

**LAFLEER v. COOPER, 566 U.S. \_\_\_\_ (2012)**

Decided March 21, 2012

**CASE SUMMARY**

**FACTS:** Cooper was charged under Michigan law with assault with intent to murder -- and three other offenses -- after firing shots that struck the victim in the buttock, hip, and abdomen. The prosecution offered to dismiss two of the charges and recommend a 51 to 85 month sentence in exchange for Cooper's guilty plea. After initially expressing his willingness to accept, Cooper -- on the advice of his attorney -- rejected the offer. His attorney had informed Cooper that the prosecution would be unable to establish his intent to murder because the victim had been shot below the waist. At trial, Cooper was convicted on all counts and received a mandatory minimum sentence of 185 to 360 months.

**ISSUE:** How does the *Strickland* prejudice test apply where ineffective assistance of counsel results in the rejection of a plea offer and the defendant is convicted at the ensuing trial?

**RULE:** To establish *Strickland* prejudice in the context of a plea, the defendant must show that there is a reasonable probability that, but for counsel's deficient performance, the result of the plea process would have been different. Specifically, where ineffective assistance leads to the rejection of a plea offer, a defendant must show that -- but for the ineffective assistance of counsel -- there is a reasonable probability: (1) that the plea offer would have been presented to the trial court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it due to intervening circumstances); (2) that the trial court would have accepted the terms of the plea agreement; and (3) that the conviction or sentence, or both, under the agreement's terms would have been less severe than the actual judgment and sentence which were imposed.

**ANALYSIS:** In this case the parties stipulated that the performance of Cooper's counsel was deficient. Thus the only inquiry was whether Cooper was prejudiced as a result of counsel's ineffective assistance. To show there was no prejudice, the State argued: (1) that errors before trial are not cognizable under the Sixth Amendment unless they affect the fairness of the trial itself; (2) that a defendant must show that the ineffective assistance of counsel led to his being denied a substantive or procedural right; and (3) that the purpose of the Sixth Amendment is to ensure the reliability of a conviction following trial.

The Supreme Court summarized the State's arguments as a general contention that: "A fair trial wipes clean any deficient performance by defense counsel during plea bargaining." The Court rejected the State's contention, asserting that such a stance "ignores the reality that the criminal justice system today is for the most part a system of pleas, not a system of trials." Thus, defendants are entitled by the Sixth Amendment to the effective assistance of counsel



during plea negotiations and to an appropriate remedy if they are prejudiced as a result of ineffective assistance.

Next the Court addressed the issue of remedy. If a defendant shows that the ineffective assistance of counsel caused the rejection of a plea offer, thereby leading to a trial and a more severe sentence, what constitutes an appropriate remedy? The primary consideration is that any remedy must balance the requirement that it “neutralize the taint” of a constitutional violation and that it not grant the defendant a “windfall” or needlessly squander the resources the State has invested in the criminal prosecution.

Where the sole advantage to a defendant who rejected a plea offer due to ineffective assistance is that he would have received a lesser sentence, the trial court may hold an evidentiary hearing to determine whether the defendant, but for counsel’s errors, would have accepted the plea. If so, the court may exercise discretion in determining whether the defendant should receive: (1) the terms offered in the plea agreement; (2) the sentence imposed at trial; or (3) something in between. However, where the offered plea was for a less serious offense than that for which the defendant was convicted at trial, resentencing alone may not be sufficient. In those circumstances, the proper remedy may be to require the prosecution to reoffer the plea. At that point, the Judge has the discretion to either vacate the conviction from the trial and accept the plea or leave the conviction undisturbed. In either situation, the trial court may, in the exercise of its discretion, take account of a defendant’s earlier expressed willingness, or unwillingness, to accept responsibility for his actions.

**CONCLUSION:** Cooper satisfied *Strickland’s* two-part test: namely, the parties conceded the fact of counsel’s deficient performance, and Cooper showed that, but for his lawyer’s performance, there is a reasonable probability he and the trial court would have accepted the plea agreement. As a result of not accepting the agreement and being convicted at trial, Cooper received a mandatory minimum sentence that was well over three times greater than he would have received under the plea agreement. The proper remedy for such a defendant is to order the State to reoffer the plea. Then, assuming Cooper accepts the plea, the trial court can exercise its discretion in determining whether to: (1) vacate the conviction and resentence pursuant to the plea agreement; (2) vacate only some of the convictions and resentence accordingly; or (3) leave the convictions and sentence from the trial undisturbed.

**RULING:** Vacated and remanded for further proceedings consistent with this opinion.

	<p>Summary Prepared by Matthew Howard Extern at the Arkansas Federal Defender Office April 2012</p>	
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**MISSOURI v. FRYE, 566 U.S. \_\_\_\_ (2012)**

Decided March 21, 2012

**CASE SUMMARY**

**FACTS:** Frye was charged with driving with a revoked license. He had been convicted of that same offense on three prior occasions. Therefore, the State of Missouri charged him with a class D felony, which carries a maximum term of four years' imprisonment. Frye was arrested again less than a week before the preliminary hearing on his pending charge.

Approximately six weeks before the preliminary hearing, the prosecutor sent Frye's counsel a letter offering a choice of two plea bargains. One was an offer for Frye to plead guilty to a misdemeanor with a sentencing recommendation of ninety days' confinement. Frye's counsel did not inform him of either offer, and they expired. Ultimately, Frye pleaded guilty with no plea agreement, and the trial Judge sentenced him to three years in prison.

**ISSUE:** Whether the constitutional right to counsel extends to the negotiation and consideration of plea offers that lapse or are rejected. If so, what must a defendant demonstrate in order to show that prejudice resulted from counsel's deficient performance?

**RULE:** The Sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of a criminal proceeding.

**ANALYSIS:** The Supreme Court made clear in *Hill v. Lockhart*, 474 U.S. 52 (1985), and *Padilla v. Kentucky*, 559 U.S. \_\_\_\_ (2010), that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel. In so doing, the Court rejected the argument that a knowing and voluntary plea supersedes errors made by defense counsel in representing his client.

The State sought to distinguish Frye's case from *Hill* and *Padilla* by stressing the fact that -- in both *Hill* and *Padilla* -- defense counsel had provided incorrect advice regarding a plea agreement. In Frye's case, however, the guilty plea that was accepted, and the plea proceedings concerning it in court, were all based on accurate advice and information. The State also stressed that there is no constitutional right to a plea offer or plea bargain and that it would be unfair to subject the State to the consequences of defense counsel's inadequacies when the opportunity for a full and fair trial or a later guilty plea were preserved.

Although the Court found the State's argument to have some persuasive force, it also found the argument insufficient to overcome the simple reality that ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas. Given that plea bargaining is "not some adjunct to the criminal justice system" but in essence "is

the criminal justice system,” defense counsel have responsibilities in the plea bargaining process that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in critical stages of the criminal justice system.

With regard to exactly what the duties and responsibilities of defense counsel are in the plea bargaining process, the Court opined that “[t]his case presents neither the necessity nor the occasion to define the duties of defense counsel in those respects.” However, the Court held that “as a general rule defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” The Court cited the ABA recommendation that defense counsel “promptly communicate and explain to the defendant all plea offers made by the prosecuting attorney” as an important guide for defense counsel’s performance.

Given defense counsel’s duty to communicate formal plea offers, where it is established that a plea offer lapsed or was rejected as a result of defense counsel’s ineffective assistance, the Court must, per *Strickland*, look to the issue of prejudice. In order to show prejudice, the defendant in these circumstances must demonstrate a reasonable probability that he would have accepted the plea agreement had he been afforded effective assistance of counsel. In addition, the defendant must demonstrate a reasonable probability that the plea would have been entered -- without the prosecution withdrawing it or the trial court refusing to accept it -- and that the end result of the criminal process would have been more favorable to the defendant by reason of the plea.

**CONCLUSION:** Frye’s defense counsel did not communicate to him the prosecution’s formal plea offers. As a result of that deficient performance, the offers lapsed. Frye showed he would have accepted the offer to plead guilty to a misdemeanor had he known about it. However -- given that Frye was arrested again after the plea offer was made but before the preliminary hearing took place -- the Court found strong reason to doubt that the prosecution and/or the trial court would have permitted the plea agreement to become final. Therefore, the Court of Appeals erred when it found that Frye had been prejudiced under *Strickland* without requiring Frye to show that, had he accepted the plea agreement, there was a reasonable probability that the prosecution and the trial court would have allowed the plea agreement to stand.

**RULING:** Vacated and remanded for further proceeding not inconsistent with this opinion.



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