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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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GLOVER *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

No. 99–8576. Argued November 27, 2000– Decided January 9, 2001

The probation office recommended that petitioner Glover’s federal labor racketeering, money laundering, and tax evasion convictions be grouped under United States Sentencing Guidelines §3D1.2, which allows the grouping of counts involving substantially the same harm. The Government objected to grouping the money laundering counts with the others, and the trial court agreed. Glover’s offense level was thus increased by two levels, resulting in an increased sentence of between 6 and 21 months. His counsel did not press the grouping issue in the trial court or raise it on appeal to the Seventh Circuit, which affirmed his conviction and sentence. Glover then filed a *pro se* motion to correct his sentence, arguing that his counsel’s failure to pursue the issue was ineffective assistance, without which his offense level would have been lower. The District Court denied the motion, determining that under Circuit precedent a 6 to 21 month sentencing increase was not significant enough to amount to prejudice for purposes of *Strickland v. Washington*, 466 U. S. 668. As a result, the court did not decide whether Glover’s counsel fell below a reasonable standard of competence, and denied his ineffective-assistance claim. The Seventh Circuit affirmed, relying on the Government’s theory that even were the performance of Glover’s counsel ineffective, the resulting increase in sentence, under Circuit precedent, would not constitute prejudice.

Held: The Seventh Circuit erred in engrafting onto the prejudice branch of the *Strickland* test the requirement that any increase in sentence must meet a standard of significance. Pp. 4–7.

(a) The Government no longer asserts that a 6 to 21 month prison term increase is not prejudice under *Strickland*. The Seventh Circuit drew the substance of its rule from *Lockhart v. Fretwell*, 506 U. S. 364,

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369, which holds that in some circumstances a mere difference in outcome will not suffice to establish prejudice. This Court explained last Term that the *Lockhart* holding does not supplant the *Strickland* analysis. See *Williams v. Taylor*, 529 U. S. 362, 393. The Seventh Circuit was incorrect to rely on *Lockhart* to deny relief to persons who might show deficient performance in their counsel's failure to object to an error of law affecting the sentencing calculation because the sentence increase does not meet some baseline prejudice standard. This Court's jurisprudence suggests that any amount of actual jail time has Sixth Amendment significance. *E.g.*, *Argersinger v. Hamlin*, 407 U. S. 25. Moreover, decisions on the right to jury trial in a criminal case, see *id.*, at 29, do not control the question whether a showing of prejudice, in the context of an ineffective-assistance claim, requires a significant prison term increase. The Seventh Circuit's rule is not well considered in any event, because there is no obvious dividing line by which to measure how much longer a sentence must be for the increase to constitute substantial prejudice. Although the amount by which a defendant's sentence is increased by a particular decision may be a factor in determining whether counsel's performance in failing to argue the point constitutes ineffective assistance, under a determinate system of constrained discretion such as the Sentencing Guidelines it cannot serve as a bar to a showing of prejudice. Here the Court considers the sentencing calculation itself, which resulted from a ruling that had it been error, would have been correctable on appeal. The question of deficient performance is not before the Court, but it is clear that prejudice flowed from the asserted error in sentencing. Pp. 4–6.

(b) The Government's various arguments for affirming the Seventh Circuit's judgment were neither raised nor resolved below, and are outside the questions presented by the petition for certiorari. Whether these issues remain open, and if so whether they have merit, are questions for the lower courts to determine in the first instance. Pp. 6–7.

182 F. 3d 921, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.