

## **07-1315 KNOWLES V. MIRZAYANCE**

DECISION BELOW:Petition Appendix B

LOWER COURT CASE NUMBER: 04-57102

### **QUESTIONS PRESENTED:**

Concluding that defense counsel was ineffective in advising petitioner to withdraw his not-guilty-by-reason-of-insanity plea, the Ninth Circuit Court of Appeals granted habeas relief to petitioner without analyzing the state-court adjudication deferentially under “clearly established” law as required by 28 U.S.C. § 2254(d) and by supplanting the district court’s factual findings and credibility determinations with its own, opposite factual findings. This Court vacated the Ninth Circuit decision and remanded the case for further consideration in light of *Carey v. Musladin*, 127 S. Ct. 649 (2006). On remand, the Ninth Circuit conceded that “no Supreme Court case has specifically addressed a counsel’s failure to advance the defendant’s only affirmative defense” but nonetheless concluded that its original decision was “unaffected” by *Musladin* and subsequent § 2254(d) decisions of this Court.

The questions presented are:

1. Did the Ninth Circuit again exceed its authority under § 2254(d) by granting habeas relief without considering whether the state-court adjudication of the claim was “unreasonable” under “clearly established Federal law” based on its previous conclusion that trial counsel was required to proceed with an affirmative insanity defense because it was the only defense available and despite the absence of a Supreme Court decision addressing the point?

2. May a federal appellate court substitute its own factual findings and credibility determinations for those of a district court without determining whether the district court’s findings were “clearly erroneous?”

CERT. GRANTED 6/27/2008