

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

BERGHUIS, WARDEN *v.* THOMPCKINSCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 08–1470. Argued March 1, 2010—Decided June 1, 2010

After advising respondent Thompkins of his rights, in full compliance with *Miranda v. Arizona*, 384 U. S. 436, Detective Helgert and another Michigan officer interrogated him about a shooting in which one victim died. At no point did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney. He was largely silent during the 3-hour interrogation, but near the end, he answered “yes” when asked if he prayed to God to forgive him for the shooting. He moved to suppress his statements, claiming that he had invoked his Fifth Amendment right to remain silent, that he had not waived that right, and that his inculpatory statements were involuntary. The trial court denied the motion. At trial on first-degree murder and other charges, the prosecution called Eric Purifoy, who drove the van in which Thompkins and a third accomplice were riding at the time of the shooting, and who had been convicted of firearm offenses but acquitted of murder and assault. Thompkins’ defense was that Purifoy was the shooter. Purifoy testified that he did not see who fired the shots. During closing arguments, the prosecution suggested that Purifoy lied about not seeing the shooter and pondered whether Purifoy’s jury had made the right decision. Defense counsel did not ask the court to instruct the jury that it could consider evidence of the outcome of Purifoy’s trial only to assess his credibility, not to establish Thompkins’ guilt. The jury found Thompkins guilty, and he was sentenced to life in prison without parole. In denying his motion for a new trial, the trial court rejected as nonprejudicial his ineffective-assistance-of-counsel claim for failure to request a limiting instruction about the outcome of Purifoy’s trial. On appeal, the Michigan Court of Appeals rejected both Thompkins’ *Miranda* and his ineffective-assistance claims. The Fed-

Syllabus

eral District Court denied his subsequent habeas request, reasoning that Thompkins did not invoke his right to remain silent and was not coerced into making statements during the interrogation, and that it was not unreasonable, for purposes of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), see 28 U. S. C. §2254(d)(1), for the State Court of Appeals to determine that he had waived his right to remain silent. The Sixth Circuit reversed, holding that the state court was unreasonable in finding an implied waiver of Thompkins' right to remain silent and in rejecting his ineffective-assistance-of-counsel claim.

Held:

1. The state court's decision rejecting Thompkins' *Miranda* claim was correct under *de novo* review and therefore necessarily reasonable under AEDPA's more deferential standard of review. Pp. 7–17.

(a) Thompkins' silence during the interrogation did not invoke his right to remain silent. A suspect's *Miranda* right to counsel must be invoked "unambiguously." *Davis v. United States*, 512 U. S. 452, 459. If the accused makes an "ambiguous or equivocal" statement or no statement, the police are not required to end the interrogation, *ibid.*, or ask questions to clarify the accused's intent, *id.*, at 461–462. There is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel at issue in *Davis*. Both protect the privilege against compulsory self-incrimination by requiring an interrogation to cease when either right is invoked. The unambiguous invocation requirement results in an objective inquiry that "avoid[s] difficulties of proof and . . . provide[s] guidance to officers" on how to proceed in the face of ambiguity. *Davis, supra*, at 458–459. Had Thompkins said that he wanted to remain silent or that he did not want to talk, he would have invoked his right to end the questioning. He did neither. Pp. 8–10.

(b) Thompkins waived his right to remain silent when he knowingly and voluntarily made a statement to police. A waiver must be "the product of a free and deliberate choice rather than intimidation, coercion, or deception" and "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U. S. 412, 421. Such a waiver may be "implied" through a "defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver." *North Carolina v. Butler*, 441 U. S. 369, 373. If the State establishes that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver. The record here shows that Thompkins waived his right to remain silent. First, the lack of any contention

Syllabus

that he did not understand his rights indicates that he knew what he gave up when he spoke. See *Burbine, supra*, at 421. Second, his answer to the question about God is a “course of conduct indicating waiver” of that right. *Butler, supra*, at 373. Had he wanted to remain silent, he could have said nothing in response or unambiguously invoked his *Miranda* rights, ending the interrogation. That he made a statement nearly three hours after receiving a *Miranda* warning does not overcome the fact that he engaged in a course of conduct indicating waiver. Third, there is no evidence that his statement was coerced. See *Burbine, supra*, at 421. He does not claim that police threatened or injured him or that he was fearful. The interrogation took place in a standard-sized room in the middle of the day, and there is no authority for the proposition that a 3-hour interrogation is inherently coercive. Cf. *Colorado v. Connelly*, 479 U. S. 157, 163–164, n. 1. The fact that the question referred to religious beliefs also does not render his statement involuntary. *Id.*, at 170. Pp. 10–15.

(c) Thompson argues that, even if his answer to Helgert could constitute a waiver of his right to remain silent, the police were not allowed to question him until they first obtained a waiver. However, a rule requiring a waiver at the outset would be inconsistent with *Butler*’s holding that courts can infer a waiver “from the actions and words of the person interrogated.” 441 U. S., at 373. Any waiver, express or implied, may be contradicted by an invocation at any time, terminating further interrogation. When the suspect knows that *Miranda* rights can be invoked at any time, he or she can reassess his or her immediate and long-term interests as the interrogation progresses. After giving a *Miranda* warning, police may interrogate a suspect who has neither invoked nor waived *Miranda* rights. Thus, the police were not required to obtain a waiver of Thompson’s *Miranda* rights before interrogating him. Pp. 15–17.

2. Even if his counsel provided ineffective assistance, Thompson cannot show prejudice under a *de novo* review of this record. To establish ineffective assistance, a defendant “must show both deficient performance and prejudice.” *Knowles v. Mirzayance*, 556 U. S. ____, ____. To establish prejudice, a “defendant must show that 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. 668, 694, considering “the totality of the evidence before the judge or jury,” *id.*, at 695. Here, the Sixth Circuit did not account for the other evidence presented against Thompson. The state court rejected his claim that he was prejudiced by evidence of Purifoy’s earlier conviction. Even if it used an incorrect legal standard, this Court need not determine whether AEDPA’s deferential

Syllabus

standard of review applies here, since Thompkins cannot show prejudice under *de novo* review, a more favorable standard for him. *De novo* review can be used in this case because a habeas petitioner will not be entitled to relief if his or her claim is rejected on *de novo* review. See §2254(a). Assuming that failure to request a limiting instruction here was deficient representation, Thompkins cannot show prejudice, for the record shows that it was not reasonably likely that such an instruction would have made any difference in light of other evidence of guilt. The surviving victim identified Thompkins as the shooter, and the identification was supported by a surveillance camera photograph. A friend testified that Thompkins confessed to him, and the details of that confession were corroborated by evidence that Thompkins stripped and abandoned the van after the shooting. The jury, moreover, was capable of assessing Purifoy's credibility, as it was instructed to do. Pp. 17–19.

547 F. 3d 572, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, and ALITO, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined.