



MAY 11, 2015

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Alexander v. State

The Supreme Court overrules *Williams v. Duffy* and holds that failure of defense counsel to inform a defendant that he would be ineligible for parole as a recidivist is deficient performance under the Sixth Amendment

In *Alexander v. State*, Case No. S14G1762 (May 11, 2015), appellant pled guilty to three counts of aggravated child molestation, two counts of statutory rape, three counts of child molestation and two counts of enticing a child for indecent purposes pursuant to a non-negotiated *Alford* plea. He was sentenced to 30 to do 15 on each count of aggravated child molestation; 15 years to serve on each of the statutory rape charges; and 15 years on each of the child molestation charges. Thereafter, appellant moved to withdraw his guilty plea on the ground of ineffective assistance of counsel. He asserted trial counsel failed to advise him he would not be eligible for parole (because he was sentenced as a recidivist) and, if he had been so advised, he would not have pled guilty. At the hearing on the motion, defense counsel testified that he had no recollection of a discussion with appellant about parole eligibility. The trial court denied the motion and in *Alexander v. State*, 328 Ga.App. 300 (2014), the Court of Appeals affirmed, finding that its decision was controlled by the binding precedent of *Williams v. Duffy*, 270 Ga. 580 (1999). The Supreme Court then granted certiorari on the sole issue of whether *Williams* remains “good law.”

In *Williams*, the Court held that parole eligibility or ineligibility only has a collateral effect on a defendant’s sentence and that an attorney’s failure to advise a defendant of a collateral consequence cannot constitute ineffective assistance. However, citing *Padilla v. Kentucky*, 559 U.S. 356 (2010), *Smith v. State*, 287 Ga. 391 (2010), and *Taylor v. State*, 304 Ga.App. 878 (2010), the Court held that whether a guilty plea gives rise to a direct or collateral consequence, when a criminal defendant seeks to withdraw a guilty plea on the ground of ineffective assistance of counsel, the ineffective assistance claim must be evaluated under the two-prong test set forth in *Strickland v. Washington*. Accordingly, *Williams* and its progeny must be overruled.

Nevertheless, the Court stated, not every failure to offer advice concerning a collateral consequence will rise to the level of constitutional deficiency in every instance. Rather, our courts should weigh a deficient performance claim by looking to the practice and expectations of the legal community. Also, courts should look to the following three factors when weighing advice concerning a collateral consequence: 1) whether the collateral consequence is intimately related to the criminal process and is “nearly an automatic result” flowing from the conviction; 2) whether the consequence is a “drastic measure” or a penalty with harsh ramifications for the client; and 3) whether the law imposing the consequence is “succinct, clear and explicit.”

State Prosecution Support Division



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Based on this test, the Court concluded that “an attorney’s failure to inform his or her client that he or she would be ineligible for parole as a recidivist for the entirety of a lengthy prison sentence is constitutionally deficient performance.” Thus, the Court reversed and remanded this case to the trial court to determine whether defense counsel performed deficiently and, if so, whether the deficient performance prejudiced appellant. To meet the prejudice prong in the guilty plea context, appellant must demonstrate there is a reasonable probability that, assuming counsel failed to inform him he would be ineligible for parole, he would not have entered a guilty plea and would have insisted on going to trial.