(ORDER LIST: 578 U. S.)

MONDAY, APRIL 4, 2016

CERTIORARI -- SUMMARY DISPOSITION

15-7290 OLIVO, JOSEPH P. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further consideration in light of *Johnson* v. *United States*, 576 U. S. ___ (2015).

ORDERS IN PENDING CASES

15M96 UDOINYION, SUNDAY N. V. GUARDIAN SECURITY, ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

15M97 COURTRIGHT, CARL A. V. UNITED STATES

15M98 SANTOS-PINEDA, AGUSTIN, ET UX. V. AXEL, KERI C., ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

15M99 JOLLEY, WILLIAM B. V. MSPB, ET AL.

The motion for leave to proceed as a veteran is granted. Justice Kagan took no part in the consideration or decision of this motion.

14-1468 BIRCHFIELD, DANNY V. NORTH DAKOTA

14-1470 BERNARD, WILLIAM R. V. MINNESOTA

14-1507 BEYLUND, STEVE M. V. LEVI, GRANT

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for enlargement of time for oral argument, and for divided argument is granted and the time is divided as follows: 35 minutes for petitioners, 15 minutes for respondent North Dakota, 10 minutes for respondent Minnesota, and 10 minutes for the Solicitor General.

15-674 UNITED STATES, ET AL. V. TEXAS, ET AL.

The motion of Gonzalez Olivieri LLC, et al. for leave to file a brief as *amici curiae* out of time is granted.

15-7093 PHIFER, SAMUEL T. V. SEVENSON ENVIRONMENTAL, ET AL.

15-7506 WATSON, CURTIS L. V. O'BRIEN, WARDEN

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

15-7946 FLEMING, WILLIAM H. V. SAINI, TEJINDER, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until April 25, 2016, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI GRANTED

15-606 PENA-RODRIGUEZ, MIGUEL A. V. COLORADO

The petition for a writ of certiorari is granted.

CERTIORARI DENIED

14-1123 WAL-MART STORES, INC., ET AL. V. BRAUN, MICHELLE, ET AL.

14-1124 WAL-MART STORES, INC., ET AL. V. BRAUN, MICHELLE, ET AL.

14-1230 WELLS FARGO BANK, NA V. GUTIERREZ, VERONICA, ET AL.

15-166 SCHLAUD, CARRIE, ET AL. V. INTERNATIONAL UNION, UAW, ET AL.

15-405 KATSO, JOSHUA V. UNITED STATES

15-550 STACKHOUSE, JAMES R. V. COLORADO

15-591 RETIREMENT CAPITAL ACCESS MGMT. V. U.S. BANCORP, ET AL.

15-682 JUSTICE, GORDON V., ET AL. V. HOSEMANN, DELBERT, ET AL.

15-898 ENRIQUEZ, SALVADOR V. SMITH, ELSIE

15-954 PASTORE, VINCENT V. COUNTY OF SANTA CRUZ, CA

15-963 MORENO, SILVESTRE V. DONNA INDEP. SCH. DIST., ET AL.

15-965 WEISS, MICHAEL A. V. SUPERIOR COURT OF CA

15-979 REICH, TODD A. V. TEXAS

15-980 LAVOIE, JOHN J. V. CONNECTICUT

15-984 CABAN, WILLIAM V. EMPLOYEE SECURITY FUND, ET AL.

15-985 DOUGLAS, AARON J. V. UNIVERSITY OF CHICAGO

15-1000 ELANSARI, AMRO A. V. UNITED STATES, ET AL.

15-1007 LOVE, UNTERS L. V. WASHINGTON

15-1068 GONZALEZ, MANUEL V. UNITED STATES

15-1073 VAUGHAN, GEORGE D. V. COLORADO

15-1080 EVANS, RYAN N. V. MISSOURI

15-1091 MICHEL-MORERA, JOSE V. UNITED STATES

15-6566 SPENCE, KIMBERLY T. V. WILLIS, CARL J.

15-6567 SPENCE, KIMBERLY T. V. WILLIS, CARL J.

15-7090 GIPSON, JAHAUN A. V. COLORADO

15-7126 RODRIGUEZ, DENNYS V. UNITED STATES

15-7132 LOPEZ-GUTIERREZ, ROBERTO V. UNITED STATES

15-7165 BLANCHARD, ROBERT D. V. COLORADO

15-7540 THETFORD, MICHAEL H. V. UNITED STATES

15-7859 WILKINS, LaTARCIA A. V. DAVID-PAIGE MANAGEMENT SYSTEMS

15-7866 ANDERSON, MICHAEL L. V. KELLEY, DIR., AR DOC

15-7868 JENKINS, ANTONIO V. YOUNG, DARYLE, ET AL.

15-7871 LeBLANC, JONATHAN J. V. COOLEY, WARDEN

15-7872 LEWIS, GORDON R. V. TEXAS

15-7880 MOORE, CALVIN L. V. CALIFORNIA

15-7882 PAUL, EMERSON V. PENNYWELL, WARDEN

15-7887 WESLEY, TERRELL V. ILLINOIS

15-7888 WAGNER, LAWRENCE V. V. MICHIGAN

15-7891 VINCENT, CAROL J. V. SULPHUR, LA, ET AL.

15-7893 MATTHISEN, GRANT V. UNITED STATES

15-7897 TORRES, MARCO M. V. SCOTT, GOV. OF FL

15-7900 ALTOONIAN, DONNA V. STEWART, WARDEN

15-7903 SLOAN, KEON V. OVERMYER, SUPT., FOREST, ET AL.

15-7907 CRUZ-GARCIA, OBEL V. TEXAS

15-7909 RICHARD, MATTHEW V. WISCONSIN

15-7911 RICKMYER, PETER V. JUNGERS, MICHAEL, ET AL.

15-7919 ZABUSKI, DANIEL V. MONTGOMERY, WARDEN

15-7923 MEJORADO, ERNESTO V. HEDGPETH, WARDEN

15-7927 MORRIS, PEGGY V. M.P. SANTINI, ET AL.

15-7932 RILEY, KENDRICK V. ILLINOIS

15-7937 HAILEY, MICHAEL K. V. CAIN, WARDEN

15-7938 WATSON, NOLAN V. PIERCE, WARDEN

15-7942 HILL, JESSIE V. AR CRIME LAB, ET AL.

15-7945 HENSLEY, CARLOS V. ILLINOIS

15-7948 FRYE, SCOTT A. V. DUNN, COMM'R, AL DOC

15-7949 GIRMA, LULU V. EMERY WORK BED PROGRAM

15-7954 HOOD, DANIEL R. V. CALIFORNIA

15-7955 GUEST, JERRY C. V. FOUNTAIN, WARDEN

15-7957 HOLLAND, LANCE D. V. VIRGINIA

15-7965 MILAM, TINA L. V. SOUTHAVEN POLICE DEPT., ET AL.

15-7968 McCREARY, JODY F. V. STEPHENS, DIR., TX DCJ

15-7969 McCORMICK, VERNON V. ILLINOIS

15-7971 LAMAR, ANDREW M. V. COLORADO, ET AL.

15-7972 KARPIN, GARY J. V. RYAN, DIR., AZ DOC, ET AL.

15-7977 WALDEN, MARC S. V. TEXAS

15-7980 MASSEY, LLOYD A. V. JOHNSON, ADM'R, NJ, ET AL.

15-7982 PICKENS, MICHAEL V. KELLEY, DIR., AR DOC

15-7984 FOLTZ, DAVID L. V. CLARKE, DIR., VA DOC

15-7994 TYLER, MICHAEL J. V. TEXAS

15-7999 ROGERS, KEITH V. KLEE, WARDEN

15-8000 SPARKS, JOSEPH H. V. CLARKE, HAROLD W.

15-8002 HOFLAND, RANDALL B. V. PERKINS, GEORGE F.

15-8005 DAVIS, JOHNNY R. V. McCOLLUM, WARDEN

15-8007 CURRY, JAMES B. V. SOUTH CAROLINA

15-8008 GRANT, ABRAHAM V. ARKANSAS

15-8010 HOLMES, JEREMY V. JONES, SEC., FL DOC, ET AL.

15-8024 HOOKS, HAROLD V. LUTHER, SUPT., LAUREL, ET AL.

15-8027 PEDROSO, GILBERTO V. NOOTH, SUPT., SNAKE RIVER

15-8032 GUNN, TIMOTHY V. SPARKMAN, EMMITT

15-8033 GARCIA, GEORGE I. V. CALIFORNIA

15-8036 IBN-SADIIKA, ABDULLAH H. V. PENNSYLVANIA

15-8037 HOWELL, JONATHAN V. BURT, WARDEN

15-8090 WATTS, KEVIN E. V. LEE, SUPT., EASTERN

15-8134 RIVA, JAMES P. V. VIDAL, SUPT., SOUZA-BARANOWSKI

15-8150 VERTER, MARVIN V. UNITED STATES

15-8153 GALLO, ANDREW T. V. DAVEY, WARDEN

15-8156 GLAGOLA, STEPHEN H. V. MICHIGAN, ET AL.

15-8158 ABAZARI, ARMIN V. ROSALIND FRANKLIN UNIV., ET AL.

15-8159 BANKS, ANGELO B. V. GA DOC

15-8162 SHVETS, NATALYA V. UNITED STATES

15-8163 KABEDE, WONDIYRAD V. CA BD. OF PRISON TERMS

15-8166 CAFFEY, FEDELL V. BUTLER, WARDEN

15-8168 DJENASEVIC, KABIL A. V. UNITED STATES

15-8170 HILTON, PAUL W. V. UNITED STATES

15-8172 CISNEROS, MAXIMILLIANO V. BAKER, WARDEN, ET AL.

15-8174 TITTLE, WILLIAM F. V. JONES, SEC., FL DOC

15-8180 YOUNG, BILLY C. V. UNITED STATES

15-8199 SAGUN, GEOFF S. V. WASHINGTON

15-8205 KRUG, GREGORY C. V. LORANTH, VICTOR, ET AL.

15-8207 FISHER, JEROLD D. V. UNITED STATES

15-8216 WILLIAMS, KIRK L. V. NOOTH, SUPT., SNAKE RIVER

15-8236 FLORES, TEUDI V. CONNECTICUT

15-8241 AVERY, WILLIAM A. V. MISSISSIPPI

15-8257 RYAN, JOHN N. V. LOPEZ, STEPHANIE

15-8265 CROCKETT, VERNARD V. BUTLER, WARDEN

15-8281 HENNEY, JOSEPH T. V. PA DEPT. OF TRANSPORTATION

15-8294 JIRAK, GENE V. USDC ND IA

15-8325 OLIVER, CHARLES V. V. DELBALSO, SUPT., RETREAT, ET AL.

15-8330 FUENTES, JERRY V. SPEARMAN, WARDEN

15-8353 PEGUES, NORRIS E. V. HAINES, WARDEN

15-8355 TROUT, GEORGE V. ILLINOIS

15-8386 BRINSON, JAMES A. V. JONES, SEC., FL DOC, ET AL.

15-8400 JONASSEN, MARTIN J. V. UNITED STATES

15-8406 BLAIR, SHEPARDSON R. V. UNITED STATES

15-8408 HENDRIX, MICHAEL V. UNITED STATES

15-8411 CHI, ANSON V. USDC ED TX

15-8413 GARCIA, LUIS V. UNITED STATES

15-8415 MARTINEZ-HARO, JUAN C. V. UNITED STATES

15-8418 MADDEN, KENNETH L. V. UNITED STATES

15-8423 GROGANS, STEVE E. V. UNITED STATES

15-8427 RASHID, AMIN A. V. UNITED STATES

15-8433 CALDERON-JIMENEZ, PABLO V. UNITED STATES

15-8435 SISCO, ROBERT L. V. UNITED STATES

15-8439 BUFFINGTON, XHOSA V. UNITED STATES

15-8449 VICENTE-ARIAS, JOSE R. V. UNITED STATES

15-8450 ALAM, MANJUR V. UNITED STATES

15-8452 MEDA, VISHNU P. V. UNITED STATES

The petitions for writs of certiorari are denied.

15-530 RATTIGAN, WILFRED S. V. LYNCH, ATT'Y GEN.

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

15-1042 SMITH, LOUISA V. NEW YORK PRESBYTERIAN, ET AL.

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

15-7964 MOORE, GREGG V. CHICAGO, IL

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992)

(*per curiam*).

15-8312 SELLERS, FREDERICK L. V. UNITED STATES

15-8401 MEDINA-CASTELLANOS, CARLOS J. V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Kagan took no part in the consideration or decision of these petitions.

HABEAS CORPUS DENIED

15-8558 IN RE RAMSEY RANDALL

The petition for a writ of habeas corpus is denied.

15-8531 IN RE PAUL A. DYE

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8.

MANDAMUS DENIED

15-7991 IN RE WILLIAM B. LOOK

15-8417 IN RE BRENT E. LOVETT

15-8432 IN RE BERNARD FOSTER

The petitions for writs of mandamus are denied.

15-7950 IN RE JANICE W. GRENADIER

The petition for a writ of mandamus and/or prohibition is denied.

PROHIBITION DENIED

15-7892 IN RE WILLIAM S. SPENCER

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of prohibition is dismissed. See Rule 39.8.

REHEARINGS DENIED

15-5758 OLIVE, MICHAEL E. V. FLORIDA

15-6096 MORRIS, CAROL J. V. COURT OF APPEALS OF TX

15-6496 MILLER, DANIEL K. V. OFFICE OF CHILDREN

15-6743 IN RE WEI ZHOU

15-6796 TILLMAN, LEE A. V. GASTELO, ACTING WARDEN

15-6885 KIDWELL, THOMAS A. V. RYAN, DIR., AZ DOC, ET AL.

15-6922 THOMPKINS, LUTRICA V. BROWN, JOSEPH, ET AL.

15-7019 WANNAMAKER, SHERINETTE V. BOULWARE, WARDEN

15-7020 WILLIAMS, JERMAINE A. V. JOHNSON, ADM'R, NJ, ET AL.

15-7079 THOMPSON, WILLIAM A. V. OZMINT, DIR., SC DOC, ET AL.

15-7101 CONNER, JOHN W. V. HUMPHREY, WARDEN

15-7239 IN RE NATHAN R. JOHNSON

The petitions for rehearing are denied.

SUPREME COURT OF THE UNITED STATES

JEFFREY WOODS, WARDEN *v.* TIMOTHY ETHERTON

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 15–723. Decided April 4, 2016

PER CURIAM.

In the fall of 2006, Michigan law enforcement received an anonymous tip that two white males were traveling on I–96 between Detroit and Grand Rapids in a white Audi, possibly carrying cocaine. Officers spotted a vehicle matching that description and pulled it over for speeding. Respondent Timothy Etherton was driving; Ryan Pollie was in the passenger seat. A search of the car uncovered 125.2 grams of cocaine in a compartment at the bottom of the driver side door. Both Etherton and Pollie were arrested.

Etherton was tried in state court on a single count of possession with intent to deliver cocaine. At trial the facts reflected in the tip were not contested. The central point of contention was instead whether the cocaine belonged to Etherton or Pollie. Pollie testified for the prosecution pursuant to a plea agreement. He claimed that he had accompanied Etherton from Grand Rapids to Detroit, not knowing that Etherton intended to obtain cocaine there. According to Pollie, once the pair arrived in Detroit, Etherton left him alone at a restaurant and drove off, returning some 45 minutes later. It was only after they were headed back to Grand Rapids that Etherton revealed he had obtained the drugs.

The prosecution also called several police officers to testify. Three of the officers described the content of the anonymous tip leading to Etherton's arrest. On the third recounting of the tip, Etherton's counsel objected on hearsay grounds, but the objection was not resolved when the

prosecutor agreed to move on. At closing, the prosecutor also described the tip. The court instructed the jury that "the tip was not evidence," but was admitted "only to show why the police did what they did." App. to Pet. for Cert. 88a. The jury convicted Etherton, and his conviction was affirmed on direct appeal. The Michigan Supreme Court denied leave to appeal. *People* v. *Etherton*, 483 Mich. 896, 760 N. W. 2d 472 (2009).

Etherton sought postconviction relief in state court on six grounds. Three are relevant here: First, he claimed that the admission of the anonymous tip violated his rights under the Confrontation Clause of the Sixth Amendment. Second, that his trial counsel was ineffective for failing to object to the tip on that ground. And third, that his counsel on direct appeal was ineffective for failing to raise the Confrontation Clause and the ineffective assistance of trial counsel claims.

The state habeas court rejected the first two claims on procedural grounds and the third on the merits. To prevail on a claim for ineffective assistance of appellate counsel, the state court explained, Etherton had to demonstrate that "appellate counsel's decision not to pursue an issue on appeal fell below an objective standard of reasonableness and that the representation so prejudiced [him] as to deprive him of a fair trial." App. to Pet. for Cert. 87a–88a. The state court concluded that Etherton failed on both counts.

First, the court reasoned, appellate counsel may have reasonably forgone any Confrontation Clause claim after concluding that trial counsel's failure to object was the product not of ineffectiveness but of strategy. While Etherton's current counsel argues that trial counsel should have objected because the tip's reference to "two men" suggested involvement by Etherton from the outset, Brief in Opposition 20–21, the reference also suggested *Pollie's* prior involvement, contrary to his testimony that

he was not with Etherton when he picked up the cocaine and had nothing to do with it. As the state court explained, not objecting would have been consistent with trial counsel's "strategy to show defendant's non-involvement and possible responsibility of the passenger (who was also charged)." App. to Pet. for Cert. 88a.

Second, the court determined, Etherton had not been prejudiced by counsel's choice: there was "ample evidence" of his guilt and "the complained of errors, even if true, would not have changed the outcome" of the case. *Id.,* at 89a. Etherton's allegations, the court concluded, ultimately failed to overcome the presumption that his appellate counsel functioned reasonably in not pursuing the Confrontation Clause or ineffectiveness claims. *Ibid.* Both the Michigan Court of Appeals and the Michigan Supreme Court denied leave to appeal.

Etherton next sought federal habeas relief. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), federal habeas relief was available to him only if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. §2254(d)(1). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington* v. *Richter*, 562 U. S. 86, 101 (2011) (quoting *Yarborough* v. *Alvarado*, 541 U. S. 652, 664 (2004)). The state court decision must be "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *White* v. *Woodall*, 572 U. S. ___, ___ (2014) (slip op., at 4) (internal quotation marks omitted).

When the claim at issue is one for ineffective assistance of counsel, moreover, AEDPA review is "doubly deferential," *Cullen* v. *Pinholster*, 563 U. S. 170, 190 (2011), be-

cause counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," *Burt* v. *Titlow*, 571 U. S. ___, ___ (2013) (slip op., at 9) (quoting *Strickland* v. *Washington*, 466 U. S. 668, 690 (1984); internal quotation marks omitted). In such circumstances, federal courts are to afford "both the state court and the defense attorney the benefit of the doubt." *Burt, supra*, at ___ (slip op., at 1).

The District Court denied relief, but the Court of Appeals for the Sixth Circuit reversed in relevant part, over the dissent of Judge Kethledge. The majority concluded that Etherton's appellate counsel had been constitutionally ineffective, and that no fairminded jurist could conclude otherwise. *Etherton* v. *Rivard*, 800 F. 3d 737 (2015). Without ruling on the merits of the court's holding that counsel had been ineffective, we disagree with the determination that no fairminded jurist could reach a contrary conclusion, and accordingly reverse.

In finding counsel ineffective, the majority first concluded that Etherton's right to confrontation had been violated. The Confrontation Clause prohibits an out-of-court statement only if it is admitted for its truth. *Crawford* v. *Washington*, 541 U. S. 36, 60, n. 9 (2004). The Sixth Circuit determined that the contents of the tip were admitted for their truth because the tip was referenced by three different witnesses and mentioned in closing argument. These "repeated references both to the existence and the details of the content of the tip went far beyond what was necessary for background," the majority below concluded, "indicating the content of the tip was admitted for its truth." 800 F. 3d, at 751.

The majority next found that Etherton had been prejudiced by the violation, a showing Etherton's state court counsel would have had to make on appeal to obtain relief either on the forfeited Confrontation Clause objection, see

People v. *Carines*, 460 Mich. 750, 763–764, 597 N. W. 2d 130, 138–139 (1999) (showing of prejudice required to overcome forfeiture), or the ineffectiveness claim, *Strickland*, *supra*, at 687 (showing of prejudice required to demonstrate ineffective assistance of counsel). In finding prejudice, the majority acknowledged the evidence of Etherton's guilt: the cocaine was found in a driver side compartment inches from Etherton; he owned the car; and he was driving at the time of arrest. But, according to the majority, that evidence was not enough to convict Etherton absent Pollie's testimony. And that is where the tip came in. "Because much of Pollie's testimony was reflected in the content of the tip that was put before the jury," the Sixth Circuit stated, "the jury could have improperly concluded that Pollie was thereby testifying truthfully—that it was unlikely for it to be a coincidence for his testimony to line up so well with the anonymous accusation." 800 F. 3d, at 753.

In reaching these conclusions, the Sixth Circuit did not apply the appropriate standard of review under AEDPA. A "fairminded jurist" could conclude that repetition of the tip did not establish that the uncontested facts it conveyed were submitted for their truth. Such a jurist might reach that conclusion by placing weight on the fact that the truth of the facts was not disputed. No precedent of this Court clearly forecloses that view. It is also not beyond the realm of possibility that a fairminded jurist could conclude that Etherton was not prejudiced when the tip and Pollie's testimony corresponded on uncontested facts. After all, Pollie himself was privy to all the information contained in the tip. A reasonable judge might accordingly regard the fact that the tip and Pollie's testimony corresponded to be unremarkable and not pertinent to Pollie's credibility. (In fact, the only point of Pollie's testimony actually reflected in the tip was that he and Etherton were traveling between Detroit and Grand Rapids.)

Etherton's underlying complaint is that his appellate lawyer's ineffectiveness meant he had "no prior opportunity to cross-examine the anonymous tipster." Brief in Opposition 11. But it would not be objectively unreasonable for a fairminded judge to conclude—especially in light of the deference afforded *trial* counsel under *Strickland*—that the failure to raise such a claim was not due to incompetence but because the facts in the tip were uncontested and in any event consistent with Etherton's defense. See *Harrington*, 562 U. S., at 105 ("Even under *de novo* review, the standard for judging counsel's representation is a most deferential one."). A fairminded jurist could similarly conclude, again deferring under *Strickland*, that *appellate* counsel was not incompetent in drawing the same conclusion. And to reach the final point at issue before the Sixth Circuit, a fairminded jurist—applying the deference due the *state court* under AEDPA—could certainly conclude that the court was not objectively unreasonable in deciding that appellate counsel was not incompetent under *Strickland*, when she determined that trial counsel was not incompetent under *Strickland*.

Given AEDPA, both Etherton's appellate counsel and the state habeas court were to be afforded the benefit of the doubt. *Burt*, *supra*, at ___. Because the Sixth Circuit failed on both counts, we grant the petition for certiorari and reverse the judgment of the Court of Appeals.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

ANNE MERCY KAKARALA *v.* WELLS FARGO BANK, N. A.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15–712. Decided April 4, 2016

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, dissenting from the denial of certiorari.

The question presented by this petition is whether the Court should overrule *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336 (1976). *Thermtron* adopted an atextual reading of 28 U. S. C. §1447(d), the federal law governing review of orders remanding a case from federal to state courts. Because I remain of the view that *Thermtron* was wrongly decided, I respectfully dissent from the denial of certiorari.

Congress has unambiguously deprived federal courts of jurisdiction to review an order remanding a case from federal to state court: "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U. S. C. §1447(d). Underscoring the breadth of this prohibition, Congress has provided only one exception: "[A]n order remanding a case to . . . State court . . . pursuant to section . . . 1443 of this title [providing for the removal of certain civil rights cases] shall be reviewable by appeal or otherwise." *Ibid.**

Yet in *Thermtron*, this Court interpreted §1447(d) to mean the opposite of what it says. The Court concluded that §1447(d) bars review of only *some* remand orders—

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*Congress later amended this provision to also provide for appellate review of orders involving the remand of certain cases involving federal officers and agencies. 28 U. S. C. §1447(d).

namely, orders issued pursuant to §1447(c), which, at the time, required federal district courts to remand cases that were "removed 'improvidently and without jurisdiction'" whenever that defect is discovered. 423 U. S., at 343–344. As Members of this Court have noted, this interpretation of §1447(d) defies established principles of statutory construction. *E.g., id.,* at 355 (Rehnquist, J., dissenting) ("[T]he Court today holds that Congress did not mean what it so plainly said"); see *Osborn* v. *Haley*, 549 U. S. 225, 262–263 (2007) (Scalia, J., dissenting) ("Few statutes read more clearly than . . . §1447(d) . . . . Yet beginning in 1976, this Court has repeatedly eroded §1447(d)'s mandate and expanded the Court's jurisdiction"); *Carlsbad Technology, Inc.* v. *HIF Bio, Inc.*, 556 U. S. 635, 645 (2009) (BREYER, J., concurring) ("[S]omething is wrong" with the Court's view of §1447(d)).

Thermtron has also proved unworkable. It has spawned a number of divisions in the lower courts over whether certain remands are based on jurisdictional or nonjurisdictional grounds, and how to determine which is which. *E.g., Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 710–712 (1996) (resolving split over whether remands based on an abstention doctrine are nonjurisdictional and thus reviewable); see *Carlsbad*, *supra*, at 641 (resolving split over whether remands of supplemental state-law claims are not based on a lack of subject-matter jurisdiction). Later cases have compounded the confusion over how to interpret §1447(d) by adding on more ancillary rules. For instance, the Court has suggested that remand orders putatively based on jurisdictional grounds may be reviewable if there is reason to think that they actually rested on a different ground. See *Kircher* v. *Putnam Funds Trust*, 547 U. S. 633, 641–644 (2006). And *Thermtron* continues to perplex Courts of Appeals today. See, *e.g., Harvey* v. *Ute Indian Tribe of Uintah and Ouray Reservation*, 797 F. 3d 800, 804 (CA10 2015) (noting split on the question whether a remand based on waiver is subject to §1447(d)'s

bar).

Nor can *Thermtron* be reconciled with the broader principles we have identified to guide our interpretation of jurisdictional statutes. Since deciding *Thermtron*, we have recognized that "administrative simplicity is a major virtue in a jurisdictional statute," and that "[c]omplex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94 (2010).

I see no need to force Congress to fix a problem that this Court created. *Thermtron* has endured in no small part because the parties in many of our prior cases have failed to ask us to overrule it. *E.g., Carlsbad*, *supra*, at 638, n. (declining to revisit *Thermtron* because no party asked for its overruling, nor did the parties in three preceding cases applying *Thermtron*). We should stop forcing parties and lower courts to guess when §1447(d) will and will not apply, and should start applying the law as Congress enacted it. The petition in this case presents an opportunity to reconsider *Thermtron*. I would grant review in this case and any other that would allow us to revisit our mistaken approach to §1447(d). I respectfully dissent from the denial of certiorari.