Team R25

No. 4-422

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Respondent,

v.

CHAD DAVID,

Petitioner.

On Writ of Certiorari
to the United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR THE UNITED STATES

Team R25
Department of Justice
Washington, DC 20530-0001

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QUESTIONS PRESENTED

1. Whether warrantless searches conducted by law enforcement acting as community caretakers extend to the home under the Fourth Amendment?
2. Whether the Sixth Amendment right to effective counsel attaches during plea negotiations prior to a federal indictment?

STATEMENT OF FACTS

On Sunday, January 15, 2017 before 7:00 AM, Officer McNown arrived at Mr. David's Sunday Service. Chad David was a minister in Lakeshow, Staples and held high energy Sunday services at the Lakeshow Community Revivalist Church. Mr. David was absent from the service that Sunday Morning. This was unusual because Mr. David regularly attended the Sunday service.

Julianne Alvarado, another church attendee, attempted to call Mr. David at his home to check if he was okay; however, there was no answer. As. Alvarado, who appeared to be nervously shaking, told Officer McNown that Mr. David did not answer his phone and she was concerned about his well-being. Jacob Ferry, another church attendee, told Officer McNown that he thought he saw Mr. David the prior night at the bar. At this time, Officer McNown shrugged off the concerns from Ms. Alvarado and Mr. Ferry because Mr. David was not known to drink or go out to bars.

Officer McNown was scheduled to patrol Lakeshow shortly after Mr. David's 7:00 AM Sunday Service on January 15, 2017. To calm the service attendees, Officer McNown told them that he would stop by Mr. David's house during his patrol route after work and bring him some hot tea. Officer McNown thought that this was all an overreaction and assumed that Mr. David was at home with an illness due to his elderly age of 72.

The Sunday service ended at approximately 8:50 AM after another churchgoer led the congregation. At 9:00 AM, Officer McNown began his shift patrolling Lakeshow. He first stopped at Starbucks and purchased a hot tea to bring to Mr. David. when Officer McNown arrived at Mr. David's residence at approximately 9:30 Am, he noticed nothing unusual as Mr. David's car was in the driveway and all the doors to the house was shut. However, Officer

McNown did testify that when pulling into Mr. David's gated community, he saw a black Cadillac SUV leaving the complex with Golden State license plates. Based on his experience, Officer McNown knew that these SUVs are typically driven by drug dealers. Additionally, there had been an increase in Golden State drugs coming into Lakeshow in recent years

Officer McNown walked up to Mr. David's front door where he heard loud music coming from inside the house. He thought this was odd considering Mr. David's age and the time of day. Officer McNown knocked and announced his presence, after waiting 2 minutes he peeked inside the window next to the front door. When looking through the window, Officer McNown noticed that the TV was on and playing he movie, *The Wolf of Wall Street.* This struck Officer McNown as unusual because he assumed Mr. David would not watch R-rated movies given his profession. Officer McNown tried opening the front door, but it was locked.

In an effort to determine the status of Mr. David, Officer McNown entered the residence through the unlocked back door. Officer McNown assumed Mr. David couldn't hear the knocking over the loud music. Upon entry, Officer McNown approached the TV to turn it off and noticed a notebook. The notebook contained incriminating information, including all the names of various church attendees along with information about drug payments.

Officer McNown here the loud music coming from a closed-door upstairs and walked up the stairs to check if Mr. David was there. Upon opening the door, Officer McNown found Mr. David packaging powder cocaine into ziplock bags. Officer McNown proceeded to handcuff Mr. David and call in local DEA agents to come to the scene, knowing that the mounds of cocaine were more than he was experienced in dealing with. According to Officer McNown, the Lakeshow Police Department policy is to obtain contact with the DEA upon substantial finding

of narcotics. The DEA had recently established a task-force in Lakeshow to combat the flow of narcotics from other states.

DEA Agent Colin Malaska arrived at Mr. David's house shortly after 10:00 Am and started investigating the scene. Officer McNown pointed Agent Malaska to the mounds of cocaine and the notebook he found in the living room. Agent Malaska read Mr. David his Miranda rights and asked Mr. David to tell him where he obtained the large quantity of drugs. Mr. David replied that there was no way he would give up his suppliers - indicating that doing so could lead to his death and his church being burnt down.

After Mr. David arrived at a federal detainment facility, he called one of the only criminal defense lawyers he knew, Keegan Long, who also happened to be an attendee of his Sunday services. Mr. David knew, through confessions and public displays, that Mr. Long was an alcoholic. However, Mr. David believed that Mr. Long would adequately represent him.

After Mr. David was in custody, Agent Malaska contacted the prosecution to express the agency's desire to obtain information from Mr. David. Agent Malaska had credible information that a suspected drug kingpin was traveling through Lakeshow and believed that Mr. David could provide information leading to the kingpin's arrest. Agent Malaska encouraged the prosecution to offer a favorable plea deal before filing any charges so that there would be less public knowledge about the arrest, something Agent Malaska worried would tip-off the kingpin.

The prosecutors listened to Agent Malaska and held off on filing any chargers. They came up with the plea bargain of one year in prison in exchange for the names of his suppliers, valid only for 36 hours. The prosecutors emailed this offer to Mr. David's attorney, Mr. Long, on Monday, January 16, 2017 at 8:00 AM. The offer was set to expire on January 17, 2017 at 10:00 PM. Mr. Long was at a bar drinking, when he received the email offer. Mr. Long saw the email

from the prosecutors but failed to accurately read the information regarding the time limit of the plea deal. On Tuesday, January 17, 2017, the prosecutor called Mr., Long's office to check the status of the plea offer. After 36 hours, the plea offer expired without Mr. Long ever communicating the plea offer to Mr. David. It is undisputed that Mr. David was never communicated the plea during the 36-hour period until it was valid. The federal prosecutors promptly indicted Mr. David, charging him with one count of 21 U.S.C. § 841 on the morning of January 18, 2017.

Kayla Marie, the prosecutor assigned to the case, contacted Mr. Long via email on the afternoon of the 18th and asked why Mr. David did not accept the plea offer. Mr. Long stated that he thought the offer was open for 36 days, not 36 hours. He then checked his email for the original plea offer and realized his mistake. He immediately contacted Mr. David and let him know his error. Mr. David fired Mr. Long as counsel during that same phone call. Mr. David subsequently hired a new criminal defense lawyer, Michael Allen, to represent him.

The following Friday, January 20, 2017, after the indictment, Mr. Allen emailed Ms. Marie to inquire about extending another plea offer to Mr. David. Ms. Marie told Mr. Allen that extending another plea offer would be pointless. Ms. Marie reasoned that the only purpose for offering the initial plea deal was to obtain the names of Mr. David's suppliers. She further explained that offering any more plea deals would be futile because the suppliers may be tipped off by now and the government would not receive any substantial benefit by extending another plea offer to Mr. David.

Defendant, Mr. David, concurrently filed two pretrial motions presently before this Court. The first is a motion to suppress evidence under the Fourth Amendment, claiming the evidence obtained from the initial search should be suppressed because Officer McNown did not

have a warrant to enter his house. Second, is a motion seeking to be re-offered the initial plea deal that was not communicated to him, claiming that his counsel was ineffective under the Sixth Amendment.

Mr. David, appeals his conviction for possession of a controlled substance with the intent to distribute. Mr. David contends that the District Court erred in denying his motion to suppress evidence prior to trial. Additionally, Mr. David contends that the District Court erred in denying his motion requiring the government to re-offer the initial plea deal. The District Court denied Mr. David's motion to suppress evidence.

The District Court's decision in part, found that the Sixth Amendment right to effective counsel does not extend to plea negotiations prior to an indictment. Mr. David conviction at trial was then affirmed.

The District Court denied Mr. David's motion to suppress evidence, finding that the community caretaking exception to the warrant requirement extends to the home, thus allowing the government to use the fruits of the search. The District Court also found that the Sixth Amendment right to counsel extends to plea negotiations pre-indictment, but found there was no prejudice suffered by Mr. David, which bars any remedy. Mr. David was convicted on one charge and sentenced to 10 years in prison, the statutory minimum. Mr. David now appeals his conviction and orders of the District Court.

Affirmed by the District Court, the lower Court's decision to deny Mr. David's motion to suppress evidence was correct. When an officer is acting as a community caretaker, totally divorced from criminal investigation, warrantless entry into a home is valid under the Fourth Amendment. Mr. David was also not entitled to be re-offered the plea deal and found it

unnecessary to examine whether prejudice was suffered under the Strickland test and if a remedy was appropriate.

SUMMARY OF ARGUMENT

I. The *Sutterfield* case recognizes that under the community caretaking doctrine, police may take action not for any criminal law enforcement purposes but rather to protect members of the public. Id. The Court found that a warrantless entry into a defendant's home constituted a legitimate exercise of the community caretaking function of the police and that the community caretaking function may also justify the warrantless entry into a home depending on the totality of the circumstances.

Cady v. Dombrowski states that under some circumstances a police officer can search without a warrant while performing community caretaker functions if the search was a result of a function that was totally divorced from the "detection, investigation, or acquisition of evidence." Even if a police officer was not performing a community caretaking function, they may search a home without a warrant if it is an emergency.

Contrary to the claim that under the Fourth Amendment that "a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant," there are facts that support the exceptions to the warrant requirement. The Supreme Court has given exceptions to the warrant requirement such as plain view, exigent circumstances, hot pursuit, search incident to a lawful arrest, consent, border search, and stop and frisk. In *Coolidge*, the court has stated that an object is in 'plain-view' when a police officer is not searching for evidence against the accused but inadvertently comes across an incriminating object.

Therefore, evidence seized against Mr. David was not erroneous or illegal and should not be suppressed.

II. It is undisputed that the Sixth Amendment stresses that in "all criminal prosecutions, the accused shall enjoy the right…. to have the Assistance of Counsel for his defense." U.S. Const. amend. VI. It is still indeterminate whether the Supreme Court is willing to extend the Sixth Amendment right to effective counsel to pre-indictment plea negotiations. Through various cases the Court has framed instances in which legal representation is necessary. The *Montejo* case provides the consideration of the Sixth Amendment guaranteeing a right to counsel at critical stages of criminal proceedings. A "critical stage" is any "trial-like confrontation, in which potential substantial prejudice to the defendant's rights inheres and in which counsel may help avoid that prejudice."

Therefore, no prejudice resulted because there is no indication that Mr. David's counsel made unprofessional errors or otherwise provided bad advice to his client.

STANDARD OF REVIEW

Under *de novo* review, the determination of law on the exceptions for a community caretaker in the cases of a warrantless entry as an exigent circumstance. Where "'the exigencies of the situation" make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." *Kentucky v. King,* 563 U.S. 452, 460 (2011).

I. WARRANTLESS SEARCHES CONDUCTED BY LAW ENFORCEMENT ACTING AS COMMUNITY CARETAKER EXTEND TO SEARCHES OF THE HOME UNDER THE FOURTH AMENDMENT

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable, searches and seizures." U.S. Constitution amend. IV. A search warrant is generally required for Fourth Amendment searches. Through the years, courts have recognized that the warrant requirement is subject to certain reasonable exceptions. One well-recognized exception applies when "'the exigencies of the situation' make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." *Kentucky v. King,* 563 U.S. 452, 460 (2011).

Under the exigent circumstance exception, the Court recognizes the community caretaker exception. Although the Supreme Court has not directly addressed the community caretaking exception to apply specifically to homes, there are ample analogous Supreme Court cases which apply search warrant exceptions to homes directly. In fact, the exigencies of the situation reasonably resulted in Officer McNown's justifiable warrantless entry, under his community caretaker capacity, into Mr. David's home.

A. Exigent Circumstance Exception Applies to Warrantless Entry of Homes

Exigent circumstances are situations that make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. *Missouri v. McNeely*, 569 U.S. 141, 148-49 (2013), citing *Kentucky*, 563 U.S. at 460. Such situations can include the need for law enforcement to provide emergency assistance to an occupant within a home, the engagement in "hot pursuit" of a fleeing suspect, to enter a burning

building in order to put out a fire and investigate it, and in some circumstances, for law enforcement to prevent the imminent destruction of evidence. *Missouri*, 569 U.S. at 149.

Moreover, the Thirteenth Circuit held that when an officer is acting as a community caretaker, totally divorced from criminal investigation, warrantless entry into a home is valid under the Fourth Amendment. This holding is congruent with three other Circuits which have justified warrantless searches of the home using the community caretaking exception. R. at 17. *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 556 (2014).

i. The Community Caretaking Is An Exception To Warrantless Search Which Extends To The Searches Of Homes

Sutterfield concerns a safety and welfare check on the well-being of the homeowner which led to the warrantless search of their home. *Sutterfield*, 751 F.3d at 553. The home in *Sutterfield* was searched for weapons to ensure that weapons could not harm the homeowner themselves or the police officers who were in the home. *Id*. The *Sutterfield* case recognizes that under the community caretaking doctrine, police may take action not for any criminal law enforcement purposes but rather to protect members of the public. *Id*. The Court found that a warrantless entry into a defendant's home constituted a legitimate exercise of the community caretaking function of the police and that the community caretaking function may also justify the warrantless entry into a home depending on the totality of the circumstances. *Sutterfield*, 751 F.3d at 575; *See State v. Pinkard*, 327 Wis.2d 346, 358 (2010).

The community caretaking exception exemplifies what law enforcement officers do when acting to serve the public interest when they are not investigating a crime. R. at 15-16. Officer McNown's function as a police officer is to offer protection and promote order and as a community caretaker, he was there to ensure the safety of the public in situations of emergency.

The present case involves the search of a home under the community caretaking doctrine. The search consisted of a police officer conducting a welfare check on Mr. David, a member of the community. Officer McNown was asked by the Lakeshow Community Revivalist Church to visit Mr. David to check on his health and well-being because Mr. David did not attend morning church services as he usually did and was unreachable by other service attendees. R. at 2.

There was a vehicle in the driveway of Mr. David's home, a movie was playing on the television, and loud music was coming from inside the home. Officer McNown knocked and announced his presence, but there was no answer. Concerned by Mr. David's lack of response, and with a need to determine whether emergency assistance of Mr. David or any other occupant may be needed, Officer McNown proceeded around the home and noticed the back door was unlocked. Even more concerned for Mr. David's welfare, Officer McNown proceeded into the home in order to locate and determine the well-being of Mr. David. There, Office McNown found mounds of cocaine in plain view. These circumstances indicate that the situation prompted immediate emergency action because it was unknown at the time whether Mr. David was injured or otherwise required assistance.

Given the above, the community caretaking as an exception to warrantless search of homes is applicable to Officer McNown because he was acting in the capacity of a community caretaker in an exigent circumstance in order to determine the safety of Mr. David. Therefore, Officer McNown's entry did not violate the Fourth Amendment

ii. The Community Caretaking Exception Is Applicable To Officer McNown's Entry Because The Resulting Search Was Divorced From The Detection, Investigation, Or Acquisition Of Evidence

In *Brigham City, Utah v. Stuart*, police entered a home without a warrant where they believed on a reasonable basis that the occupant was seriously injured or imminently threatened

with injury. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). An exigency exception to the requirement of a warrant is the need to assist any persons who are or may be threatened with serious injury. *Id*.

Cady v. Dombrowski states that under some circumstances a police officer can search without a warrant while performing community caretaker functions if the search was a result of a function that was totally divorced from the "detection, investigation, or acquisition of evidence." *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). Even if a police officer was not performing a community caretaking function, they may search a home without a warrant if it is an emergency. *Mincey v. Arizona*, 437 U.S. 385, 394 (1978).

In the present case, Officer McNown went to Mr. David's home to check his safety and well-being per the concerns of the Lakeshow Community Revivalist Church. R. at 2. Officer McNown was not attempting to detect, investigate, or acquire any evidence from Mr. David's home because he believed that Mr. David may have been merely ill, which is why Officer McNown came with a hot cup of Starbucks tea. R. at 2.

There was odd music coming from Mr. David's home, and there was no answer to the door even though Officer McNown knocked and announced himself. R. at 3. Officer McNown entered Mr. David's home because he reasonably believed that something was wrong with Mr. David and wanted to check on his status. *Id*.

It is apparent that Officer McNown's entry into Mr. David's home was a performance of community caretaker functions motivated by the occupant's safety, rather than "detection, investigation, or acquisition of evidence." Therefore, Officer McNown's entry did not violate the Fourth Amendment based on the community caretaker exception.

iii. The Warrantless Search Was Justified Because Cocaine Was Found In "Plain View"

Contrary to the claim that under the Fourth Amendment that "a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant," there are facts that support the exceptions to the warrant requirement. R. at 18. *Michigan v. Fisher*, 436 U.S. 506 (2009). The Supreme Court has given exceptions to the warrant requirement such as plain view, exigent circumstances, hot pursuit, search incident to a lawful arrest, consent, border search, and stop and frisk. R. at 18. In *Coolidge v. New Hampshire*, the court has stated that an object is in 'plain-view' when a police officer is not searching for evidence against the accused but inadvertently comes across an incriminating object. *Coolidge v. New Hampshire*, 403 U.S. 443, 465-66 (1971); *See Harris v. United States*, 390 U.S. 234, 235 (1968).

Petitioner states that the government has not met the burden of reasonableness in showing there was an exception to the general requirement of a warrant that makes the search reasonable. R. at 19. *Coolidge*, 403 U.S. at 455. However, *Coolidge* states while plain view is not enough to justify a warrantless seizure of evidence it is justifiable under an exigent circumstance and that the discovery of evidence in plain view must be inadvertent.

Here, Mr. David's Fourth Amendment rights were not violated when the evidence of Mr. David's drug activities were discovered because Officer McNown was acting in the capacity as a community caretaker during an exigent circumstance. When Mr. David did not show up to Sunday services, as he usually did, and was unable to be contacted, Officer McNown offered to check on Mr. David in order to check on the safety and well-being of Mr. David

In his concern for Mr. David's well-being and safety, Officer McNown discovered and decided to go through an unlocked back door of the home to search for Mr. David. In Officer McNown's search he inadvertently sees a notebook in plain-view next to the television which was playing a movie. During the course of the search of the home, Officer McNown located Mr. David from the loud music coming from the closed-door upstairs. There, Officer McNown inadvertently saw, in plain view, mounds of cocaine and Mr. David packaging the cocaine.

Under the totality of the circumstances, these events together show Officer McNown was totally divorced from a criminal investigation. *Sutterfield*, 751 F.3d at 575; *See State v. Pinkard*, 327 Wis.2d 346, 358 (2010). It is reasonable to believe that Officer McNown's was influenced by a motive to entering the home in order to determine the safety, well-being, and location of Mr. David. In addition, incriminating evidence was found in plain view during a valid warrantless search as a community caretaker.

Therefore, evidence seized against Mr. David was not erroneous or illegal and should not be suppressed. We submit that the Majority did not err in affirming the District Court's decision.

II. THE SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL DOES NOT ATTACH DURING PLEA NEGOTIATIONS PRIOR TO A FEDERAL INDICTMENT

In regard to Mr. David's Sixth Amendment Right to Effective counsel, we agree that Mr. David is unable to show that he suffered prejudice. R. at 8. However, we disagree with the order in that the Sixth Amendment does not attach to Mr. David's pre-indictment plea negotiations. The Supreme Court has not addressed whether the right to the effective assistance of counsel exists during plea negotiations prior to indictment. Absent clear constraints on the right to

effective counsel during pre-indictment, it is precarious to require all pre-indictment plea negotiations to acquire counsel.

A. Mr. David Did Not Possess a Sixth Amendment Right to Effective Counsel During Plea Negotiations Prior to Indictment

It is undisputed that the Sixth Amendment stresses that in "all criminal prosecutions, the accused shall enjoy the right…. to have the Assistance of Counsel for his defense." U.S. Const. amend. VI. It is still indeterminate whether the Supreme Court is willing to extend the Sixth Amendment right to effective counsel to pre-indictment plea negotiations. Through various cases the Court has framed instances in which legal representation is necessary. The *Montejo v. Louisiana* case provides the consideration of the Sixth Amendment guaranteeing a right to counsel at critical stages of criminal proceedings. *Montejo v. Louisiana,* 556 U.S. 778, 786 (2009). A "critical stage" is any "trial-like confrontation, in which potential substantial prejudice to the defendant's rights inheres and in which counsel may help avoid that prejudice." *United States v. Leonti,* 326 F.3d 1111, 1117 (2003).

The Supreme Court has reasoned that for constitutional right to counsel to extend to negotiation and consideration of plea offers, defendants must demonstrate a reasonable probability both that they would have accepted the plea and that the plea would have been entered without the prosecution's canceling it or the trial court's refusing to accept it. *Missouri v. Frye*, 566 U.S. 134, 145 (2012).

As the appellate court indicates, the statement made by Mr. David, indicating that if he gave the names of his suppliers then he would be killed, and his church would be burnt down, is substantial. R. at 11. Mr. David's statements are indicative of his unwillingness to accept the plea. It is unreasonable to assume otherwise.

Additionally, in cases where the Court provides the Sixth Amendment right to counsel during pre-indictment plea negotiations, the Court was inclined to do so based on the nature of the confrontation between the suspect-defendant and the government. In the *United States v. Wilson*, for approximately three weeks, Mr. Wilson assisted agents in seizing ecstasy packages, recording phone calls, and helping agents locate suppliers. *U.S. v. Wilson*, 719 F. Supp. 2d 1260, 1264 (2010). The Court took into consideration all of Mr. Wilson's interactions with the prosecution and there found that it was necessary to extend the Sixth Amendment right to counsel. The Court further emphasized that the bright-line rule separating post-indictment criminal proceedings and pre-indictment criminal proceedings was arbitrary and dangerous for the accused to proceed without counsel. *id*. at 1266.

Here, Mr. David lacks the arbitrary confrontations between him and the government. There are no interactions which would jeopardize or raise prejudice to Mr. David. Unlike in *Wilson*, it is evident that Mr. David lacked the willingness to cooperate and therefore did not require the Sixth Amendment right to effective counsel at any point prior to indictment.

B. Mr. David Did Not Suffer Prejudice Because He Had Effective Counsel

Even assuming that Mr. David's counsel was inadequate, the inadequate counsel did not cause Mr. David prejudice. Prejudice results if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington,* 466 U.S. at 694, (1984). Furthermore, a reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* at 694. Here, the inquiry is whether there is a "reasonable probability" that "but for counsel's bad advice the outcome of plea bargaining would have been different." *Perez v. Rosario,* 459 F.3d 943, 948 (2006). Mr. David failed to meet the burden necessary to establish prejudice.

Mr. David was given the opportunity to cooperate with the DEA Agent Colin Malaska, prior to retaining counsel, and from the inception of his arrest. R. at 3. Upon being asked to cooperate, "Mr. David replied that there was no way he would give up his suppliers - indicating that doing so could lead to his death and his church being burnt down." *Id.* Mr. David was certain on keeping his supplier's information. After making that claim, it is unreasonable to assume that Mr. David would accepted the plea being offered. It would be irrational to suppose Mr. David would jeopardize his life and the wellbeing of his church. There is no evidence to show Mr. David even made an attempt to contact Officer McNown or DEA Agent Colin Malaska in an effort to cooperate.

Assuming additional facts which would establish prejudice, there would be no remedy appropriate for Mr. David. As the prosecutor in this case informed Mr. David's counsel, "the only purpose for offering the initial plea deal was to obtain the name of Mr. David's suppliers… offering any more plea deals would be futile because the suppliers may be tipped off by now and the government would not receive any substantial benefit by extending another plea offer." R. at 5. Even the minority acknowledges that the government would not retrieve any benefit from Mr. David accepting the original plea. R. at 23.

Therefore, no prejudice resulted because there is no indication that Mr. David's counsel made unprofessional errors or otherwise provided bad advice to his client.

CONCLUSION

The judgment of the court of appeals should be upheld.

Respectfully submitted,

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TEAM R25

October 21, 2018