

08-724 SMITH V. SPISAK

DECISION BELOW:512 F.3d 852

LOWER COURT CASE NUMBER: 03-4034

QUESTIONS PRESENTED:

1. Did the Sixth Circuit contravene the directives of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") and *Carey v. Musladin*, 127 S. Ct. 649 (2006), when it applied *Mills v. Maryland*, 486 U.S. 367 (1988), to resolve in a habeas petitioner's favor questions that were not decided or addressed in *Mills*?
2. Did the Sixth Circuit exceed its authority under AEDPA when it applied *United States v. Cronin*, 466 U.S. 648 (1984), to presume that a habeas petitioner suffered prejudice from several allegedly deficient statements made by his trial counsel during closing argument instead of deferring to the Ohio Supreme Court's reasonable rejection of the claim under *Strickland v. Washington*, 466 U.S. 668 (1984)?

CERT. GRANTED 2/23/2009