Syllabus

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

Syllabus

HARRINGTON, WARDEN *v.* RICHTER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 09–587. Argued October 12, 2010—Decided January 19, 2011

In 1994, deputies called to drug dealer Johnson's California home found Johnson wounded and Klein fatally wounded. Johnson claimed that he was shot in his bedroom by respondent Richter's codefendant, Branscombe; that he found Klein on the living room couch; and that his gun safe, a pistol, and cash were missing. His account was corroborated by evidence at the scene, including, relevant here, spent shell casings, blood spatters, and blood pooled in the bedroom doorway. Investigators took a blood sample from a wall near the bedroom door, but not from the blood pool. A search of Richter's home turned up the safe and ammunition matching evidence at the scene. After his arrest on murder and other charges, Richter initially denied his involvement, but later admitted disposing of Johnson's and Branscombe's guns. The prosecution initially built its case on Johnson's testimony and the circumstantial evidence, but it adjusted its approach after Richter's counsel, in his opening statement, outlined the theory that Branscombe shot Johnson in self-defense and that Klein was killed in the crossfire in the bedroom doorway, and stressed the lack of forensic support for the prosecution's case. The prosecution then decided to call an expert in blood pattern evidence, who testified that it was unlikely that Klein had been shot outside the living room and then moved to the couch, and a serologist, who testified that the blood sample taken near the blood pool could be Johnson's but not Klein's. Under cross-examination, she conceded that she had not tested the sample for cross-contamination and that a degraded sample would make it difficult to tell if it had blood of Klein's type. Defense counsel called Richter to tell his conflicting version of events and called other witnesses to corroborate Richter's version. Richter was convicted and sentenced to life without parole.

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He later sought habeas relief from the California Supreme Court, asserting, *inter alia,* that his counsel provided ineffective assistance, see *Strickland* v. *Washington*, 466 U. S. 668, when he failed to present expert testimony on blood evidence, because it could have disclosed the blood pool's source and bolstered Richter's theory. He also offered affidavits from forensics experts to support his claim. The court denied the petition in a one-sentence summary order. Subsequently, he reasserted his state claims in a federal habeas petition. The District Court denied his petition. A Ninth Circuit panel affirmed, but the en banc court reversed. Initially it questioned whether 28 U. S. C. §2254(d)—which, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), limits the availability of federal habeas relief for claims previously "adjudicated on the merits" in state court—applied to Richter's petition, since the State Supreme Court issued only a summary denial. But it found the state-court decision unreasonable anyway. In its view, trial counsel was deficient in failing to consult blood evidence experts in planning a trial strategy and in preparing to rebut expert evidence the prosecution might—and later did—offer.

Held:

1. Section 2254(d) applies to Richter's petition, even though the state court's order was unaccompanied by an opinion explaining the court's reasoning. Pp. 7–10.

(a) By its terms, §2254(d) bars relitigation of a claim "adjudicated on the merits" in state court unless, among other exceptions, the earlier state-court "decision" involved "an unreasonable application" of "clearly established Federal law, as determined by" this Court, §2254(d)(1). Nothing in its text—which refers only to a "decision" resulting "from an adjudication"—requires a statement of reasons. Where the state-court decision has no explanation, the habeas petitioner must still show there was no reasonable basis for the state court to deny relief. There is no merit to the assertion that applying §2254(d) when state courts issue summary rulings will encourage those courts to withhold explanations. The issuance of summary dispositions can enable state judiciaries to concentrate resources where most needed. Pp. 7–9.

(b) Nor is there merit to Richter's argument that §2254(d) does not apply because the California Supreme Court did not say it was adjudicating his claim "on the merits." When a state court has denied relief, adjudication on the merits can be presumed absent any contrary indication or state-law procedural principles. The presumption may be overcome by a more likely explanation for the state court's decision, but Richter does not make that showing here. Pp. 9–10.

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2. Richter was not entitled to the habeas relief ordered by the Ninth Circuit. Pp. 10–24.

(a) That court failed to accord the required deference to the decision of a state court adjudicating the same claims later presented in the federal habeas petition. Its opinion shows an improper understanding of §2254(d)'s unreasonableness standard and operation in the context of a *Strickland* claim. Asking whether the state court's application of *Strickland*'s standard was unreasonable is different from asking whether defense counsel's performance fell below that standard. Under AEDPA, a state court must be granted a deference and latitude that are not in operation in a case involving direct review under *Strickland*. A state court's determination that a claim lacks merit precludes federal habeas relief so long as "fair-minded jurists could disagree" on the correctness of that decision. *Yarborough* v. *Alvarado*, 541 U. S. 652, 664. And the more general the rule being considered, "the more leeway courts have in reaching outcomes in case-by-case determinations." *Ibid.* The Ninth Circuit explicitly conducted a *de novo* review and found a *Strickland* violation; it then declared without further explanation that the state court's contrary decision was unreasonable. But §2254(d) requires a habeas court to determine what arguments or theories supported, or could have supported, the state-court decision; and then to ask whether it is possible fair-minded jurists could disagree that those arguments or theories are inconsistent with a prior decision of this Court. AEDPA's unreasonableness standard is not a test of the confidence of a federal habeas court in the conclusion it would reach as a *de novo* matter. Even a strong case for relief does not make the state court's contrary conclusion unreasonable. Section 2254(d) is designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions. Pp. 10–14.

(b) The Ninth Circuit erred in concluding that Richter demonstrated an unreasonable application of *Strickland* by the state court. Pp. 14–23.

(1) Richter could have secured relief in state court only by showing both that his counsel provided deficient assistance and that prejudice resulted. To be deficient, counsel's representation must have fallen "below an objective standard of reasonableness," *Strickland*, 466 U. S., at 688; and there is a "strong presumption" that counsel's representation is within the "wide range" of reasonable professional assistance, *id.,* at 689. The question is whether counsel made errors so fundamental that counsel was not functioning as the counsel guaranteed by the Sixth Amendment. Prejudice requires demonstrating "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been differ-

ent." *Id.,* at 694. "Surmounting *Strickland*'s high bar is never . . . easy." *Padilla* v. *Kentucky*, 559 U. S.___, ___. *Strickland* can function as a way to escape rules of waiver and forfeiture. The question is whether an attorney's representation amounted to incompetence under prevailing professional norms, not whether it deviated from best practices or most common custom. Establishing that a state court's application of *Strickland* was unreasonable under §2254(d) is even more difficult, since both standards are "highly deferential," 466 U. S, at 689, and since *Strickland*'s general standard has a substantial range of reasonable applications. The question under §2254(d) is not whether counsel's actions were reasonable, but whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard. Pp. 14–16.

(2) The Ninth Circuit erred in holding that because Richter's attorney had not consulted forensic blood experts or introduced expert evidence, the State Supreme Court could not reasonably have concluded counsel provided adequate representation.

A state court could reasonably conclude that a competent attorney could elect a strategy that did not require using blood evidence experts. Rare are the situations in which the latitude counsel enjoys will be limited to any one technique or approach. There were any number of experts whose insight might have been useful to the defense. Counsel is entitled to balance limited resources in accord with effective trial tactics and strategies. In finding otherwise the Ninth Circuit failed to "reconstruct the circumstances of counsel's challenged conduct" and "evaluate the conduct from counsel's perspective at the time." *Strickland, supra,* at 689. Given the many factual differences between the prosecution and defense versions of events, it was far from evident at the time of trial that the blood source was central to Richter's case. And relying on "the harsh light of hindsight" to cast doubt on a trial that took place over 15 years ago is precisely what *Strickland* and AEDPA seek to prevent. See *Bell* v. *Cone*, 535 U. S. 685, 702. Even had the value of expert testimony been apparent, it would be reasonable to conclude that a competent attorney might elect not to use it here, where counsel had reason to question the truth of his client's account. Making blood evidence a central issue could also have led the prosecution to produce its own expert analysis, possibly destroying Richter's case, or distracted the jury with esoteric questions of forensic science. Defense counsel's opening statement may have inspired the prosecution to present forensic evidence, but that shows only that the defense strategy did not work out as well as hoped. In light of the record here there was no basis to rule that the state court's determination was unreasonable.

The Court of Appeals erred in dismissing such concern as an inac-

curate account of counsel's actual thinking, since *Strickland* examined only the objective reasonableness of counsel's actions. As to whether counsel was constitutionally deficient for not preparing expert testimony as a response to the prosecution's, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for remote possibilities. Here, even if counsel was mistaken, the prosecution itself did not expect to present forensic testimony until the eve of trial. Thus, it is at least debatable whether counsel's error was so fundamental as to call the trial's fairness into doubt. Even if counsel should have foreseen the prosecution's tactic, Richter would still need to show it was indisputable that *Strickland* required his attorney to rely on a rebuttal witness rather than on cross-examination to discredit the witnesses, but *Strickland* imposes no such requirement. And while it is possible an isolated error can constitute ineffective assistance if it is sufficiently egregious, it is difficult to establish ineffective assistance where counsel's overall performance reflects active and capable advocacy. Pp. 16–22.

(3) The Ninth Circuit also erred in concluding that Richter had established prejudice under *Strickland*, which asks whether it is "reasonably likely" the verdict would have been different, 466 U. S., at 696, not whether a court can be certain counsel's performance had no effect on the outcome or that reasonable doubt might have been established had counsel acted differently. There must be a substantial likelihood of a different result. The State Supreme Court could have reasonably concluded that Richter's prejudice evidence fell short of this standard. His expert serology evidence established only a theoretical possibility of Klein's blood being in the blood pool; and at trial, defense counsel extracted a similar concession from the prosecution's expert. It was also reasonable to find Richter had not established prejudice given that he offered no evidence challenging other conclusions of the prosecution's experts, *e.g.,* that the blood sample matched Johnson's blood type. There was, furthermore, sufficient conventional circumstantial evidence pointing to Richter's guilt, including, *e.g.,* the items found at his home. Pp. 22–23.

578 F. 3d 944, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, BREYER, ALITO, and SOTOMAYOR, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment. KAGAN, J., took no part in the consideration or decision of the case.