

Verbatim

**United States Court of Appeals for the Fourth Circuit
United States of America, Plaintiff - Appellee**

v

Nicholas Ragin, Defendant - Appellant

GREGORY, Circuit Judge: This appeal presents an issue of first impression in this Circuit: whether a defendant's right to effective assistance of counsel is violated when his counsel sleeps during trial.

We hold that a defendant is deprived of his Sixth Amendment right to counsel when counsel sleeps during a substantial portion of the defendant's trial. The Sixth Amendment guarantees a criminal defendant the assistance of counsel for his defense. U.S. Const. amend. VI. Although generally a defendant must show that his counsel's performance was deficient and prejudicial to prevail on a claim of ineffective assistance of counsel, see *Strickland v. Washington*, 466 U.S. 668 (1984), in *United States v. Cronin*, 466 U.S. 648 (1984), the Supreme Court held that there are certain situations where the reliability of a trial becomes so questionable that the defendant need not show that he was actually prejudiced. Instead, prejudice is presumed. We believe

that when counsel for a criminal defendant sleeps through a substantial portion of the trial, such conduct compromises the reliability of the trial, and thus no separate showing of prejudice is necessary.

This case presents such a situation. Nicholas Ragin's Sixth Amendment right to counsel was violated not because of specific legal errors or omissions indicating incompetence in 3 counsel's representation but because Ragin effectively had *no* legal assistance during a substantial portion of his trial. The evidence is not disputed; it demonstrates that counsel was asleep for much of Ragin's trial. As one witness testified, counsel was asleep '[f]requently . . . almost every day . . . morning and evening' for '30 minutes at least' at a time. These circumstances suggest "a breakdown in the adversarial process that our system counts on to produce just results," *Strickland*, 466 U.S. at 696, and from which we must presume prejudice to Ragin. We therefore conclude that Ragin was deprived of effective assistance of counsel during his trial, in violation of the Sixth Amendment.

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