

Criminal Law—Failure to Investigate and Present Mitigating Evidence in Absence of Aggravating Factors Renders Counsel Ineffective—*Wiggins v. Smith*, 539 U.S. 510 (2003)

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to effective assistance of counsel.¹ In applying “effective assistance” principles to capital sentencing proceedings, the Court has established that a defendant must prove his counsel’s performance was deficient and thereby prejudiced his defense to show a Sixth Amendment violation.² In *Wiggins v. Smith*,³ the Court considered whether counsel’s decision to forgo investigating and presenting mitigating evidence of the defendant’s background at a capital sentencing proceeding violated the defendant’s Sixth Amendment rights.⁴ The Court held that the defendant’s counsel had performed inadequately, and in so doing, violated the defendant’s right to effective assistance of counsel.⁵

In the opening statement at Kevin Wiggins’ capital sentencing proceeding, Wiggins’ counsel told the jury that they would hear evidence contradicting Wiggins’ direct responsibility for the murder, as well as facts concerning Wiggins’ difficult life and prior clean record.⁶ Wiggins’ counsel, however, not only failed to introduce any evidence of Wiggins’ dysfunctional family background during the ensuing proceeding, but also did not mention it when preserving the mitigation case to the judge for purposes of appeal.⁷ The jury

1. U.S. CONST. amend. VI. The Sixth Amendment provides, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence.” *Id.* See generally *McMann v. Richardson*, 397 U.S. 759, 770-71 (1970) (noting Sixth Amendment guarantee means right to effective representation).

2. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing standard for ineffective assistance of counsel claim); see also *Williams v. Taylor*, 529 U.S. 362, 390-91 (2000) (applying two-part *Strickland* test to capital sentencing hearing); *Darden v. Wainwright*, 477 U.S. 168, 184 (1986) (evaluating ineffective assistance claim against two-part test); Meredith J. Duncan, *The (So-Called) Liability of Criminal Defense Attorneys: A System in Need of Reform*, 2002 BYU L. REV. 1, 13 (2002) (citing *Strickland* as leading case involving violations of constitutional right to effective assistance).

3. 539 U.S. 510 (2003).

4. *Id.* at 514.

5. *Id.* at 533, 538.

6. 539 U.S. at 515. Wiggins’ counsel remarked, “You’re going to hear that Kevin Wiggins has had a difficult life. It has not been easy for him. But he’s worked. He’s tried to be a productive citizen, and he’s reached the age of twenty-seven with no convictions for prior crimes of violence and no convictions, period.” *Id.*

7. *Id.* at 515-16. Wiggins’ counsel argued the bifurcation issue to the judge, stating that had the motion been granted “they would have introduced psychological reports and expert testimony demonstrating Wiggins’ limited intellectual capacities and child like emotional state on the one hand, and the absence of aggressive patterns in his behavior, his capacity for empathy, and his desire to function in the world on the other.” *Id.*

sentenced Wiggins to death, and the appeals court affirmed the decision.⁸

Seeking postconviction relief, Wiggins argued that his trial counsel rendered ineffective assistance by failing to investigate and present his troubled history as mitigating evidence.⁹ At the proceeding, one of Wiggins' trial counsel testified that "he did not remember retaining a forensic social worker to prepare a social history report," despite having knowledge of Wiggins' difficult life.¹⁰ Counsel further testified that he and his co-counsel decided to "retry the factual case," rather than present a case for mitigation, after determining that the mitigating evidence would undercut their strategy to create doubt that Wiggins was directly responsible for the death of the victim.¹¹ Concluding that

8. *Id.* at 516.

9. *Id.* (challenging effectiveness of trial counsel). Wiggins' counsel presented expert testimony from a social worker about the "severe physical and sexual abuse" Wiggins had suffered. *Id.* at 516-17. The social worker's report noted that Wiggins' alcoholic mother "left Wiggins and his siblings home alone for days, forcing them to beg for food and eat paint chips and garbage." *Id.* His mother's abusive behavior also included beating Wiggins' for stealing food from the locked kitchen and burning his hand on a hot stove burner. *Id.* at 517. After the State removed Wiggins from his mother's custody, his many foster parents physically abused, molested, and raped him. *Id.* Additionally, Wiggins was allegedly sexually assaulted by his supervisor in the Job Corps program. *Id.* The pre-sentence investigation (PSI) and Department of Social Services (DSS) records did mention the repeated molestations and rapes detailed in the forensic social worker's report. *Id.* at 517-18.

10. 539 U.S. at 517-18 (discussing trial tactics); *id.* at 539-40 (Scalia, J., dissenting) (excerpting portions at postconviction hearing of trial counsel's testimony regarding his knowledge of Wiggins' background).

Q: But you knew that Mr. Wiggins, Kevin Wiggins, had been removed from his natural mother as a result of a finding of neglect and abuse when he was six years old, is that correct?

A: I believe that we tracked all of that down.

Q: You got the Social Services records?

A: That is what I recall.

Q: That was in the Social Service records?

A: Yes.

Q: So you knew that?

A: Yes.

Q: You also knew that [there] were reports of sexual abuse at one of his foster homes?

A: Yes.

Q: Okay. You also knew that he had his hands burned as a child as a result of his mother's abuse of him?

A: Yes.

Q: You also knew about homosexual overtures made toward him by his Job Corp supervisor?

A: Yes.

Q: And you also knew that he was borderline mentally retarded?

A: Yes.

Q: You knew all—

A: At least I knew that as it was reported in other people's reports, yes.

Q: But you knew it?

A: Yes.

Id. (Scalia, J., dissenting).

11. *Id.* at 517-18. Maryland law provides that "a defendant found guilty of murder in the first degree may be sentenced to death only if . . . defendant was a principal in the first degree." MD. CODE ANN., CRIMINAL LAW § 2-202 (2003). This requires proof of a defendant's direct responsibility for death penalty eligibility. *See* 539 U.S. at 517-18. If the jury, however, determines that defendant was a principal in the first degree, it must determine by a preponderance of the evidence whether any mitigating circumstances exist. *See* MD. CODE ANN., CRIMINAL LAW § 2-202, -303. If the jury finds that one or more mitigating circumstances exist, it shall

Wiggins' attorneys made a reasonable decision, the trial court denied Wiggins' petition for postconviction relief, and the appeals court later affirmed.¹² Subsequently, the federal district court granted Wiggins relief on his federal habeas corpus petition because the Maryland courts' "unreasonably applied clearly established federal law" to Wiggins' ineffective assistance claim.¹³ The Fourth Circuit reversed, concluding that counsel's strategic decision to focus on Wiggins' direct responsibility was reasonable, and Wiggins subsequently sought certiorari with the United States Supreme Court.¹⁴

In *Strickland v. Washington*,¹⁵ the Court established a two-part test for evaluating ineffective assistance of counsel claims.¹⁶ A valid ineffectiveness claim under *Strickland* requires a convicted defendant to show his counsel performed inadequately and that counsel's deficient performance prejudiced his defense.¹⁷ Under the first part of the *Strickland* test, the defendant must rebut the strong presumption that counsel rendered adequate assistance by showing "that counsel's representation fell below an objective standard of reasonableness."¹⁸ To evaluate the reasonableness of counsel's performance,

determine whether aggravating circumstances outweigh the mitigating circumstances. *Id.* at § 2-303. If the jury finds that the mitigating circumstances outweigh the aggravating circumstances, then the defendant may not be sentenced to death. *Id.* A sentence of death must be a unanimous decision. *Id.*

12. 539 U.S. at 517-18 (noting dispositions of trial and appeals courts regarding Wiggins' petition for postconviction relief).

13. *Id.* at 519 (concluding limited knowledge of Wiggins' background obliged counsel to look further before making strategic decision).

14. *Id.* (explaining reasons for reversal of district court). Counsel's knowledge of the mitigating evidence from the PSI report and DSS records was sufficient to make an informed decision to dispute Wiggins' direct responsibility. *Id.* "The conflicting medical testimony with respect to the time of death, the absence of direct evidence against Wiggins, and unexplained forensic evidence at the crime scene supported counsel's strategy." *Id.*

15. 466 U.S. 668 (1984).

16. *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing standard governing ineffectiveness claims). The benchmark for claims of ineffectiveness "must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686. The *Strickland* Court noted that the two-part test applies to capital sentencing proceedings because they are trial-like due to their adversarial nature—presentation of evidence, burden of proof, and standards for a decision. *Id.* at 686-87; *see also* *Bell v. Cone*, 535 U.S. 685, 698-99 (2002) (applying *Strickland* principles to ineffectiveness claim); *Roe v. Flores-Ortega*, 528 U.S. 470, 476-77 (2000) (recognizing *Strickland* principles governing ineffectiveness claims as familiar test).

17. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing two-part test governing ineffective assistance claims). The court stated, "[u]nless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable." *Id.* at 687; *see also Williams v. Taylor*, 529 U.S. 362, 390-91 (2000) (noting *Strickland* test qualifies as clearly established law governing ineffectiveness claims); *Darden v. Wainwright*, 477 U.S. 168, 184-87 (1986) (quoting and applying *Strickland* test).

18. *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984) (refusing to make specific checklist for judicial evaluation of attorney performance). "Prevailing norms of practice as reflected in American Bar Association standards . . . are guides to determining what is reasonable, but they are only guides. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel." *Id.* at 688-89; *see Roe v. Flores-Ortega*, 528 U.S. 470, 478 (2000) (rejecting bright line requirement as inconsistent with *Strickland* test); *Michel v. Louisiana*, 350 U.S. 91, 101 (1955) (noting

the court must consider counsel's conduct in light of all of the circumstances at the time counsel acted.¹⁹ These general standards also apply to counsel's duty to investigate.²⁰ The *Strickland* Court emphasized that, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."²¹

presumption that challenged action "might be considered sound trial strategy"); see also Brief for the United States as Amicus Curiae Supporting Respondent at 9-10, *Wiggins v. Smith*, 539 U.S. 510 (2003) (No. 02-311) (noting *Strickland* only imposes general requirement for counsel to make objectively reasonable choices). See generally Martin C. Calhoun, Note & Comment, *How to Thread the Needle: Toward a Checklist-Based Standard for Evaluating Ineffective Assistance of Counsel Claims*, 77 GEO. L.J. 413, 427-37, 455-56 (1988) (criticizing *Strickland* for creating amorphous standard giving courts wide discretion in interpreting all ineffectiveness cases); Ivan K. Fong, Note, *Ineffective Assistance of Counsel at Capital Sentencing*, 39 STAN. L. REV. 461, 487-88 (1987) (calling *Strickland's* standard unpractical because it gives courts no way to ensure accuracy of outcomes).

19. *Strickland v. Washington*, 466 U.S. 668, 690 (1984) (commenting on ease of second-guessing effectiveness of counsel after conviction or adverse sentence); see *Burger v. Kemp*, 483 U.S. 776, 788-89 (1987) (noting *Strickland's* reasons for judging attorney performance based on all circumstances at time counsel acted).

20. *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984) (noting ineffectiveness standard does not require any "amplification" to define counsel's duty to investigate); see *Burger v. Kemp*, 483 U.S. 776, 794 (1987) (acknowledging *Strickland* principles apply equally to duty to investigate); see also Brief Amicus Curiae of the Criminal Justice Legal Foundation in Support of Respondants at 9, *Wiggins v. Smith*, 539 U.S. 510 (2003) (No. 02-311) (noting *Strickland* test satisfied when counsel chooses to limit investigation based on defendant's "double-edged" background); Brief of the Constitution Project as Amicus Curiae Supporting Petitioner at 12-13, *Wiggins v. Smith*, 539 U.S. 510 (2003) (No. 02-311) (acknowledging counsel meets reasonable standard when deciding not to investigate because of counteracting aggravating evidence).

21. *Strickland v. Washington*, 466 U.S. 668, 691 (1984). Even though the defense proved unsuccessful, the Court held that counsel used reasonable professional judgment in deciding not to investigate to present mitigating evidence about the defendant's character and background. *Id.* at 673, 699. Counsel decided to restrict *Wiggins'* character evidence to his plea, in which *Wiggins* mentioned his financial and emotional troubles and accepted responsibility for the crimes that he committed. *Id.* at 672, 699. This ensured that contrary character and psychological evidence, as well as the defendant's criminal history, would not come into evidence and undermine the defense strategy. *Id.* at 699. Counsel's strategy was based on general knowledge of the importance that the sentencing judge placed on "owning up to one's crimes," as well as arguing extreme emotional distress as a mitigating circumstance. *Id.*; see *Bell v. Cone*, 535 U.S. 685, 702 (2002) (holding decision not to present mitigating evidence reasonable because of defendant's record and normal youth). In *Bell*, counsel suppressed mitigating evidence of the defendant's post-traumatic stress resulting from military service and drug addiction because counsel feared that the available witnesses might elicit information about defendant's criminal background and normal youth. 535 U.S. at 699-701. In closing, counsel could have pled for his client's life and restated the mitigating evidence, thereby allowing the State's lead prosecution to rebut this evidence and depict defendant as a killer, or alternatively, counsel would have waived his closing altogether. *Id.* at 701-02. As a result, the Court noted, "[n]either option . . . so clearly outweighs the other that it was objectively unreasonable for the . . . [state court] to deem counsel's choice . . . a tactical decision." *Id.* at 702; see also *Burger v. Kemp*, 483 U.S. 776, 794 (1987) (holding counsel's decision to limit investigation reasonable because known aggravating factors undermined defense). The *Burger* Court held that counsel adequately performed when he decided not to further investigate and present any mitigating evidence about the defendant even though there was evidence that the defendant had an unstable childhood and was mildly retarded. 483 U.S. at 788-95. The Court deferred to counsel's judgment that presenting such evidence would have exposed the defendant's violent tendencies and lack of remorse, which would have undermined the strategy of showing that the co-defendant exerted influence on defendant's will. *Id.* at 788-95; *Darden v. Wainwright*, 477 U.S. 168, 186-87 (1986) (holding reasonable counsel's decision to limit mitigation case because it kept out aggravating factors). The *Darden* Court concluded that counsel might have reasonably believed that any effort to suggest that the defendant was not violent and therefore could not have committed

The second part of the *Strickland* test requires the defendant to affirmatively prove that counsel's deficient performance adversely affected his defense.²² Under the appropriate prejudice test, "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."²³ The Court defines a reasonable probability as "a probability that undermines confidence in the outcome."²⁴

In capital sentencing proceedings, the Court has recognized that punishment should be directly related to the personal culpability of the defendant.²⁵ Mitigating evidence concerning a defendant's background and character allows for individualized assessment of the appropriateness of the death penalty.²⁶ Failure to effectively investigate the defendant's background prejudices the defendant because it prevents the jury from considering mitigating evidence

the crimes at issue would have opened the door for the State to introduce the defendant's criminal record, as well as evidence showing that the defendant was having an affair. 477 U.S. at 186-87. *But see* *Williams v. Taylor*, 529 U.S. 362, 367, 373, 393 (2000) (holding counsel's performance deficient in failing to investigate and uncover significant mitigating evidence). The *Williams* Court explained that counsel's failure to investigate and present the voluminous amount of favorable mitigating evidence was not supported by a tactical decision to rely solely on the defendant's voluntary confession. *Id.* at 373, 390-93. Counsel testified that he failed to seek the defendant's juvenile and social services records because counsel erroneously believed that state law prevented it. *Id.* at 373. Counsel also acknowledged that even though the defendant had been committed to the juvenile system, testimony the about defendant's troubled childhood would have been important in mitigation. *Id.*

22. *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (articulating second component of ineffectiveness claim); *see Williams v. Taylor*, 529 U.S. 362, 390-94 (2000) (applying prejudice element established in *Strickland*).

23. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). *See generally* Brief of the Constitution Project as Amicus Curiae Supporting the Petitioner at 24, *Wiggins v. Smith*, 539 U.S. 510 (2003) (No. 02-311) (arguing reasonable probability in capital sentencing proceeding means one juror could find mitigating evidence persuasive). The prejudice test requires that the presentation of mitigating evidence cause only one hypothetical juror to doubt the application of the death penalty. *See* Brief of the Constitution Project, *supra*, at 25, 27-28.

24. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *see Williams v. Taylor*, 529 U.S. 362, 394 (2000) (noting defendant met burden in establishing actual prejudice). The trial court in *Williams* concluded that had the jury heard the mitigation evidence, there would have been a reasonable probability of a different outcome. *See* 529 U.S. at 397. On appeal, the Court stressed that while the trial court's decision on prejudice seemed to emphasize mitigating evidence, its judgment was based on "the totality of the omitted evidence rather than on the notion that a single item of omitted evidence, no matter how trivial, would require a new hearing." *See id.*

25. *See, e.g., Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (commenting on principle behind requirement of individualized assessment at capital sentencing); *Edmund v. Florida*, 458 U.S. 782, 798 (1982) (noting relevant facets of defendant's character important for determining culpability for individualized sentencing); *Lockett v. Ohio*, 438 U.S. 586, 605 (1978) (concluding individualized decision at sentencing essential in capital cases); *see also Fong, supra* note 18, at 461 (noting standard inconsistent with capital punishment jurisprudence); Jeffrey Levinson, Note, *Don't Let Sleeping Lawyers Lie: Raising the Standard for Effective Assistance of Counsel*, 28 AM. CRIM. L. REV. 147, 158-65 (2001) (disagreeing with *Strickland's* applicability to capital proceedings because uniqueness of death penalty requires individualized sentencing).

26. *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (explaining importance of mitigating evidence in capital proceeding). The Court explained that mitigating evidence is relevant to individualized sentencing because society believes that defendants with disadvantaged backgrounds "may be less culpable than defendants who have no such excuse." *Id.* (quoting *California v. Brown*, 479 U.S. 538, 545 (1987)).

essential to the fundamental fairness of a capital proceeding.²⁷

In *Wiggins v. Smith*, the Court held that counsel's failure to further investigate and present mitigating evidence in the absence of any evidence of aggravating factors from the defendant's background rendered counsel's performance ineffective.²⁸ The Court reasoned that at the time counsel decided not to investigate mitigating evidence, the possibility of a viable mitigation case still existed.²⁹ The Court further supported its conclusion that counsel performed inadequately by questioning counsel's postconviction testimony to the extent of his knowledge of mitigating evidence.³⁰ This deficient performance prevented the jury from hearing mitigating evidence relevant to assessing the defendant's moral culpability.³¹ The Court emphasized that had the jury been able to hear about the defendant's unfortunate life, there would have been a reasonable probability that at least one juror would have been persuaded against imposing a death sentence.³² Consequently, the Court concluded that the defendant satisfied *Strickland's* requirements, thus proving his attorney violated his constitutional right to effective assistance of counsel.³³

The Court properly distinguished *Wiggins* from precedent where it found limited investigations into mitigating evidence to be reasonable.³⁴ In capital sentencing proceedings, the Court consistently defers to counsel's judgment to limit investigations when the presentation of mitigating evidence could open the door to harmful aggravating evidence.³⁵ In *Wiggins*, there was no evidence in the defendant's background that would act as a "double-edged sword," and, consequently, there was no strategic reason to cease investigating the possibility of a mitigation case.³⁶ The Court, therefore, properly concluded that

27. *Williams v. Taylor*, 529 U.S. 362, 393-96 (2000) (noting even though defendant deprived of legal right, normal *Strickland* standard applies to prejudice test); *see also* Brief of the Constitution Project as Amicus Curiae Supporting the Petitioner at 22-24, *Wiggins v. Smith*, 539 U.S. 510 (2003) (No. 02-311) (noting deprivation of individualized sentencing when counsel failed to investigate what made him "an individual"); Reply Brief for Petitioner at 8-9, *Wiggins v. Smith*, 539 U.S. 510 (2003) (No. 02-311) (arguing prejudice occurs when jury does not hear mitigating evidence to assess blameworthiness of defendant).

28. 539 U.S. at 533-38 (articulating issue and holding of case).

29. *Id.* at 524-26, 533-34 (basing conclusion on limited principle governing strategic choices); *see supra* note 21 and accompanying text (explaining "double-edged" nature of defendant's history justifies strategic decisions to limit investigations).

30. 539 U.S. at 530-33 (questioning counsel's actual knowledge of mitigating evidence).

31. *Id.* at 534-35 (reiterating mitigating factors of defendant's troubled life); *see supra* note 25 and accompanying text (emphasizing relevancy of capital defendant's troubled history in assessing defendant's blameworthiness).

32. 539 U.S. at 536-38.

33. *Id.* at 532-38 (holding defendant's constitutional right to effective assistance of counsel violated *Strickland* standard); *see supra* note 21 (explaining Court's precedent).

34. 539 U.S. at 525, 535 (noting counsel uncovered no "double edge" evidence making mitigation counterproductive). *But see supra* note 21 and accompanying text (illustrating precedent where limited investigation deemed reasonable because known aggravating factors undermined defense strategy).

35. *See supra* note 21 and accompanying text (discussing cases where counsel acted reasonably in limiting mitigation investigation and presenting evidence).

36. 539 U.S. at 525, 534-35 (commenting on absence of harmful aggravating evidence in defendant's

counsel's failure to further investigate and present mitigating evidence violated the defendant's constitutional right to effective assistance.³⁷

The Court, however, unnecessarily shifted the burden of proof to the State.³⁸ *Strickland* made clear that the defendant bears the burden of showing his counsel's deficient performance prejudiced his defense.³⁹ In concluding that counsel's postconviction testimony was false, the Court effectively shifted the burden of proof to the State to prove counsel's knowledge of the existence of mitigating evidence.⁴⁰ The Court shifted the burden unnecessarily because the defendant had already clearly demonstrated counsel's deficient performance.⁴¹ The record revealed that the defendant's history did not contain any "double-edge" evidence that the Court has held in other cases to justify limited investigations.⁴²

With its opinion, the Court continued to promulgate its highly criticized *Strickland* test for evaluating capital ineffectiveness claims.⁴³ The Court, however, clearly established that an attorney's failure to investigate and present mitigating evidence in the absence of any aggravating evidence will render his or her performance unreasonable at a capital proceeding.⁴⁴ Moreover, for the first time, the Court's ineffectiveness decision emphasized that "death is different" and constitutionally requires individualized sentencing by the judge or jury.⁴⁵ Ultimately, the *Wiggins* Court seems to provide a bit more guidance

background); *see supra* note 20 and accompanying text (distinguishing *Wiggins* from precedent holding counsel's decision to limit investigation reasonable); *see also supra* notes 6, 34 and accompanying text (commenting on absence of aggravating factors in defendant's background).

37. 539 U.S. at 525-26, 533-38 (articulating Court's holding); *see supra* notes 20-21 and accompanying text (demonstrating Court's decision consistent with precedent).

38. 539 U.S. at 547-49 (Scalia, J., dissenting) (stating majority conclusion erroneously places burden of proof on State rather than on defendant). The dissent argues that the majority improperly shifts the burden to the State to demonstrate counsel's knowledge of mitigating evidence, rather than requiring the defendant to prove that counsel did not know all of the circumstances. *Id.* at 547 (Scalia, J., dissenting); *see supra* note 10 and accompanying text (excerpting relevant portion of counsel's postconviction testimony proving awareness of all mitigation evidence).

39. *See supra* note 17 and accompanying text (emphasizing ineffectiveness claim fails unless defendant makes both showings).

40. 539 U.S. at 533 (noting counsel's postconviction testimony took place over four years after sentencing); *see supra* note 10 and accompanying text (reiterating counsel's postconviction testimony regarding counsel's knowledge of mitigating evidence); *see also supra* note 38 and accompanying text (explaining majority opinion's shift of burden of proof).

41. *See supra* notes 17, 21, 34 and accompanying text (reviewing trial court record to establish ineffective assistance rather than counsel's postconviction testimony).

42. *See supra* notes 6, 20-21, 34 and accompanying text (illustrating lack of aggravating factors in defendant's record).

43. 539 U.S. at 521 (noting all ineffectiveness claims evaluated by *Strickland's* two-part test); *see supra* note 18 and accompanying text (characterizing *Strickland* standard as amorphous and unpractical for capital ineffectiveness claims).

44. 539 U.S. at 533-38 (holding unreasonable to end investigation because of mitigating evidence in reports and no aggravating factors). *But see supra* note 21 and accompanying text (illustrating multiple situations where Court held counsel effective).

45. 539 U.S. at 534-38 (analyzing prejudice component and acknowledging defendant's constitutional

as to the application of its “amorphous” standard for capital ineffectiveness cases.⁴⁶

In *Wiggins v. Smith*, the Court revisited the *Strickland* standard for evaluating capital defendants’ ineffectiveness claims. While the Court correctly fit the defendant’s ineffectiveness claim into its effective assistance jurisprudence, it ignored precedent by needlessly shifting the burden of proof to the State. Overall, though, the decision provides more direction for courts, lawyers, and capital defendants analyzing the validity of future ineffectiveness claims.

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right to individualized sentencing in capital cases); *see supra* notes 18, 25 and accompanying text (calling *Strickland* test impractical because it does not provide sufficient guidance for capital proceedings).

46. *See supra* notes 44-45 and accompanying text (demonstrating aspects of decision providing guidance to *Strickland*’s amorphous standard).