of his ex-girlfriend and shot her in the head and face as she lay in her bed. The victim was pronounced dead on

arrival at the hospital. Charged with capital murder during a first-degree burglary, Wood was represented at trial in Alabama state court by three court-appointed attorneys: Cary Dozier and Frank Ralph, both of whom had significant trial experience, and Kenneth Trotter, who had been admitted to the bar for five months at the time he was appointed. The jury convicted Wood at the guilt phase of trial and recommended a death sentence at the penalty phase by a vote of 10 to 2. After a separate sentencing hearing, the trial judge imposed the death penalty. The Alabama Court of Criminal Appeals affirmed Woods conviction and sentence, *Ex parte Wood* , 715 So. 2d 812 (1996), as did the Alabama Supreme Court, *Wood* v. *State* , 715 So. 2d 819 (1998). This Court denied certiorari. *Wood* v. *Alabama* , 525 U. S. 1042 (1998).

Wood petitioned for state postconviction relief under Alabama Rule of Criminal Procedure 32 (2009), arguing, among other things, that he was mentally retarded and not eligible for the death penalty, and that his trial counsel were ineffective under *Strickland* v. *Washington* , 466 U. S. 668 (1984), because they failed to investigate and present evidence of his mental deficiencies during the penalty phase of trial. App. to Pet. for Cert. 198a-202a, 207a-210a, 213a-216a, 220a-221a, 225a. The Rule 32 court held two evidentiary hearings and denied Woods claims. On appeal, the Alabama Court of Criminal Appeals remanded for further consideration in light of *Atkins* v. *Virginia* , 536 U. S. 304 (2002), which held that the Eighth Amendment prohibits the execution of the mentally retarded. *Wood* v. *State* , 891 So. 2d 398 (2003).

On remand, the Rule 32 court conducted a third evidentiary hearing and once again denied relief. As to Woods claim of mental retardation, the court found that, while the evidence suggested that he probably does exhibit significantly subaverage general intellectual functioning, he had failed to show that he has significant or substantial deficits in his adaptive functioning. App. to Pet. for Cert. 236a-237a.

The court also rejected Woods factually related claim of ineffective assistance of counsel, concluding that Wood had failed to establish that his counsels performance was deficient or that any deficiency prejudiced his defense. *Id.,* at

257a-275a. The court first made a factual finding that Woods counsel had made a strategic decision not to pursue evidence of his alleged mental retardation. The court observed that counsel had requested that a Dr. Karl Kirkland conduct a mental evaluation, had thoroughly reviewed Dr. Kirklands report, and had determined that nothing in that report merited further investigation. *Id.,* at 264a, 271a. The court additionally found that counsel appeared to have made a strategic decision not to present to the jury the limited evidence of Woods mental deficiencies in their possession, because calling Dr. Kirkland to testify was not in Woods best interest. *Id.,* at 271a-272a. The court concluded that these strategic decisions were reasonable and thus that counsel had not performed deficiently. *Ibid.* The court further concluded that there was no reasonable probability of a different outcome had the evidence developed in the Rule 32 hearings been presented to the jury or to the sentencing court. *Id.,* at 273a. The Alabama Court of Criminal Appeals affirmed, App. 589-610, and the Alabama Supreme Court denied certiorari, *id.,* at 4.

Wood then filed a petition for federal habeas relief under 2254. The District Court rejected all of Woods claims save one: that counsels failure to investigate and present mitigation evidence of his mental deficiencies during the penalty phase constituted ineffective assistance of counsel. 465 F. Supp. 2d 1211, 1239-1245 (MD Ala. 2006). According to the court, there was nothing in the record to even remotely support a finding that counsel made a strategic decision not to let the jury at the penalty stage know about Woods mental condition. *Id.,* at 1242. Ralph and Dozier, the court noted, had placed the inexperienced Trotter in charge of the penalty phase. At the Rule 32 hearing, Trotter testified that he had seen the references to Woods intellectual functioning in the Kirkland report but did not recall considering whether to pursue that issue. Trotter further testified that he had unsuccessfully attempted to subpoena Woods school records and that he did not recall speaking to any of Woods teachers. Trotter had also written to an attorney at the Southern Poverty Law Center explaining that he was stressed out over this case and [didnt] have anyone with whom to discuss the case, including the other two attorneys. *Id.,* at 1241. Shortly before the penalty phase began, Trotter told the judge that he would request further psychological evaluation before the judges sentencing hearing, even though the evaluation would come too late to be

considered by the jury. *Id.,* at 1241-1242. Based on this evidence, the District Court concluded that the state courts finding that a strategic decision was made not to investigate or introduce to the sentencing jury evidence of mental retardation [was] an unreasonable determination of the facts in light of the clear and convincing evidence presented in the record. *Ibid.*

Having rejected the state courts factual determinations, the District Court held that counsels performance was deficient and that counsels deficient performance prejudiced Wood, concluding that the state courts holdings to the contrary constituted an unreasonable application of federal law under *Strickland* . *Id.,* at 1245. The court granted the petition on this claim and ordered the State either to resentence Wood to life without parole or to conduct a new sentencing hearing.

In a divided opinion, the Eleventh Circuit reversed the grant of habeas relief. 542 F. 3d 1281 (2008). The majority began by explaining the standard of review: Section 2254(d) permits federal habeas relief only where the state courts decisions were (1) contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or (2) based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. *Id.,* at 1285 (quoting 2254(d)(1)-(2)). A determination of a factual issue made by a State court shall be presumed to be correct, the majority explained, and the petitioner shall have the burden of rebutting the presumption of correctness by clear and convincing evidence. *Ibid.* (quoting 2254(e)(1)). Thus, the majority stated, the federal habeas courts review of findings of fact by the state court is even more deferential than under a clearly erroneous standard of review. *Ibid.*

The majority then held that the Alabama courts rejection of Woods ineffective-assistance-of-counsel claim was neither an unreasonable application of clearly established law nor based on an unreasonable determination of the facts. With respect to the facts, the court concluded that the evidence presented in the Rule 32 hearings supported the state courts findings that counsel made a strategic decision not to present mental health evidence during the penalty phase. At a minimum, the court noted, Wood has not presented evidence, much less clear and

convincing evidence, that counsel did not make such decisions. *Id.,* at 1304, n. 23. The court also agreed with the state courts legal conclusion that counsels strategic decision was reasonable. According to the court, the silent record created a presumption that counsel exercised sound professional judgment, supported by ample reasons, not to present the information they had obtained. These reasons included unfavorable information in Dr. Kirklands report, such as details about Woods 19 earlier arrests and his previous attempt to murder another ex-girlfriend, as well as Dr. Kirklands conclusion that, notwithstanding Woods mental deficiencies, Wood had a high level of adaptive functioning. *Id.,* at 1304-1306. The court added that the investigation preceding counsels decision was sufficient to permit them to make a reasoned decision, crediting the Rule 32 courts findings that, *inter alia* , counsel not only employed an investigator who sought mitigation evidence from family members but also themselves met with family members and sought guidance from capital defense organizations. *Id.,* at 1307-1308. The court also accepted as not objectively unreasonable the state courts determination that Wood had failed to show prejudice from counsels failure to present evidence of his mental deficiencies. *Id.,* at 1309, 1314.

The dissent, implicitly considering the factual question whether counsel made a strategic decision as part and parcel of the legal question whether any strategic decision was reasonable, concluded that [n]o such strategic decisions could possibly have been made in this case because counsel had failed to adequately investigate the available mitigating evidence. *Id.,* at 1316. According to the dissent, the weight of the evidence in the record demonstrates that Trotter, an inexperienced and overwhelmed attorney, unassisted by senior counsel, realized too late-only in time to present it to the sentencing judge, not to the penalty jury-what any reasonably prepared attorney would have known: that evidence of Woods mental impairments could have served as mitigating evidence and deserved investigation so that it could properly be presented before sentencing . *Id* ., at 1320. The dissent also concluded that there was a reasonable probability of a different outcome at the penalty phase had the evidence been presented, because the jury could have concluded that Wood was less culpable as a result of his diminished abilities. *Id.,* at 1322-1325. The dissent therefore concluded that the state courts application of *Strickland* to the facts of this case was

unreasonable. 542 F. 3d , at 1326.

We granted certiorari to resolve two related questions raised by Woods petition. First, we granted review of a question that has divided the Courts of Appeals: whether, in order to satisfy 2254(d)(2), a petitioner must establish only that the state-court factual determination on which the decision was based was unreasonable, or whether 2254(e)(1) additionally requires a petitioner to rebut a presumption that the determination was correct with clear and convincing evidence.[Footnote 1] We also granted review of the question whether the state court reasonably determined that Woods counsel made a strategic decision not to pursue or present evidence of his mental deficiencies. 556 U. S. __ (2009). Woods petition raised two additional questions on which we declined to grant certiorari. *Ibid.* Neither of these asked us to review whether the state courts resolution of Woods ineffective-assistance-of-counsel claim was contrary to, or involved an unreasonable application of, clearly established Federal law under 2254(d)(1) and *Strickland* .

II

A

Notwithstanding statements we have made about the relationship between 2254(d)(2) and (e)(1) in cases that did not squarely present the issue, see Brief for Petitioner 37-38; Brief for Respondents 28-29, we have explicitly left open the question whether 2254(e)(1) applies in every case presenting a challenge under 2254(d)(2), see *Rice* v. *Collins* , 546 U. S. 333 , 339 (2006). The parties and their *amici* have offered a variety of ways to read the relationship between these two provisions.[Footnote 2] Although we granted certiorari to resolve the question of how 2254(d)(2) and (e)(1) fit together, we find once more that we need not reach this question, because our view of the reasonableness of the state courts factual determination in this case does not turn on any interpretive difference regarding the relationship between these provisions. For present purposes, we assume for the sake of argument that the factual determination at issue should be reviewed, as Wood urges, only under 2254(d)(2) and not under 2254(e)(1). We conclude that, under 2254(d)(2), the state courts finding that

Woods counsel made a strategic decision not to pursue or present evidence of Woods mental deficiencies was not an unreasonable determination of the facts in light of the evidence presented in the state-court proceedings. We therefore do not need to decide whether that determination should be reviewed under the arguably more deferential standard set out in 2254(e)(1).

As we have observed in related contexts, [t]he term unreasonable is no doubt difficult to define. *Williams* v. *Taylor* , 529 U. S. 362 , 410 (2000). It suffices to say, however, that a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance. Cf. *id.,* at 411. In *Rice* , for example, in which we assumed, *arguendo* , that only 2254(d)(2) and not 2254(e)(1) applied, 546 U. S., at 339, we rejected the Ninth Circuits conclusion that a state-court factual determination was unreasonable. We noted that even if [r]easonable minds reviewing the record might disagree about the finding in question, on habeas review that does not suffice to supersede the trial courts determination. *Id.,* at 341-342.

In this case, the evidence in the state-court record demonstrated that all of Woods counsel read the Kirkland report. App. 12, 174, 210, 283. Trotter testified that Dozier told him that nothing in the report merited further investigation, a recollection that is supported by contemporaneous letters Trotter wrote to Dozier and Ralph noting that no independent psychological evaluations had been conducted because Dozier had said they would not be needed. *Id.,* at 283, 343, 345. Trotter also told the sentencing judge that counsel did not intend to introduce the Kirkland report to the jury. *Id.,* at 12. This evidence in the state-court record can fairly be read to support the Rule 32 courts factual determination that counsels failure to pursue or present evidence of Woods mental deficiencies was not mere oversight or neglect but was instead the result of a deliberate decision to focus on other defenses.

Arguing that the state courts factual determination to this effect was unreasonable, Wood calls our attention to Doziers testimony during the Rule 32 proceedings that evidence of Woods mental health problems would have been presented during the penalty phase if counsel had been aware of it, *id.,* at 169; that Dozier did not

recall whether he had decided not to present evidence based on the Kirkland report, *id.,* at 168, 171; and that Dozier and Ralph had designated the inexperienced Trotter to be in charge of the penalty phase proceedings, *id.,* at 270-271. Trotter, in turn, testified that he did not recall considering Woods mental deficiencies. *Id.,* at 288. Wood also observes that the Kirkland report was prepared for the guilt phase, not the penalty phase, and a strategic decision not to use the Kirkland report in the former does not necessarily carry over into the latter. *Id.,* at 324. Wood notes that his counsel sought to obtain additional evidence about his mental health to use in mitigation after reviewing the Kirkland report, but they failed to pursue it, in part out of a belief that the sentencing judge would not grant a continuance to permit them to investigate. *Id.,* at 285, 343-346. Finally, Wood emphasizes that his counsel must have thought that evidence of his mental deficiencies was important because they presented it to the judge at the final sentencing hearing. *Id.,* at 88.

Most of the evidence Wood highlights, however, speaks not to whether counsel made a strategic decision, but rather to whether counsels judgment was reasonable-a question we do not reach. See Part II-B, *infra* . As for any evidence that may plausibly be read as inconsistent with the finding that counsel made a strategic decision, we conclude that it does not suffice to demonstrate that the finding was unreasonable.[Footnote 3]

Reviewing all of the evidence, we agree with the State that even if it is debatable, it is not unreasonable to conclude that, after reviewing the Kirkland report, counsel made a strategic decision not to inquire further into the information contained in the report about Woods mental deficiencies and not to present to the jury such information as counsel already possessed about these deficiencies. Cf. *Rice* , *supra* , at 341-342. For that reason, we agree with the Court of Appeals that the District Court erred in holding to the contrary.

B

Wood also argues that the state-court decision involved an unreasonable application of *Strickland* under 2254(d)(1) because counsel failed to make a reasonable investigation of Woods mental deficiencies before deciding not to

pursue or present such evidence. Without a reasonable investigation, Wood contends, these decisions were an unreasonable exercise of professional judgment and constituted deficient performance under *Strickland* . We agree with the State, however, that this argument is not fairly included in the questions presented under this Courts Rule 14.1(a). Whether the state court reasonably determined that there was a strategic decision under 2254(d)(2) is a different question from whether the strategic decision itself was a reasonable exercise of professional judgment under *Strickland* or whether the application of *Strickland* was reasonable under 2254(d)(1). Cf. *Rice* , 546 U. S., at 342 (The question whether a state court errs in determining the facts is a different question from whether it errs in applying the law). These latter two questions may be *related* to the one petitione[r] presented, and perhaps *complementary* to the one petitione[r] presented, but they are not fairly included therein. *Yee* v. *Escondido* , 503 U. S. 519 , 537 (1992) (internal quotation marks omitted).

It is true that Woods petition discussed the Eleventh Circuits misapplication of 2254(d)(1) and *Strickland* . Pet. for Cert. 22-27. But the fact that [petitioner] discussed this issue in the text of [his] petition for certiorari does not bring it before us. Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review. *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S. Philips Corp.* , 510 U. S. 27 , 31, n. 5 (1993) *(per curiam)* . We therefore do not address Woods argument that the state court unreasonably applied *Strickland* in rejecting his ineffective-assistance-of-counsel claim on the merits.

***

Because the resolution of this case does not turn on them, we leave for another day the questions of how and when 2254(e)(1) applies in challenges to a state courts factual determinations under 2254(d)(2). We hold simply that, even under petitioners reading of 2254(d)(2), the state courts conclusion that Woods counsel made a strategic decision not to pursue or present evidence of his mental deficiencies was not an unreasonable determination of the facts. Accordingly, we affirm the judgment of the Court of Appeals for the Eleventh Circuit.

It is so ordered.

Footnote 1

See, e.g., 542 F. 3d 1281, 1285, 1304, n. 23 (CA11 2008) (decision below); *Taylor* v. *Maddox* , 366 F. 3d 992, 999-1000 (CA9), cert. denied, 543 U. S. 1038 (2004) (where a habeas petitioner challenges state-court factual findings based entirely on the state record, the federal court reviews those findings for reasonableness only under 2254(d)(2), but where a petitioner challenges such findings based in part on evidence that is extrinsic to the state-court record, 2254(e)(1) applies); *Lambert* v. *Blackwell* , 387 F. 3d 210, 235 (CA3 2004) (2254(d)(2)s reasonableness determination turns on a consideration of the totality of the evidence presented in the state-court proceeding, while 2254(e)(1) contemplates a challenge to the state courts individual factual determinations, including a challenge based wholly or in part on evidence outside the state trial record); *Trussell* v. *Bowersox* , 447 F. 3d 588, 591 (CA8) (federal habeas relief is available only if the state court made an unreasonable determination of the facts in light of the evidence presented in the State court proceeding, 28 U. S. C. 2254(d)(2), which requires clear and convincing evidence that the state courts presumptively correct factual finding lacks evidentiary support), cert. denied, 549 U. S. 1034 (2006); *Ben-Yisrayl* v. *Buss* , 540 F. 3d 542, 549 (CA7 2008) (2254(d)(2) can be satisfied by showing, under 2254(e)(1), that a state-court decision rests upon a determination of fact that lies against the clear weight of the evidence because such a decision is, by definition, a decision so inadequately supported by the record as to be arbitrary and therefore objectively unreasonable (internal quotation marks omitted)).

Footnote 2

In Woods view, when a petitioner seeks relief based entirely on the state-court record, a federal court reviews the state courts findings for reasonableness under 2254(d)(2). Section 2254(e)(1) comes into play, according to Wood, only when a petitioner challenges individual state-court factual findings based in part on evidence that is extrinsic to the state-court record. Brief for Petitioner 38-39. According to respondents, 2254(e)(1) applies to any challenge to a state courts factual findings under 2254(d)(2), including a challenge based solely on the state-court record. Brief for Respondents 35-37. Respondents *amici* offer still further

variations, although they all agree with respondents that 2254(e)(1) applies in some fashion in every habeas case reviewing state-court factual findings. Brief for Criminal Justice Legal Foundation as *Amicus Curiae* 5, 10-14; Brief for State of Indiana et al. as *Amici Curiae* 2, 12-18.

Footnote 3

The dissent suggests that counsel could not have made a strategic decision not to pursue evidence of Woods mental deficiencies because there could be no reasonable justification for doing so. *Post* , at 3-5 (opinion of Stevens, J., joined by Kennedy, J.). This interpretation conflates the question whether a decision was strategic with the question whether a strategic decision was reasonable. Cf. *post,* at 2, n. 1. Without expressing a view on the ultimate reasonableness of the decision not to pursue this evidence further, we note that the Eleventh Circuit majority observed that the state court could reasonably have determined that counsel had strategic grounds for their decision. In particular, evidence about Woods mental deficiencies may have led to rebuttal testimony about the capabilities he demonstrated through his extensive criminal history, an extraordinarily limited amount of which was actually admitted at the penalty phase of the trial. Counsels decision successfully thwarted the prosecutors efforts to admit evidence that Wood murdered his ex-girlfriend while on parole for an attempted murder of a different ex-girlfriend that was strikingly similar in execution to the subsequent successful murder. App. 23-24. Moreover, as the Eleventh Circuit majority noted, evidence of Woods mental deficiencies also could have undercut the defenses argument that he left school to support his family, suggesting instead that he left school because of educational difficulties. 542 F. 3d, at 1305-1306. Counsels decision about which avenues to investigate can therefore plausibly be described as strategic rather than necessarily being the product of happenstance, inattention, or neglect, *post* , at 4.

Wood v. Allen - 08-9156 (2010)

STEVENS, J., DISSENTING

WOOD V. ALLEN
558 U. S. ____ (2010)
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on writ of certiorari to the united states court ofappeals for the eleventh circuit

[January 20, 2010]

Justice Stevens, with whom Justice Kennedy joins, dissenting.

There is a world of difference between a decision not to introduce evidence at the guilt phase of a trial and a failure to investigate mitigating evidence that might be admissible at the penalty phase. Woods experienced counsel made a perfectly sensible decision not to introduce Dr. Kirklands report into evidence or to call him as a witness. That was a strategic decision based on their judgment that the evidence would do more harm than good. But it does not follow from this single strategic decision that counsel also made a strategic decision to forgo investigating powerful mitigating evidence of Woods mental deficits for the penalty phase. On the contrary, the only reasonable factual conclusion I can draw from this record is that counsels decision to do so was the result of inattention and neglect. Because such a decision is the antithesis of a strategic choice, I would reverse the decision of the Court of Appeals.

Assuming that the Court is correct to decline to consider whether the state courts application of *Strickland* v. *Washington* , 466 U. S. 668 (1984) was reasonable, see *ante* , at 12-13, the question whether the decision itself was the product of a strategy is still before us. The Court may well be correct that the state court reasonably concluded that counsel made a decision not to pursue Dr. Kirklands report for either guilt or penalty phase purposes, *ante* , at 10-12, but to reject Woods claim the state court also had to reasonably conclude that such a decision

was borne of strategy. And whether counsels decision was the product of strategy is a question of fact for purposes of 28 U. S. C. 2254(d)(2).[Footnote 1] Cf. *Wiggins* v. *Smith* , 539 U. S. 510 , 526-527 (2003) (observing that the strategic decision the state courts and respondents all invoke to justify counsels limited pursuit of mitigating evidence resembles more a *post hoc* rationalization of counsels conduct than an accurate description of their deliberations prior to sentencing); *Carr* v. *Schofield* , 364 F. 3d 1246, 1264 (CA11 2004) (identifying whether counsels decisions were tactical or strategic as a question of fact (citing *Horton* v. *Zant* , 941 F. 2d 1449, 1462 (CA11 1991)));[Footnote 2] *Berryman* v. *Morton* , 100 F. 3d 1089, 1095 (CA3 1996) (same). In other words, the Court correctly concludes that the record reasonably supports a finding that counsel decided not to investigate Woods mental retardation further, but the Court fails to engage with the requisite second question: Does the record reasonably support finding that counsels decision was a strategic one? The answer to this question is unequivocally no.

Before petitioners trial, his counsel learned that Wood had an IQ in the borderline range of intellectual functioning, App. 327, and was functioning, at most, in this borderline range, *id.* , at 328. Wood was reading on less than a 3rd grade level. *Id.* , at 327. His former special education teacher testified during postconviction review that Wood was classified as educable mentally retarded by the local school system. *Id.* , at 403. In short, Wood has the type of significant mental deficits that we recognize as inherently mitigating, *Tennard* v. *Dretke* , 542 U. S. 274 , 287 (2004).[Footnote 3]

Despite the powerful mitigating value of this evidence, [n]o evidence of Woods mental retardation was ever presented to the jury. 542 F. 3d 1281, 1314 (CA11 2008) (Barkett, J., concurring in part, dissenting in part). Counsel was clearly aware that this evidence existed, *id.* , at 1318, but chose not to investigate it beyond the conclusions outlined in Dr. Kirklands report, App. 283. In the Courts view, the record reasonably supports the state courts conclusion that counsel made a strategic decision not to inquire further into Woods mental deficiencies, *ante* , at 12. Although I agree with the majority that the failure was the result of a

decision, albeit a hasty one, the Court regrettably fails to consider whether the decision was also strategic as a matter of fact.

A decision cannot be fairly characterized as strategic unless it is a conscious choice between two legitimate and rational alternatives. It must be borne of deliberation and not happenstance, inattention, or neglect. See *Wiggins* , 539 U. S., at 526 (concluding that counsels failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment); *Strickland* , 466 U. S., at 690-691. Moreover, a cursory investigation does not automatically justif[y] a tactical decision with respect to sentencing strategy. *Wiggins* , 539 U. S., at 527. Although we afford deference to counsels strategic decisions, *Strickland* , 466 U. S., at 690-691, for this deference to apply there must be some evidence that the decision was just that: strategic.

The lawyers duty to conduct a thorough investigation of possible mitigating evidence is well established by our cases, *Porter* v. *McCollum* , 558 U. S. ___, ___ (2009) *(per curiam)* (slip op., at 10); *Rompilla* v. *Beard* , 545 U. S. 374 , 387 (2005); *Wiggins* , 539 U. S., at 522-523; *Williams* v. *Taylor* , 529 U. S. 362 , 396 (2000); *Strickland* , 466 U. S., at 688. These cases also make clear that counsels unconsidered decision to fail to discharge that duty cannot be strategic. The only conceivable strategy that might support forgoing counsels ethical obligations under these circumstances would be a reasoned conclusion that further investigation is futile and thus a waste of valuable time. Cf. *id.,* at 691 (recognizing that counsels decision to abandon an investigation is entitled to deference when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful). There is no evidence in the record to suggest that Woods counsel reached such a conclusion.[Footnote 4] See 542 F. 3d, at 1321-1322 (Barkett, J., concurring in part, dissenting in part). On the contrary, the Court recognizes that Wood has pointed to substantial evidence that Trotter, the attorney who had primary responsibility for Woods penalty phase, believed that further investigation had value, *ante* , at 10-11. Despite the fact that Trotter had a meager five months of experience as a lawyer when he was appointed to represent Wood, App. 261, even he knew that further

investi-gation into any mental or psychological deficits was in order.[Footnote 5]

In my view, any decision to abandon an investigation into the mitigating evidence signaled by Dr. Kirklands report was so obviously unreasonable that the decision itself is highly persuasive evidence that counsel did not have any strategy in mind when they did so. I share the view of my dissenting colleague below that the District Court correctly concluded that the failure to investigate was the product of inattention and neglect by attorneys preoccupied with other concerns and not the product of a deliberate choice between two permissible alternatives. For the state court to conclude otherwise was thus an unreasonable determination of the facts in light of the evidence presented in the State court proceeding within the meaning of 28 U. S. C. 2254(d)(2).[Footnote 6]

I therefore respectfully dissent.

Footnote 1

The Court explains: Whether the state court reasonably determined that there was a strategic decision under 2254(d)(2) is a different question from whether the strategic decision itself was a reasonable exercise of professional judgment under *Strickland* or whether the application of *Strickland* was reasonable under 2254(d)(1). *Ante* , at 12-13. I agree with the majority that whether a particular strategic decision is reasonable or not is the *Strickland* question we would address were we reviewing Woods claim for habeas relief under 2254(d)(1).

Footnote 2

Indeed, the law in the Eleventh Circuit on this point is well settled: The question of whether an attorneys actions were actually the product of a tactical or strategic decision is an issue of fact . *Fotopoulos* v. *Secretary, Dept. of Corrections* , 516 F. 3d 1229, 1233 (CA11 2008) (quoting *Provenzano* v. *Singletary* , 148 F. 3d 1327, 1330 (CA11 1998)); see also *Lamarca* v. *Secretary, Dept. of Corrections* , 568 F. 3d 929, 938 (CA11 2009) (same). Thus, it is quite understandable that Wood framed the questions presented in his petition for certiorari as arising under 2254(d)(2).

Footnote 3

Although Wood does not fall within the class of individuals we identified in *Atkins* v. *Virginia* , 536 U. S. 304 (2002), against whom the death penalty may not be constitutionally imposed, the reality that [the defendant] was borderline mentally retarded, might well . . . influenc[e] the jurys appraisal of his moral culpability. *Williams* v. *Taylor* , 529 U. S. 362 , 398 (2000).

Footnote 4

The Court conflates the strategic decision to present mitigating evidence to the jury with the strategic decision to investigate avenues of mitigating evidence fully, see *ante* , at 11-12, n. 3. My concern is that there is no evidence to support a conclusion that there was a strategic decision on the latter, which is a necessary prerequisite for counsel to make reasoned choices with respect to what evidence should go before the jury during the penalty phase of a capital trial. See, *e.g.* , *Wiggins* , 539 U. S., at 522 (explaining that counsels failure to uncover and present voluminous mitigating evidence at sentencing could not be justified as a tactical decision to focus on [defendants] voluntary confessions, because counsel had not fulfill[ed] their obligation to conduct a thorough investigation of the defendants background (quoting *Williams* , 529 U. S., at 396)).

Footnote 5

Shortly before the penalty phase commenced, Trotter sent letters to his two more experienced co-counsel imploring that we should request an independent psychological evaluation-even if that means asking for a postponement of the sentencing hearing. App. 343 (letter from Trotter to Dozier); *id.* , at 345 (letter from Trotter to Ralph). Trotter attempted to procure Woods school records and speak to his former special education teachers in order to obtain anything that would be able to be used as a mitigating factor, *id.* , at 267 (testimony of Trotter), but he failed to follow up on a subpoena issued for the records and never spoke at length with any of Woods teachers, *id.* , at 267-268. Notably, at least two of these former teachers were willing to testify on Woods behalf at the state postconviction hearing, see *id.,* at 401-421 (testimony of Maddox and Penn).

Footnote 6

I would also reach the same conclusion were I to agree with the respondents and their *amici* that a habeas petitioner must pierce 2254(e)(1)s presumption of correctness with respect to state-court findings of fact before he can proceed to show he is entitled to relief under 2254(d)(2). See *ante* , at 9, n. 2.

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