

**FILED: September 12, 2012**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

MERVIN BARTEAUX,  
Petitioner-Appellant,

v.

DON MILLS,  
Superintendent,  
Two Rivers Correctional Institution,  
Defendant-Respondent.

Umatilla County Circuit Court  
CV081141

A145272

Linda Louise Bergman, Senior Judge.

On respondent's petition for reconsideration filed July 25, 2012. Opinion filed June 27, 2012. 250 Or App 767, \_\_\_ P3d \_\_\_.

Mary H. Williams, Deputy Attorney General, Anna M. Joyce, Solicitor General, and David B. Thompson, Assistant Attorney General, for petition.

Before Armstrong, Presiding Judge, and Haselton, Chief Judge, and Duncan, Judge.

PER CURIAM

Reconsideration allowed; former opinion clarified and adhered to as clarified.

1 PER CURIAM

2 Defendant has petitioned us to reconsider our decision that reversed and  
3 remanded the post-conviction judgment in this case, seeking, among other things,  
4 clarification of the tasks for the parties and the post-conviction court on remand. We  
5 allow the petition to provide the requested clarification.

6 In assessing a claim that trial counsel in petitioner's criminal case provided  
7 inadequate legal assistance, the post-conviction court proceeded from what has now been  
8 confirmed in *Lafler v. Cooper*, \_\_\_ US \_\_\_, 132 S Ct 1376, 182 L Ed 2d 398 (2012), and  
9 *Missouri v. Frye*, \_\_\_ US \_\_\_, 132 S Ct 1399, 182 L Ed 2d 379 (2012), to have been a  
10 false first premise. Accordingly, as defendant posits in his reconsideration petition, the  
11 "court intends for the parties and the post-conviction court to simply start over (*i.e.*, to  
12 consider anew both the deficient-performance question and the prejudice question), now  
13 that *Frye* and *Lafler*" have been decided.

14 Reconsideration allowed; former opinion clarified and adhered to as  
15 clarified.