SUPREME COURT OF THE UNITED STATES

No. 02–311

KEVIN WIGGINS, PETITIONER *v.* SEWALL SMITH, WARDEN, ET AL.

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

[June 26, 2003]

JUSTICE O'CONNOR delivered the opinion of the Court.

Petitioner, Kevin Wiggins, argues that his attorneys' failure to investigate his background and present mitigating evidence of his unfortunate life history at his capital sentencing proceedings violated his Sixth Amendment right to counsel. In this case, we consider whether the United States Court of Appeals for the Fourth Circuit erred in upholding the Maryland Court of Appeals' rejection of this claim.

I

A

On September 17, 1988, police discovered 77-year-old Florence Lacs drowned in the bathtub of her ransacked apartment in Woodlawn, Maryland. *Wiggins* v. *State*, 352 Md. 580, 585, 724 A. 2d 1, 5 (1999). The State indicted petitioner for the crime on October 20, 1988, and later filed a notice of intention to seek the death penalty. Two Baltimore County public defenders, Carl Schlaich and Michelle Nethercott, assumed responsibility for Wiggins' case. In July 1989, petitioner elected to be tried before a judge in Baltimore County Circuit Court. *Ibid.* On

August 4, after a 4-day trial, the court found petitioner guilty of first-degree murder, robbery, and two counts of theft. App. 32.

After his conviction, Wiggins elected to be sentenced by a jury, and the trial court scheduled the proceedings to begin on October 11, 1989. On September 11, counsel filed a motion for bifurcation of sentencing in hopes of presenting Wiggins' case in two phases. *Id.,* at 34. Counsel intended first to prove that Wiggins did not act as a "principal in the first degree," *ibid.*—*i.e.,* that he did not kill the victim by his own hand. See Md. Ann. Code, Art. 27, §413 (1996) (requiring proof of direct responsibility for death eligibility). Counsel then intended, if necessary, to present a mitigation case. In the memorandum in support of their motion, counsel argued that bifurcation would enable them to present each case in its best light; separating the two cases would prevent the introduction of mitigating evidence from diluting their claim that Wiggins was not directly responsible for the murder. App. 36–42, 37.

On October 12, the court denied the bifurcation motion, and sentencing proceedings commenced immediately thereafter. In her opening statement, Nethercott told the jurors they would hear evidence suggesting that someone other than Wiggins actually killed Lacs. *Id.,* at 70–71. Counsel then explained that the judge would instruct them to weigh Wiggins' clean record as a factor against a death sentence. She concluded: "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 27 with no convictions for prior crimes of violence and no convictions, period. . . . I think that's an important thing for you to consider." *Id.,* at 72. During the proceedings themselves, however, counsel introduced no evidence of Wiggins' life history.

Before closing arguments, Schlaich made a proffer to the

court, outside the presence of the jury, to preserve bifurcation as an issue for appeal. He detailed the mitigation case counsel would have presented had the court granted their bifurcation motion. He explained that they would have introduced psychological reports and expert testimony demonstrating Wiggins' limited intellectual capacities and childlike 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. See *id.,* at 349–351. At no point did Schlaich proffer any evidence of petitioner's life history or family background. On October 18, the court instructed the jury on the sentencing task before it, and later that afternoon, the jury returned with a sentence of death. *Id.,* at 409–410. A divided Maryland Court of Appeals affirmed. *Wiggins* v. *State,* 324 Md. 551, 597 A. 2d 1359 (1991), cert. denied, 503 U. S 1007 (1992).

B

In 1993, Wiggins sought postconviction relief in Baltimore County Circuit Court. With new counsel, he challenged the adequacy of his representation at sentencing, arguing that his attorneys had rendered constitutionally defective assistance by failing to investigate and present mitigating evidence of his dysfunctional background. App. to Pet. for Cert. 132a. To support his claim, petitioner presented testimony by Hans Selvog, a licensed social worker certified as an expert by the court. App. 419. Selvog testified concerning an elaborate social history report he had prepared containing evidence of the severe physical and sexual abuse petitioner suffered at the hands of his mother and while in the care of a series of foster parents. Relying on state social services, medical, and school records, as well as interviews with petitioner and numerous family members, Selvog chronicled petitioner's bleak life history. App. to Pet. for Cert. 163a.

According to Selvog's report, petitioner's mother, a chronic alcoholic, frequently left Wiggins and his siblings home alone for days, forcing them to beg for food and to eat paint chips and garbage. *Id.,* at 166a–167a. Mrs. Wiggins' abusive behavior included beating the children for breaking into the kitchen, which she often kept locked. She had sex with men while her children slept in the same bed and, on one occasion, forced petitioner's hand against a hot stove burner—an incident that led to petitioner's hospitalization. *Id.,* at 167a–171a. At the age of six, the State placed Wiggins in foster care. Petitioner's first and second foster mothers abused him physically, *id.,* at 175a–176a, and, as petitioner explained to Selvog, the father in his second foster home repeatedly molested and raped him. *Id.,* at 176a–179a. At age 16, petitioner ran away from his foster home and began living on the streets. He returned intermittently to additional foster homes, including one in which the foster mother's sons allegedly gang-raped him on more than one occasion. *Id.,* at 190a. After leaving the foster care system, Wiggins entered a Job Corps program and was allegedly sexually abused by his supervisor. *Id.,* at 192a.

During the postconviction proceedings, Schlaich testified that he did not remember retaining a forensic social worker to prepare a social history, even though the State made funds available for that purpose. App. 487–488. He explained that he and Nethercott, well in advance of trial, decided to focus their efforts on "retry[ing] the factual case" and disputing Wiggins' direct responsibility for the murder. *Id.,* at 485–486. In April 1994, at the close of the proceedings, the judge observed from the bench that he could not remember a capital case in which counsel had not compiled a social history of the defendant, explaining, "[n]ot to do a social history, at least to see what you have got, to me is absolute error. I just—I would be flabbergasted if the Court of Appeals said anything else." *Id.,* at

605. In October 1997, however, the trial court denied Wiggins' petition for postconviction relief. The court concluded that "when the decision not to investigate . . . is a matter of trial tactics, there is no ineffective assistance of counsel." App. to Pet. for Cert. 155a–156a.

The Maryland Court of Appeals affirmed the denial of relief, concluding that trial counsel had made "a deliberate, tactical decision to concentrate their effort at convincing the jury" that appellant was not directly responsible for the murder. *Wiggins* v. *State,* 352 Md., at 608, 724 A. 2d, at 15. The court observed that counsel knew of Wiggins' unfortunate childhood. They had available to them both the presentence investigation (PSI) report prepared by the Division of Parole and Probation, as required by Maryland law, Md. Ann. Code, Art. 41, §4–609(d) (1988), as well as "more detailed social service records that recorded incidences of physical and sexual abuse, an alcoholic mother, placements in foster care, and borderline retardation." 352 Md., at 608–609, 724 A. 2d, at 15. The court acknowledged that this evidence was neither as detailed nor as graphic as the history elaborated in the Selvog report but emphasized that "counsel *did* investigate and *were* aware of appellant's background." *Id.,* at 610, 724 A. 2d, at 16 (emphasis in original). Counsel knew that at least one uncontested mitigating factor—Wiggins' lack of prior convictions—would be before the jury should their attempt to disprove Wiggins' direct responsibility for the murder fail. As a result, the court concluded, Schlaich and Nethercott "made a reasoned choice to proceed with what they thought was their best defense." *Id.,* at 611–612, 724 A. 2d, at 17.

C

In September 2001, Wiggins filed a petition for writ of habeas corpus in Federal District Court. The trial court granted him relief, holding that the Maryland courts'

rejection of his ineffective assistance claim "involved an unreasonable application of clearly established federal law." *Wiggins* v. *Corcoran*, 164 F. Supp. 2d 538, 557 (2001) (citing *Williams* v. *Taylor,* 529 U. S. 362 (2000)). The court rejected the State's defense of counsel's "tactical" decision to "'retry guilt,'" concluding that for a strategic decision to be reasonable, it must be "based upon information the attorney has made after conducting a reasonable investigation." 164 F. Supp. 2d, at 558. The court found that though counsel were aware of some aspects of Wiggins' background, that knowledge did not excuse them from their duty to make a "fully informed and deliberate decision" about whether to present a mitigation case. In fact, the court concluded, their knowledge triggered an obligation to look further. *Id.,* at 559.

Reviewing the District Court's decision *de novo*, the Fourth Circuit reversed, holding that counsel had made a reasonable strategic decision to focus on petitioner's direct responsibility. *Wiggins* v. *Corcoran,* 288 F. 3d 629, 639–640 (2002). The court contrasted counsel's complete failure to investigate potential mitigating evidence in *Williams,* 288 F. 3d, at 640, with the fact that Schlaich and Nethercott knew at least some details of Wiggins' childhood from the PSI and social services records, *id.,* at 641. The court acknowledged that counsel likely knew further investigation "would have resulted in more sordid details surfacing," but agreed with the Maryland Court of Appeals that counsel's knowledge of the avenues of mitigation available to them "was sufficient to make an informed strategic choice" to challenge petitioner's direct responsibility for the murder. *Id.,* at 641–642. The court emphasized that 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.,* at 641.

We granted certiorari, 537 U. S. 1027 (2002), and now

reverse.

II

A

Petitioner renews his contention that his attorneys' performance at sentencing violated his Sixth Amendment right to effective assistance of counsel. The amendments to 28 U. S. C. §2254, enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), circumscribe our consideration of Wiggins' claim and require us to limit our analysis to the law as it was "clearly established" by our precedents at the time of the state court's decision. Section 2254 provides:

> "(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
> "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> "(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented at the State court proceeding."

We have made clear that the "unreasonable application" prong of §2254(d)(1) permits a federal habeas court to "grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts" of petitioner's case. *Williams* v. *Taylor, supra,* at 413; see also *Bell* v. *Cone,* 535 U. S. 685, 694 (2002). In other words, a federal court may grant relief when a state court has misapplied a "governing legal principle" to "a set of facts differ-

ent from those of the case in which the principle was announced." *Lockyer* v. *Andrade,* 538 U. S. __, __ (2003) (slip op., at 12) (citing *Williams* v. *Taylor, supra,* at 407). In order for a federal court to find a state court's application of our precedent "unreasonable," the state court's decision must have been more than incorrect or erroneous. See *Lockyer, supra,* at __ (slip op., at 11). The state court's application must have been "objectively unreasonable." See *Williams* v. *Taylor, supra,* at 409.

We established the legal principles that govern claims of ineffective assistance of counsel in *Strickland* v. *Washington,* 466 U. S. 668 (1984). An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense. *Id.,* at 687. To establish deficient performance, a petitioner must demonstrate that counsel's representation "fell below an objective standard of reasonableness." *Id.,* at 688. We have declined to articulate specific guidelines for appropriate attorney conduct and instead have emphasized that "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Ibid.*

In this case, as in *Strickland,* petitioner's claim stems from counsel's decision to limit the scope of their investigation into potential mitigating evidence. *Id.,* at 673. Here, as in *Strickland,* counsel attempt to justify their limited investigation as reflecting a tactical judgment not to present mitigating evidence at sentencing and to pursue an alternate strategy instead. In rejecting Strickland's claim, we defined the deference owed such strategic judgments in terms of the adequacy of the investigations supporting those judgments:

> "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made af-

> ter less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.*, at 690–691.

Our opinion in *Williams* v. *Taylor* is illustrative of the proper application of these standards. In finding Williams' ineffectiveness claim meritorious, we applied *Strickland* and concluded that counsel's failure to uncover and present voluminous mitigating evidence at sentencing could not be justified as a tactical decision to focus on Williams' voluntary confessions, because counsel had not "fulfill[ed] their obligation to conduct a thorough investigation of the defendant's background." 529 U. S., at 396 (citing 1 ABA Standards for Criminal Justice 4–4.1, commentary, p. 4–55 (2d ed. 1980)). While *Williams* had not yet been decided at the time the Maryland Court of Appeals rendered the decision at issue in this case, cf. *post*, at 5 (SCALIA, J., dissenting), Williams' case was before us on habeas review. Contrary to the dissent's contention, *post,* at 6, we therefore made no new law in resolving Williams' ineffectiveness claim. See *Williams*, 529 U. S., at 390 (noting that the merits of Williams' claim "are squarely governed by our holding in *Strickland*"); see also *id.,* at 395 (noting that the trial court correctly applied both components of the *Strickland* standard to petitioner's claim and proceeding to discuss counsel's failure to investigate as a violation of *Strickland*'s performance prong). In highlighting counsel's duty to investigate, and in referring to the ABA Standards for Criminal Justice as guides,

we applied the same "clearly established" precedent of *Strickland* we apply today. Cf. *Strickland,* 466 U. S., at 690–691 (establishing that "thorough investigation[s]" are "virtually unchallengeable" and underscoring that "counsel has a duty to make reasonable investigations"); see also *id.,* at 688–689 ("Prevailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable").

In light of these standards, our principal concern in deciding whether Schlaich and Nethercott exercised "reasonable professional judgmen[t]," *id.,* at 691, is not whether counsel should have presented a mitigation case. Rather, we focus on whether the investigation supporting counsel's decision not to introduce mitigating evidence of Wiggins' background *was itself reasonable*. *Ibid.* Cf. *Williams* v. *Taylor, supra,* at 415 (O'CONNOR, J., concurring) (noting counsel's duty to conduct the "requisite, diligent" investigation into his client's background). In assessing counsel's investigation, we must conduct an objective review of their performance, measured for "reasonableness under prevailing professional norms," *Strickland,* 466 U. S., at 688, which includes a context-dependent consideration of the challenged conduct as seen "from counsel's perspective at the time," *id.,* at 689 ("[E]very effort [must] be made to eliminate the distorting effects of hindsight").

B

1

The record demonstrates that counsel's investigation drew from three sources. App. 490–491. Counsel arranged for William Stejskal, a psychologist, to conduct a number of tests on petitioner. Stejskal concluded that petitioner had an IQ of 79, had difficulty coping with demanding situations, and exhibited features of a personality disorder. *Id.,* at 44–45, 349–351. These reports

revealed nothing, however, of petitioner's life history. Tr. of Oral Arg. 24–25.

With respect to that history, counsel had available to them the written PSI, which included a one-page account of Wiggins' "personal history" noting his "misery as a youth," quoting his description of his own background as "'disgusting,'" and observing that he spent most of his life in foster care. App. 20–21. Counsel also "tracked down" records kept by the Baltimore City Department of Social Services (DSS) documenting petitioner's various placements in the State's foster care system. *Id.,* at 490; Lodging of Petitioner. In describing the scope of counsel's investigation into petitioner's life history, both the Fourth Circuit and the Maryland Court of Appeals referred only to these two sources of information. See 288 F. 3d, at 640–641; *Wiggins* v. *State,* 352 Md., at 608–609, 724 A. 2d, at 15.

Counsel's decision not to expand their investigation beyond the PSI and the DSS records fell short of the professional standards that prevailed in Maryland in 1989. As Schlaich acknowledged, standard practice in Maryland in capital cases at the time of Wiggins' trial included the preparation of a social history report. App. 488. Despite the fact that the Public Defender's office made funds available for the retention of a forensic social worker, counsel chose not to commission such a report. *Id.,* at 487. Counsel's conduct similarly fell short of the standards for capital defense work articulated by the American Bar Association (ABA)—standards to which we long have referred as "guides to determining what is reasonable." *Strickland, supra,* at 688; *Williams* v. *Taylor, supra,* at 396. The ABA Guidelines provide that investigations into mitigating evidence "should comprise efforts to discover *all reasonably available* mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." ABA Guidelines for the Appointment

and Performance of Counsel in Death Penalty Cases 11.4.1(C), p. 93 (1989) (emphasis added). Despite these well-defined norms, however, counsel abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources. Cf. *id.,* 11.8.6, p. 133 (noting that among the topics counsel should consider presenting are medical history, educational history, employment and training history, *family and social history,* prior adult and juvenile correctional experience, and religious and cultural influences) (emphasis added); 1 ABA Standards for Criminal Justice 4–4.1, commentary, p. 4–55 ("The lawyer also has a substantial and important role to perform in raising mitigating factors both to the prosecutor initially and to the court at sentencing. . . . Investigation is essential to fulfillment of these functions").

The scope of their investigation was also unreasonable in light of what counsel actually discovered in the DSS records. The records revealed several facts: Petitioner's mother was a chronic alcoholic; Wiggins was shuttled from foster home to foster home and displayed some emotional difficulties while there; he had frequent, lengthy absences from school; and, on at least one occasion, his mother left him and his siblings alone for days without food. See Lodging of Petitioner 54–95, 126, 131–136, 140, 147, 159–176. As the Federal District Court emphasized, any reasonably competent attorney would have realized that pursuing these leads was necessary to making an informed choice among possible defenses, particularly given the apparent absence of any aggravating factors in petitioner's background. 164 F. Supp. 2d, at 559. Indeed, counsel uncovered no evidence in their investigation to suggest that a mitigation case, in its own right, would have been counterproductive, or that further investigation would have been fruitless; this case is therefore distinguishable from our precedents in which we have found

limited investigations into mitigating evidence to be reasonable. See, *e.g., Strickland,* 466 U. S., at 699 (concluding that counsel could "reasonably surmise . . . that character and psychological evidence would be of little help"); *Burger* v. *Kemp,* 483 U. S. 776, 794 (1987) (concluding counsel's limited investigation was reasonable because he interviewed all witnesses brought to his attention, discovering little that was helpful and much that was harmful); *Darden* v. *Wainwright,* 477 U. S. 168, 186 (1986) (concluding that counsel engaged in extensive preparation and that the decision to present a mitigation case would have resulted in the jury hearing evidence that petitioner had been convicted of violent crimes and spent much of his life in jail). Had counsel investigated further, they may well have discovered the sexual abuse later revealed during state postconviction proceedings.

The record of the actual sentencing proceedings underscores the unreasonableness of counsel's conduct by suggesting that their failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment. Counsel sought, until the day before sentencing, to have the proceedings bifurcated into a retrial of guilt and a mitigation stage. See *supra,* at 2. On the eve of sentencing, counsel represented to the court that they were prepared to come forward with mitigating evidence, App. 45, and that they intended to present such evidence in the event the court granted their motion to bifurcate. In other words, prior to sentencing, counsel never actually abandoned the possibility that they would present a mitigation defense. Until the court denied their motion, then, they had every reason to develop the most powerful mitigation case possible.

What is more, during the sentencing proceeding itself, counsel did not focus exclusively on Wiggins' direct responsibility for the murder. After introducing that issue in her opening statement, *id.,* at 70–71, Nethercott en-

treated the jury to consider not just what Wiggins "is found to have done," but also "who [he] is." *Id.,* at 70. Though she told the jury it would "hear that Kevin Wiggins has had a difficult life," *id.,* at 72, counsel never followed up on that suggestion with details of Wiggins' history. At the same time, counsel called a criminologist to testify that inmates serving life sentences tend to adjust well and refrain from further violence in prison—testimony with no bearing on whether petitioner committed the murder by his own hand. *Id.,* at 311–312. Far from focusing exclusively on petitioner's direct responsibility, then, counsel put on a halfhearted mitigation case, taking precisely the type of "shotgun" approach the Maryland Court of Appeals concluded counsel sought to avoid. *Wiggins* v. *State,* 352 Md., at 609, 724 A. 2d, at 15. When viewed in this light, the "strategic decision" the state courts and respondents all invoke to justify counsel's limited pursuit of mitigating evidence resembles more a *post-hoc* rationalization of counsel's conduct than an accurate description of their deliberations prior to sentencing.

In rejecting petitioner's ineffective assistance claim, the Maryland Court of Appeals appears to have assumed that because counsel had *some* information with respect to petitioner's background—the information in the PSI and the DSS records—they were in a position to make a tactical choice not to present a mitigation defense. *Id.,* at 611–612, 724 A. 2d, at 17 (citing federal and state precedents finding ineffective assistance in cases in which counsel failed to conduct an investigation of any kind). In assessing the reasonableness of an attorney's investigation, however, a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further. Even assuming Schlaich and Nethercott limited the scope of their investigation for strategic reasons, *Strickland* does not establish that a cursory investi-

gation automatically justifies a tactical decision with respect to sentencing strategy. Rather, a reviewing court must consider the reasonableness of the investigation said to support that strategy. 466 U. S., at 691.

The Maryland Court of Appeals' application of *Strickland*'s governing legal principles was objectively unreasonable. Though the state court acknowledged petitioner's claim that counsel's failure to prepare a social history "did not meet the minimum standards of the profession," the court did not conduct an assessment of whether the decision to cease all investigation upon obtaining the PSI and the DSS records actually demonstrated reasonable professional judgment. *Wiggins* v. *State,* 352 Md.*,* at 609, 724 A. 2d, at 16. The state court merely assumed that the investigation was adequate. In light of what the PSI and the DSS records actually revealed, however, counsel chose to abandon their investigation at an unreasonable juncture, making a fully informed decision with respect to sentencing strategy impossible. The Court of Appeals' assumption that the investigation was adequate, *ibid.,* thus reflected an unreasonable application of *Strickland*. 28 U. S. C. §2254(d)(1). As a result, the court's subsequent deference to counsel's strategic decision not "to present every conceivable mitigation defense," 352 Md.*,* at 610, 724 A. 2d, at 16, despite the fact that counsel based this alleged choice on what we have made clear was an unreasonable investigation, was also objectively unreasonable. As we established in *Strickland*, "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." 466 U. S., at 690–691.

Additionally, the court based its conclusion, in part, on a clear factual error—that the "social service records . . . recorded incidences of . . . sexual abuse." 352 Md., at 608–609, 724 A. 2d, at 15. As the State and the United States

now concede, the records contain no mention of sexual abuse, much less of the repeated molestations and rapes of petitioner detailed in the Selvog report. Brief for Respondents 22; Brief for United States as *Amicus Curiae* 26; App. to Pet. for Cert. 175a–179a, 190a. The state court's assumption that the records documented instances of this abuse has been shown to be incorrect by "clear and convincing evidence," 28 U. S. C. §2254(e)(1), and reflects "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," §2254(d)(2). This partial reliance on an erroneous factual finding further highlights the unreasonableness of the state court's decision.

The dissent insists that this Court's hands are tied, under §2254(d), "by the state court's factual determinations that Wiggins' trial counsel '*did* investigate and *were* aware of [Wiggins'] background,' " *post,* at 14. But as we have made clear, the Maryland Court of Appeals' conclusion that the *scope* of counsel's investigation into petitioner's background met the legal standards set in *Strickland* represented an objectively unreasonable application of our precedent. §2254(d)(1). Moreover, the court's assumption that counsel learned of a major aspect of Wiggins' background, *i.e.,* the sexual abuse, from the DSS records was clearly erroneous. The requirements of §2254(d) thus pose no bar to granting petitioner habeas relief.

2

In their briefs to this Court, the State and the United States contend that counsel, in fact, conducted a more thorough investigation than the one we have just described. This conclusion, they explain, follows from Schlaich's postconviction testimony that he knew of the sexual abuse Wiggins suffered, as well as of the hand-burning incident. According to the State and its *amicus*,

the fact that counsel claimed to be aware of this evidence, which was not in the social services records, coupled with Schlaich's statement that he knew what was in "other people's reports," App. 490–491, suggests that counsel's investigation must have extended beyond the social services records. Tr. of Oral Arg. 31–36; Brief for United States as *Amicus Curiae* 26–27, n. 4; Brief for Respondents 35. Schlaich simply "was not asked to and did not reveal the source of his knowledge" of the abuse. Brief for United States as *Amicus Curiae* 27, n. 4.

In considering this reading of the state postconviction record, we note preliminarily that the Maryland Court of Appeals clearly assumed both that counsel's investigation began and ended with the PSI and the DSS records and that this investigation was sufficient in scope to satisfy *Strickland*'s reasonableness requirement. See *Wiggins* v. *State*, 352 Md., at 608, 724 A. 2d, at 15. The court also assumed, erroneously, that the social services records cited incidences of sexual abuse. See *id.,* at 608–609, 724 A. 2d, at 15. Respondents' interpretation of Schlaich's postconviction testimony therefore has no bearing on whether the Maryland Court of Appeals' decision reflected an objectively unreasonable application of *Strickland*.

In its assessment of the Maryland Court of Appeals' opinion, the dissent apparently does not dispute that if counsel's investigation in this case had consisted exclusively of the PSI and the DSS records, the court's decision would have constituted an unreasonable application of *Strickland*. See *post,* at 7. Of necessity, then, the dissent's primary contention is that the Maryland Court of Appeals *did* decide that Wiggins' counsel looked beyond the PSI and the DSS records and that we must therefore defer to that finding under §2254(e)(1). See *post,* at 7–14. *Had* the court found that counsel's investigation extended beyond the PSI and the DSS records, the dissent, of course, would be correct that §2254(e) would require that

we defer to that finding. But the state court made no such finding.

The dissent bases its conclusion on the Maryland Court of Appeals' statements that "[c]ounsel were aware that appellant had a most unfortunate childhood," and that "counsel *did* investigate and *were* aware of appellant's background." See *post,* at 3–4, 8 (quoting *Wiggins* v. *State, supra,* at 608, 610, 724 A. 2d, at 15, 16). But the state court's description of how counsel learned of petitioner's childhood speaks for itself. The court explained: "Counsel were aware that appellant had a most unfortunate childhood. Mr. Schlaich had available to him not only the presentence investigation report . . . but also more detailed social service records." See 352 Md., at 608–609, 724 A. 2d, at 15. This construction reflects the state court's understanding that the investigation consisted of the two sources the court mentions. Indeed, when describing counsel's investigation into petitioner's background, the court never so much as implies that counsel uncovered any source other than the PSI and the DSS records. The court's conclusion that counsel were aware of "incidences. . . of sexual abuse" does not suggest otherwise, cf. *post,* at 8, because the court assumed that counsel learned of such incidents from the social services records. *Wiggins* v. *Corcoran,* 352 Md., at 608–609, 724 A. 2d, at 15.

The court's subsequent statement that, "as noted, counsel *did* investigate and *were* aware of appellant's background," underscores our conclusion that the Maryland Court of Appeals assumed counsel's investigation into Wiggins' childhood consisted of the PSI and the DSS records. The court's use of the phrase "as noted," which the dissent ignores, further confirms that counsel's investigation consisted of the sources previously described, *i.e.,* the PSI and the DSS records. It is the dissent, therefore, that "rests upon a fundamental fallacy," *post,* at 7,—that the Maryland Court of Appeals determined that Schlaich's

investigation extended beyond the PSI and the DSS records.

We therefore must determine, *de novo,* whether counsel reached beyond the PSI and the DSS records in their investigation of petitioner's background. The record as a whole does not support the conclusion that counsel conducted a more thorough investigation than the one we have described. The dissent, like the State and the United States, relies primarily on Schlaich's postconviction testimony to establish that counsel investigated more extensively. But the questions put to Schlaich during his postconviction testimony all referred to what he knew from the social services records; the line of questioning, after all, first directed him to his discovery of those documents. His subsequent reference to "other people's reports," made in direct response to a question concerning petitioner's mental retardation, appears to be an acknowledgement of the psychologist's reports we know counsel commissioned —reports that also revealed nothing of the sexual abuse Wiggins experienced. App. 349. As the state trial judge who heard this testimony concluded at the close of the proceedings, there is "*no reason to believe* that [counsel] did have all of this information." *Id.,* at 606 (emphasis added).

The State maintained at oral argument that Schlaich's reference to "other people's reports" indicated that counsel learned of the sexual abuse from sources other than the PSI and the DSS records. Tr. of Oral Arg. 31, 33, 35. But when pressed repeatedly to identify the sources counsel might have consulted, the State acknowledged that no written reports documented the sexual abuse and speculated that counsel must have learned of it through "[o]ral reports" from Wiggins himself. *Id.,* at 36. Not only would the phrase "other people's reports" have been an unusual way for counsel to refer to conversations with his client, but the record contains no evidence that counsel ever

pursued this line of questioning with Wiggins. See *id.,* at 24. For its part, the United States emphasized counsel's retention of the psychologist. *Id.,* at 51; Brief for United States as *Amicus Curiae* 27. But again, counsel's decision to hire a psychologist sheds no light on the extent of their investigation into petitioner's social background. Though Stejskal based his conclusions on clinical interviews with Wiggins, as well as meetings with Wiggins' family members, Lodging of Petitioner, his final report discussed only petitioner's mental capacities and attributed nothing of what he learned to Wiggins' social history.

To further underscore that counsel did not know, prior to sentencing, of the sexual abuse, as well as of the other incidents not recorded in the DSS records, petitioner directs us to the content of counsel's October 17, 1989, proffer. Before closing statements and outside the presence of the jury, Schlaich proffered to the court the mitigation case counsel would have introduced had the court granted their motion to bifurcate. App. 349–351. In his statement, Schlaich referred only to the results of the psychologist's test and mentioned nothing of Wiggins' troubled background. Given that the purpose of the proffer was to preserve their pursuit of bifurcation as an issue for appeal, they had every incentive to make their mitigation case seem as strong as possible. Counsel's failure to include in the proffer the powerful evidence of repeated sexual abuse is therefore explicable only if we assume that counsel had no knowledge of the abuse.

Contrary to the dissent's claim, see *post,* at 10, we are not accusing Schlaich of lying. His statements at the postconviction proceedings that he knew of this abuse, as well as of the hand-burning incident, may simply reflect a mistaken memory shaped by the passage of time. After all, the state postconviction proceedings took place over four years after Wiggins' sentencing. Ultimately, given counsel's likely ignorance of the history of sexual abuse at

the time of sentencing, we cannot infer from Schlaich's postconviction testimony that counsel looked further than the PSI and the DSS records in investigating petitioner's background. Indeed, the record contains no mention of sources other than those it is undisputed counsel possessed, see *supra,* at 10. We therefore conclude that counsel's investigation of petitioner's background was limited to the PSI and the DSS records.

3

In finding that Schlaich and Nethercott's investigation did not meet *Strickland*'s performance standards, we emphasize that *Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing. Nor does *Strickland* require defense counsel to present mitigating evidence at sentencing in every case. Both conclusions would interfere with the "constitutionally protected independence of counsel" at the heart of *Strickland*. 466 U. S., at 689. We base our conclusion on the much more limited principle that "strategic choices made after less than complete investigation are reasonable" only to the extent that "reasonable professional judgments support the limitations on investigation." *Id.,* at 690–691. A decision not to investigate thus "must be directly assessed for reasonableness in all the circumstances." *Id.,* at 691.

Counsel's investigation into Wiggins' background did not reflect reasonable professional judgment. Their decision to end their investigation when they did was neither consistent with the professional standards that prevailed in 1989, nor reasonable in light of the evidence counsel uncovered in the social services records—evidence that would have led a reasonably competent attorney to investigate further. Counsel's pursuit of bifurcation until the eve of sentencing and their partial presentation of a miti-

gation case suggest that their incomplete investigation was the result of inattention, not reasoned strategic judgment. In deferring to counsel's decision not to pursue a mitigation case despite their unreasonable investigation, the Maryland Court of Appeals unreasonably applied *Strickland*. Furthermore, the court partially relied on an erroneous factual assumption. The requirements for habeas relief established by 28 U. S. C. §2254(d) are thus satisfied.

III

In order for counsel's inadequate performance to constitute a Sixth Amendment violation, petitioner must show that counsel's failures prejudiced his defense. *Strickland,* 466 U. S., at 692. In *Strickland,* we made clear that, to establish prejudice, a "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. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.,* at 694. In assessing prejudice, we reweigh the evidence in aggravation against the totality of available mitigating evidence. In this case, our review is not circumscribed by a state court conclusion with respect to prejudice, as neither of the state courts below reached this prong of the *Strickland* analysis.

The mitigating evidence counsel failed to discover and present in this case is powerful. As Selvog reported based on his conversations with Wiggins and members of his family, see Reply Brief for Petitioner 18–19, Wiggins experienced severe privation and abuse in the first six years of his life while in the custody of his alcoholic, absentee mother. He suffered physical torment, sexual molestation, and repeated rape during his subsequent years in foster care. The time Wiggins spent homeless, along with his diminished mental capacities, further

augment his mitigation case. Petitioner thus has the kind of troubled history we have declared relevant to assessing a defendant's moral culpability. *Penry* v. *Lynaugh,* 492 U. S. 302, 319 (1989) ("'[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background . . . may be less culpable than defendants who have no such excuse'"); see also *Eddings* v. *Oklahoma,* 455 U. S. 104, 112 (1982) (noting that consideration of the offender's life history is a "'part of the process of inflicting the penalty of death'"); *Lockett* v. *Ohio,* 438 U. S. 586, 604 (1978) (invalidating Ohio law that did not permit consideration of aspects of a defendant's background).

Given both the nature and the extent of the abuse petitioner suffered, we find there to be a reasonable probability that a competent attorney, aware of this history, would have introduced it at sentencing in an admissible form. While it may well have been strategically defensible upon a reasonably thorough investigation to focus on Wiggins' direct responsibility for the murder, the two sentencing strategies are not necessarily mutually exclusive. Moreover, given the strength of the available evidence, a reasonable attorney may well have chosen to prioritize the mitigation case over the direct responsibility challenge, particularly given that Wiggins' history contained little of the double edge we have found to justify limited investigations in other cases. Cf. *Burger* v. *Kemp,* 483 U. S. 776 (1987); *Darden* v. *Wainwright,* 477 U. S. 168 (1986).

The dissent nevertheless maintains that Wiggins' counsel would not have altered their chosen strategy of focusing exclusively on Wiggins' direct responsibility for the murder. See *post,* at 17. But as we have made clear, counsel were not in a position to make a reasonable strategic choice as to whether to focus on Wiggins' direct responsibility, the sordid details of his life history, or both,

because the investigation supporting their choice was unreasonable. See *supra,* at 11–14. Moreover, as we have noted, see *supra,* at 13, Wiggins' counsel did *not* focus solely on Wiggins' direct responsibility. Counsel told the sentencing jury "you're going to hear that Kevin Wiggins has had a difficult life," App. 72, but never followed up on this suggestion.

We further find that had the jury been confronted with this considerable mitigating evidence, there is a reasonable probability that it would have returned with a different sentence. In reaching this conclusion, we need not, as the dissent suggests, *post,* at 17–20, make the state-law evidentiary findings that would have been at issue at sentencing. Rather, we evaluate the totality of the evidence—"both that adduced at trial, *and the evidence adduced in the habeas proceeding[s].*" *Williams* v. *Taylor,* 529 U. S., at 397–398 (emphasis added).

In any event, contrary to the dissent's assertion, it appears that Selvog's report may have been admissible under Maryland law. In *Whittlesey* v. *Maryland,* 340 Md. 30, 665 A. 2d 223 (1995), the Maryland Court of Appeals vacated a trial court decision excluding, on hearsay grounds, testimony by Selvog himself. The court instructed the trial judge to exercise its discretion to admit "any relevant and reliable mitigating evidence, including hearsay evidence that might not be admissible in the guilt-or-innocence phase of the trial." *Id.,* at 73, 665 A. 2d, at 244. This "relaxed standard," the court observed, would provide the factfinder with "the opportunity to consider 'any aspect of a defendant's character or record . . . that the defendant proffers as a basis for a sentence less than death.'" *Ibid.* See also *Ball* v. *State,* 347 Md. 156, 172–173, 699 A. 2d 1170, 1177 (1997) (noting that the trial judge had admitted Selvog's social history report on the defendant). While the dissent dismisses the contents of the social history report, calling Wiggins a "liar" and his

claims of sexual abuse "uncorroborated gossip," *post,* at 18, 19, Maryland appears to consider this type of evidence relevant at sentencing, see *Whittlesey, supra,* at 71, 665 A. 2d, at 243 ("The reasons for relaxing the rules of evidence apply with particular force in the death penalty context"). Not even the State contests that Wiggins suffered from the various types of abuse and neglect detailed in the PSI, the DSS records, and Selvog's social history report.

Wiggins' sentencing jury heard only one significant mitigating factor—that Wiggins had no prior convictions. Had the jury been able to place petitioner's excruciating life history on the mitigating side of the scale, there is a reasonable probability that at least one juror would have struck a different balance. Cf. *Borchardt* v. *Maryland,* 367 Md. 91, 139–140, 786 A. 2d 631, 660 (2001) (noting that as long as a single juror concludes that mitigating evidence outweighs aggravating evidence, the death penalty cannot be imposed); App. 369 (instructing the jury: "If you unanimously find that the State has proven by a preponderance of the evidence that the aggravating circumstance does outweigh the mitigating circumstances, then consider whether death is the appropriate sentence").

Moreover, in contrast to the petitioner in *Williams* v. *Taylor, supra,* Wiggins does not have a record of violent conduct that could have been introduced by the State to offset this powerful mitigating narrative. Cf. *id.,* at 418 (REHNQUIST, C. J., dissenting) (noting that Williams had savagely beaten an elderly woman, stolen two cars, set fire to a home, stabbed a man during a robbery, and confessed to choking two inmates and breaking a fellow prisoner's jaw). As the Federal District Court found, the mitigating evidence in this case is stronger, and the State's evidence in support of the death penalty far weaker, than in *Williams,* where we found prejudice as the result of counsel's failure to investigate and present mitigating evidence. *Id.,*

at 399. We thus conclude that the available mitigating evidence, taken as a whole, "might well have influenced the jury's appraisal" of Wiggins' moral culpability. 529 U. S., at 398. Accordingly, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.