

SCOTUS Opinion: Failure To File Appeal Is Constitutionally Deficient Even After Defendant Signs Appeal Waiver

27 Feb 2019

[James N. Markels](#)

In [Garza v. Idaho](#), Garza signed two plea agreements for state crimes, each of which included a waiver of his appeal rights. After he was sentenced, Garza told his counsel that he wanted to appeal. His counsel did not file any appeal, telling Garza that his waivers made any such appeal problematic. After the deadline to appeal passed, Garza sought postconviction relief in the state court, alleging that his counsel's performance was deficient under the Sixth Amendment. He cited to [Roe v. Flores-Ortega, 528 U.S. 470 \(2000\)](#), in which the U.S. Supreme Court held that an attorney's failure to file an appeal when requested by the defendant created the presumption of prejudice. The Idaho Supreme Court denied relief, holding that his appeal waivers contradicted any claim of deficient performance or resulting prejudice, aligning itself with a minority of the courts to consider the issue. The Court, in an opinion by Justice Sotomayor, reversed, holding that the presumption of prejudice established in *Flores-Ortega* applies regardless of whether a defendant has signed an appeal waiver. First, the majority reasoned that appeal waivers do not automatically bar all appeals—some claims are unwaivable. Moreover, the majority noted that filing a notice of appeal is a purely ministerial task for counsel. Even if such an appeal might be problematic due to a signed waiver, counsel is obligated to fulfill the defendant's wishes. Justice Thomas, joined by Justice Gorsuch in whole and Justice Alito in part, dissented, arguing that Garza's counsel acted reasonably to not file an appeal that would jeopardize the favorable plea agreements Garza signed, and that *Flores-Ortega* was distinguishable on the facts.

TAGGED: [scotus](#), [Sixth Amendment](#), [SCOTUS opinions](#), [Garza v. Idaho](#), [Appeal Waiver](#), [Roe v. Flores-Ortega](#)