No. _____

In the
Supreme Court of the United States

Daniel Ramet,

Petitioner,

v.

Robert LeGrande, et al.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Unopposed application for an extension of time to file a petition for a writ of certiorari

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To the Honorable Justice Elena Kagan, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the United States Court of Appeals for the Ninth Circuit.

Pursuant to Rule 13.5, Petitioner Daniel Ramet respectfully requests a **30-day extension** of time in which to file his petition for a writ of certiorari in this Court, to and including **January 3, 2020**.

Mr. Ramet intends to seek review of an opinion of the United States Court of Appeals for the Ninth Circuit filed on May 28, 2019, attached as Exhibit A. The Ninth Circuit denied a petition for rehearing in an order filed on September 5, 2019, attached as Exhibit B. The time to file a petition for a writ of certiorari in this Court currently expires on December 4, 2019, and this application has been filed more than ten days before that date. This Court has jurisdiction under 28 U.S.C. § 1254. Undersigned counsel represents Mr. Ramet through appointment under the Criminal Justice Act of 1964, see 18 U.S.C. §3006A(d)(7).

This habeas case challenges a state court judgment under 28 U.S.C. § 2254 and involves a claim for relief based on *Lafler* v. *Cooper*, 566 U.S. 156 (2012). The relevant state criminal proceedings began after Mr. Ramet strangled his 20-year-old daughter Amy Ramet to death. At trial,

the factual circumstances surrounding her death were undisputed in all material respects. Amy had moved back in with her father, who was destitute at the time. One day, the two began to argue, and in the midst of the argument, Mr. Ramet began strangling Amy and killed her. The police eventually arrested Mr. Ramet, and the State charged him with open murder. The State offered a favorable plea deal involving a sentence of 15 years to life, but his attorney incompetently advised him to turn down the deal because the attorney unreasonably believed they would have a really good shot at a manslaughter defense at trial. Mr. Ramet followed his attorney's advice and went to trial. The jury convicted him of first-degree murder and sentenced him to life without the possibility of parole.

Mr. Ramet litigated a *Lafler* claim in state court, and the state court unreasonably denied relief. Mr. Ramet raised the claim again in federal court. He explained that no reasonable attorney could think the undisputed facts of the case satisfied the elements of manslaughter, because Mr. Ramet's verbal argument with his daughter wasn't adequate provocation as a matter of law. The federal district court denied his petition, and the Ninth Circuit affirmed on appeal. In the court's view, even if the

attorney "gravely miscalculated Ramet's chances of obtaining a manslaughter conviction at trial," that sort of miscalculation wouldn't amount to deficient performance under *Lafler*. Exhibit A at 5.

Mr. Ramet intends to file a petition for a writ of certiorari addressing whether a petitioner can prove deficient performance under *Lafler* v. *Cooper* based on an attorney's "grave[] miscalculat[ion]" about the availability of a defense at trial. The Ninth Circuit concluded this type of grave miscalculation is insufficient to prove deficient performance, but Mr. Ramet intends to demonstrate in his petition that the court's decision is inconsistent with at least one other circuit court of appeals applying *Lafler*. Mr. Ramet also intends to demonstrate the court's decision is inconsistent with this Court's case law interpreting *Strickland* v. *Washington*, 466 U.S. 688 (1984), which in turn governs *Lafler* claims. Contrary to the lower court's reasoning, Mr. Ramet received deficient performance because his lawyer advocated rejecting a favorable plea deal to pursue a defense that had no reasonable chance of success at trial.

Counsel requires additional time to prepare a petition presenting this important issue to the Court. Counsel's duties in other non-capital

habeas cases will prevent him from completing the petition by the current deadline. As of the date of the filing of this application, counsel has been unable to devote sufficient time to the preparation of the petition because of, most recently, an opposition to a motion to dismiss filed on November 6, 2019, in *Burch* v. *Baker*, Case No. 2:17-cv-00656-MMD-VCF (D. Nev.), and an opposition to a motion to dismiss filed on November 8, 2019, in *Patterson* v. *Gentry*, Case No. 2:17-cv-02131-JCM-EJY (D. Nev.); an opening brief filed on November 8, 2019, in *Slaughter* v. *Baker*, Case No. 78760 (Nev. Sup. Ct.); and a deposition conducted on November 12, 2019, along with other discovery-related obligations, in *Sawyer* v. *Baker*, Case No. 3:16-cv-00627-MMD-WGC (D. Nev.), a case that will likely involve actual innocence arguments. In addition, counsel is working on a reply on the merits due on December 6, 2019, in *Matlean* v. *Williams*, Case No. 3:16-cv-00233-HDM-CLB (D. Nev.); the court has indicated it will not extend this deadline. Finally, counsel will be out of the country on vacation starting on November 19, 2019, through December 3, 2019. Based on these professional and personal obligations (among others), counsel requires additional time to prepare the petition in this matter.

Counsel has contacted counsel for the State, Deputy Solicitor General Jeffrey Conner, who stated he doesn't oppose this request for additional time.

Accordingly, Mr. Ramet respectfully requests this application be granted and the Court allow him until January 3, 2020, to file a petition for a writ of certiorari.

Dated November 18, 2019.

Respectfully submitted,

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EXHIBIT A

EXHIBIT A

NOT FOR PUBLICATION

FILED

MAY 28 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL A. RAMET, Petitioner-Appellant, v. ROBERT LEGRANDE; ATTORNEY GENERAL FOR THE STATE OF NEVADA, Respondents-Appellees.	No. 18-15206 D.C. No. 3:14-cv-00452-MMD-WGC MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Argued and Submitted May 15, 2019
San Francisco, California

Before: McKEOWN and GOULD, Circuit Judges, and LASNIK,** District Judge.

Daniel Ramet appeals the district court's dismissal of his petition for writ of habeas corpus under 28 U.S.C. § 2254. Ramet contends that he received ineffective assistance of counsel in connection with plea negotiations. We review

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

a district court's decision on a habeas corpus petition de novo. *Rodriguez v. McDonald*, 872 F.3d 908, 918 (9th Cir. 2017). We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

Ramet was convicted of the first-degree murder of his daughter by a jury in the Nevada state district court for Clark County. He was sentenced to life without the possibility of parole. Before trial, the state had offered Ramet a plea deal of life in prison with the possibility of parole after 15 years. Ramet's trial counsel, Norman Reed, recommended that Ramet reject the deal on Reed's belief that Ramet had a strong chance of obtaining a conviction for manslaughter. Ramet argues that Reed erred by advising him to reject the state's plea offer.

Our review is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Under AEDPA, we must deny habeas relief on any claim adjudicated on the merits in a state court proceeding unless the proceeding "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d).

A criminal defendant is entitled to reasonable assistance of counsel during a criminal prosecution, including during plea-bargaining. *See Lafler v. Cooper*, 566 U.S. 156, 162 (2012); *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984).

Strickland requires a petitioner to show (1) that trial counsel's performance was so deficient it denied him the counsel guaranteed by the Constitution and (2) that there is a reasonable probability that, but for the deficient performance, the outcome would have been different. 466 U.S. at 687. The Nevada Supreme Court rejected Ramet's ineffective assistance of counsel claim, concluding that Ramet could not show either deficient performance or prejudice. The district court denied Ramet's habeas corpus petition on the deficient performance prong and did not reach the prejudice prong.

Ramet contends that the Nevada Supreme Court and the district court erred in finding that Reed's performance was not deficient because, Ramet argues, Reed's advice was based on a mistake of law.[1] Ramet argues that Reed did not understand that under Nevada law, manslaughter requires "a serious and highly provoking injury" that is "sufficient to excite an irresistible passion in a reasonable person." Nev. Rev. Stat. § 200.050. The record does not support Ramet's contention. Reed's arguments at trial show that he understood the elements of the different degrees of murder and voluntary manslaughter. Reed emphasized to the jury that, although manslaughter requires provocation to be objectively reasonable,

[1] We reject the state's argument that Ramet's mistake-of-law argument is unexhausted and procedurally improper. The claim Ramet raised in his federal habeas corpus petition and the claim presented to the Nevada Supreme Court were substantially equivalent to the claim raised on this appeal. *See Picard v. Connor*, 404 U.S. 270, 278 (1971).

the jury must place the reasonable person in the defendant's circumstances. To that end, Reed focused on the multitude of stressors that Ramet had endured at the time of the killing. It therefore appears that Reed understood that Ramet's subjective provocation would not alone support a manslaughter conviction but that his strategy was to emphasize the conditions in which Ramet found himself. The district court correctly observed that "[t]here is no evidence that [Reed's] advice to Ramet included an 'incorrect legal rule,'" and the Nevada Supreme Court's conclusion that Reed was not deficient on this basis is not an unreasonable application of Supreme Court law.

Ramet also contends that the district court erred in concluding that the Nevada Supreme Court reasonably concluded that Reed's advice to reject the state's plea offer was properly based on the facts known to him at the time. After Ramet was arrested, he made several incriminating statements about the killing in phone calls to his other daughter. These phone calls were recorded and later produced by the state in discovery. Ramet argues that Reed "must not have looked at" the "jailhouse phone calls" because if he had, Reed would have concluded that Ramet did not have a viable shot at a manslaughter defense and would have advised Ramet to accept the state's plea offer. But Ramet's claim fails because he did not meet his burden to show that Reed had access to the jailhouse recordings before he advised Ramet to reject the plea offer. *See Burt v. Titlow*, 571 U.S. 12,

22–23 (2013).

In substance Ramet is arguing that Reed performed ineffectively because he gravely miscalculated Ramet's chances of obtaining a manslaughter conviction at trial. But "an erroneous strategic prediction about the outcome of a trial is not necessarily deficient performance." *Lafler*, 566 U.S. at 174. The Nevada Supreme Court reasonably concluded that Reed's advice to Ramet to reject the state's plea deal—which was premised on Reed's belief that Ramet had a good shot at a manslaughter conviction at trial—"falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689.

AFFIRMED.

EXHIBIT B

EXHIBIT B

FILED

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL A. RAMET, Petitioner-Appellant, v. ROBERT LEGRANDE; ATTORNEY GENERAL FOR THE STATE OF NEVADA, Respondents-Appellees.	No. 18-15206 D.C. No. 3:14-cv-00452-MMD-WGC District of Nevada, Reno ORDER DENYING PFREB AND MOTION TO EXPAND RECORD ON APPEAL

Before: McKEOWN and GOULD, Circuit Judges, and LASNIK,* District Judge.

The panel has voted to deny the petition for panel rehearing. The petition for panel rehearing is DENIED.

The full court was advised of the petition for rehearing en banc. No judge requested a vote on whether to rehear the matter en banc. The petition for rehearing en banc is DENIED.

Petitioner-Appellant's motion to expand the record on appeal is also DENIED. *See Cullen v. Pinholster*, 563 U.S. 170, 181–82 (2011).

* The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.