# Deportation law problem question case study

ASSIGN BUSTER

1. Yes, if Mr. Adams accepts the offer and is faced with deportation, his likelihood of success on an ineffectiveness claim would depend on how easily the average criminal defense attorney could have determined that the crime to which he pled was a deportable offense. This scenario does not state what Mr. Adams is pleading guilty to. Under the immigration statute U. SC 1227(a)(2)(B)(i), states that any alien is deportable for anything related to a controlled substance unless it is for a person's own use of thirty grams or less of marijuana. Mr. Adams declared that he wanted to understand the immigration consequences in order to decide whether to accept the plea. However, his attorney rejected to explain the immigration consequences himself and directed him over to an immigration clinic located in a law school where a student advises him that his crime has no deportation consequences.

The reason that Mr. Adams would have success on an ineffectiveness claim due to how easily the average criminal defense attorney could have determined if the crime was deportable is because of the ruling in *Padilla v. Kentucky* . Padilla's counsel gave the wrong advice about deportation which caused Padilla's plea to automatically deport him. It was determined in the this case that Padilla's attorney could have very easily confirmed that Padilla's plea would automatically make him eligible for deportation by merely scanning the immigration statute on controlled substances. Likewise, in this particular case with Mr. Adams, his attorney could have simply read the same immigration statute and told Mr. Adams that his plea would automatically trigger deportation. The court in Padilla did acknowledge that immigration law is a very complex law and attorneys that are not well versed

in it would perhaps not understand. However, they determined that when a law is succinct and straightforward, the responsibility and obligation to give correct advice is clear and when the law is not clear or succinct the attorney, at the bare minimum, tell their client they may face deportation consequences.

As a result, Mr. Adams has a good chance of success on an ineffectiveness claim against his attorney. The attorney could have easily read the immigration statute and told Mr. Adams that his plea would trigger deportation and Mr. Adams would have chosen another option rather than accepting the plea. Even if the law was not succinct or straightforward, the attorney still had the obligation to let Mr. Adams know that there were deportation consequences.

2. Yes, along with question number one, Mr. Adams is guaranteed to succeed on his ineffectiveness claim. *Strickland v. Washington,* (466 U. S. 668, 1984) states that defendants are permitted to having the effective assistance of competent counsel. The Strickland case posed that to prove ineffectiveness of counsel the defendant must show that 1) performance of counsel was objectively unreasonable and 2) prejudice in the sense that counsels' errors were serious enough that the defendant would not have pled guilty if given correct advice.

The fact that in question one, Mr. Adams attorney could have clearly read the immigration statute and gave his client a clear answer clearly shows that the performance was objectively unreasonable. Secondly, the fact that Mr. Adams' attorney could have conducted a brief web search of the immigration clinic and saw numerous complaints about the legal advice also shows his

performance as counsel was unreasonable. When you put these two together, the counsels' errors were serious enough that Mr. Adams would have never accepted the plea if he knew he would automatically be deported if he accepted it.

3. Justice Rehnquist's majority opinion rejected to extend its holding in Douglas. It was held that having a counsel appointed to a defendant is only mandatory on an appeal that is granted as of right, without needing consent of the appellate court. The court furthermore characterized the situation of a defendant at the trial and appellate stages of a proceeding. Counsel is only required when it is a matter of due process and it is the attorney for the state who is prosecuting a case. However, on appeal, the defendant is the one who is initiating the process of requesting review. The court additionally reminded that appeals are not required by due process.

Furthermore, the court also affirms that there really is no need for appointed counsel during a discretionary appeal. The court explains by showing that on discretionary appeals, an indigent defendant has already had the help of a lawyer in organizing and preparing briefings during the first level of appeal. Therefore, the court says that those briefs are going to be used during the discretionary review. Secondly, the indigent defendant already has a transcript of the record in the trial court reproduced and thirdly, they could possibly have a decision recorded by the first appellate court that a greater court can use in order to review the issues at hand. With all this being said, the court says there is enough material to effectively and sufficiently guarantee that a review request by the greater court is meaningful.

When it comes to the dissent in this case, Justice Douglas is joined by Justice Marshall and Justice Brennan. All three justices agree with Chief Judge Haynsworths opinion who believes that the most meaningful review of the defendant’s criminal conviction would be at the North Caroline Supreme Court. Thus, counsel is essential to the process. The dissenting justices, reviewing a conviction is of utmost important when it comes to fairness and it must require counsel assistance. They believe that all the briefings from the first appeal and all of the records do not address the issue that the Supreme Court has to resolve which is whether the particular case is worthy of review. The justices also believe that appointed counsel is essential at further appeal stage because arranging a petition of certiorari is very technical in nature and a indigent defendant will be particularly incapable to negotiate. Lastly, they assert that is would be tremendously easy to have the exact same appointed counsel from the earlier appeal to remain the defendants counsel in the later stages of appeal. As a result, Justice Douglas and the other would have ruled that the fairness of the due process clause and equal protection equality would demand appointed counsel in discretionary appeals.

Overall, if Justice Rehnquist accepted the dissent’s view about relative need, he would not have to overrule *Douglas v. California* (372 U. S. 353, 1963). It states in *Ross v. Moffitt* that the fourteenth amendments’ due process clause does not require North Carolina to offer the defendant with an attorney on his discretionary appeal to the State Supreme Court. The Douglas issue was whether the assistance of counsel during the first appeal of right is a fundamental right in which they decided that indigent petitioners are indeed

entitled to appointed counsel at the appellate level. However, the dissent in *Ross v. Moffitt* , (417 U. S. 600, 1974) by Justice Douglas, Brennan and Marshall are essentially arguing that there should be a right to appointed counsel beyond the first appeal as of right. Thus, Justice Rehnquist accepting the dissent does not necessarily mean he would have to overrule *Douglas v. California,* (372 U. S. 353, 1963) but to go ahead and extend the ruling to having an appointed counsel beyond the first appeal as of right.

4. The courts holding in Mr. Goodbars' case is supported by *Strickland v. Washington,* (466 U. S. 668, 1984). In the Strickland case, in order to achieve relief due to ineffective assistance of counsel, a criminal defendant has to pass a two prong test about his/her counsels' assistance during the proceeding. The first test has to show that their counsels' performance fell below an objective standard of reasonableness. The second test has to show that the counsels' lacking performance gives a rational likelihood that, if counsel had performed effectively, the result of the proceeding would have been different.

In this particular case, Mr. Goodbar did not show any proof of his counsel doing anything unreasonable or omitting something that should have been said or shown during the proceeding. He is merely presenting the court with a copy of a study that determined that indigents charged with non-capital murder in Philadelphia between 1994- 2005, had a lesser chance of receiving a life sentence if they were represented by a public defender than assigned counsel. Just presenting a study does not show in any way that counsel was ineffective in his/her assistance. *Strickland v. Washington* (466 U. S. 668, 1984) clearly states that if a defendant wants to prove an ineffectiveness

claim they must have proof of counsels’ inadequate performance and because of that inadequacy the result would have been different. Therefore, without proof of being deprived of effective assistance to counsel, the courts holding will stand accordingly.