

In the
Supreme Court of the United States

ALFREDO CAMARGO,

Petitioner,

v.

DAVID SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS;
ATTORNEY GENERAL FOR THE STATE OF ARIZONA,

Respondents.

*On Petition for Writ of Certiorari
to the Ninth Circuit*

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a circuit court should automatically issue a certificate of appealability where a district court judge disagreed with a magistrate judge's Report and Recommendation regarding denial of a habeas claim arising from a state-court conviction?
2. Whether a federal court should ignore a reasoned decision on the merits by a state post-conviction court where a state appellate court wrongly applied a procedural bar to state appellate review?

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INTRODUCTION

After successfully convincing the Ninth Circuit to apply equitable tolling to achieve federal habeas review, Alfredo Camargo now contends that same court erred by refusing to issue a certificate of appealability following the denial of habeas relief after a thorough merits analysis of his constitutional claim by the District Court Judge. Camargo asserts that because the District Court Judge rejected the relevant portion of the Magistrate Judge’s recommendation as legally and factually unsound, there exists a *de facto* showing that “reasonable jurists could debate” that the petition should have been resolved differently, which commands issuance of a certificate of appealability. But actual judges disagreeing does not automatically satisfy 28 U.S.C. § 2253, nor does it signal that a claim should be encouraged to proceed further.

Because Ninth Circuit review, even were it appropriate, is unlikely to bring him relief, Camargo expands his request to include ignoring a state-court merits ruling so he can label the erroneous state appellate court timeliness dismissal (which was the basis for the Ninth Circuit applying equitable tolling and securing federal habeas review) the “last reasoned decision.” In other words, Camargo wishes to ignore the District Court Judge’s affirmance of the state court merits ruling and record, so he invents a circuit split regarding the “look through” doctrine. However, Camargo’s case is governed squarely by AEDPA and this Court’s existing case law.

STATEMENT OF THE CASE

More than a decade ago, Camargo kidnapped a woman from her home—at gunpoint, and in front of her family—and threatened to kill her if she did not do what he wanted. Camargo was caught running away from the scene of the kidnapping after tossing away a gun which was later recovered and which bore his fingerprints. The kidnapping victim and her husband both identified Camargo as the kidnapper.

Nevertheless, Camargo demanded that his counsel find some way to conjure up an acquittal. When his counsel correctly advised him that the only reasonable course was to plead guilty, Camargo ignored that advice and rejected multiple plea bargains. When his counsel continued to advise him to plead guilty, Camargo refused to speak to him and claimed he and his counsel had developed an irreconcilable “conflict.” The Arizona trial court held two hearings on the matter and concluded that the conflict was of Camargo’s own making—any new attorney would be faced with the same problem because Camargo unreasonably refused to accept sound legal advice.

Camargo ultimately admitted his guilt just before opening statements were to begin. At sentencing, he apologized for the harm he caused to the victims and argued that his willingness to admit guilt demonstrated that he was remorseful for his actions. That remorse was apparently short-lived, for Camargo insisted in two rounds of state post-conviction proceedings and on habeas review that his guilty plea should be vacated because of an alleged

“irreconcilable conflict” with his trial counsel. The state trial court repeatedly addressed this issue, finding it without merit because Camargo would have had the same conflict with any counsel. The state post-conviction court and the district court¹ affirmed the trial court’s resolution. (Pet. App. C.) Camargo unsuccessfully sought a certificate of appealability from the Ninth Circuit. (Pet. App. A & B.)

REASONS FOR DENYING THE PETITION

This Court grants certiorari only for “compelling reasons.” U.S. Sup. Ct. R. 10. Camargo attempts to show a circuit split on the questions presented, but even assuming such splits exist, his case is not an appropriate vehicle for this Court to resolve them because the factual and procedural history of his case supports the Ninth Circuit’s denial of a certificate of appealability. The state court in the instant case reasonably applied this Court’s clearly established federal law, and the ensuing federal habeas review of the court’s decision correctly affirmed it. This Court should deny certiorari.

¹ The district court dismissed Camargo’s First Amended Petition as untimely, however, the timeliness issue was granted a certificate of appealability to the Ninth Circuit, which applied equitable tolling and remanded for consideration on the merits (see *Camargo v. Ryan*, 684 Fed. Appx. 607 (9th Cir. 2017)), leading to the Second Amended Petition at issue here.

I. A circuit court of appeals should not automatically issue a certificate of appealability where a district court judge, disagreeing with a magistrate judge, denies habeas relief on a state-court conviction.

Camargo seeks a certificate of appealability, despite both the Arizona District Court and the Ninth Circuit denying him one. He contends that if a district court judge disagrees with a magistrate judge, there exists a de facto showing that “reasonable jurists” could find the district court’s decision “debatable or wrong.” (Pet. at 7–8.)

As this Court has recently reiterated, “[a] state prisoner whose petition for writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal.” *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Congress requires that the state-court convicted petitioner first obtain a certificate of appealability from a circuit justice or judge “only if the applicant has made a substantial showing of the denial of a constitutional right.” *Id.*; 28 U.S.C. § 2253(c)(1) and (2). *See also Gonzalez v. Thaler*, 565 U.S. 134, 140–41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). As this Court has explained, a petitioner must show that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n.4 (1983) (cleaned up). In other words, whether the magistrate and the district court judge agreed or disagreed is irrelevant to whether a certificate of appealability should issue.

Instead, the question is whether a petitioner brought claims that “deserve encouragement to proceed further,” (*Slack*, 529 U.S. at 484) and this requires a petitioner to “prove something more than the absence of frivolity or the existence of mere good faith on his or her part.” *Miller-El*, 537 U.S. 322, 338 (2003). A disagreement between a magistrate judge and a district court judge thus does not make an automatic showing that “reasonable jurists could debate” the denial of his habeas petition. Instead, to decide whether a certificate of appealability should issue, the court of appeals should make “a threshold inquiry into the underlying merit of the claims and ask only if the District Court’s decision was debatable.” *Buck*, 137 S. Ct. at 774, quoting *Miller-El*, 537 U.S. at 327 (cleaned up). The Ninth Circuit correctly did just that here, twice. (Pet. App. A & B, at 1a–3a.)

Camargo disputes the District Court Judge’s application of AEDPA deference to the state court post-conviction court’s dismissal on the merits of his claim that he was “constructively” denied constitutionally effective trial counsel due to an “irreconcilable conflict” with him, where the Magistrate Judge would have eluded such deference and granted an evidentiary hearing. (Pet. at 8; Pet. App. D, at 87a.) In explaining its rejection of this portion of the Report and Recommendation, the District Court Judge explained:

The record shows the Superior Court of Arizona in and for Maricopa County (the “Superior Court”) rejected on the merits Camargo’s claim of constructive denial of counsel and did not violate settled Supreme Court precedent in so ruling. The Magistrate Judge erred in not according deference to the Superior Court’s legal conclusions and findings of fact. There was not and could not have been any ineffective assistance of Camargo’s post-conviction relief counsel in not raising that unmeritorious claim. The mistaken

recommendation to supplement the record is contrary to the requirement that this federal habeas corpus proceeding be judged based on the record before the Superior Court. The R&R compounds those errors by grounding its recommendations in lower court authorities, not just Supreme Court precedents. By that chain of errors, the Magistrate Judge reached a recommendation plainly contrary to 28 U.S.C. § 2254 and the well-supported findings of the Superior Court.

(Pet. App. C, at 5a.) The District Court Judge then detailed the various motions and hearings in the state court record regarding Camargo’s “irreconcilable conflict” with his trial counsel—which led the trial court to conclude that Camargo would have “the very same conflicts” with new counsel. (*Id.* at 6a–14a.) The District Court Judge correctly concluded that because the state court ruled on the merits, those rulings are entitled to deference under 28 U.S.C. § 2254(d), and, further, that the state-court rulings were “well-supported by the record and not contrary to clearly established federal law,” Camargo’s claim asserting constructive denial of counsel was “baseless.” (*Id.* at 14a.) *See Morris v. Slappy*, 461 U.S. 1, 14 (1983) (“[W]e reject the claim that the Sixth Amendment guarantees a ‘meaningful relationship’ between an accused and his counsel.”) (footnote omitted). *See also United States v. Cronic*, 466 U.S. 648, 657, n.21 (1984) (“If counsel is a reasonably effective advocate, he meets constitutional standards irrespective of his client’s evaluation of his performance.”).

Camargo’s baseless claim was rejected on the merits by both the state trial and post-conviction courts on solid grounds that illustrate the Magistrate Judge’s errors and why reasonable jurists could not debate whether this claim deserves encouragement to proceed further. Thus, regardless of whether other district or

circuit courts have cited disagreement between magistrate and district court judges when issuing a certificate of appealability, it is the nature of the claim, *not* any alleged disagreement (or agreement) between actual judges that governs. And both the state court record and this Court’s case law affirm that Camargo’s constructive-denial-of-trial-counsel claim is not worthy of further review.

To avoid this, Camargo asserts a second faulty premise—that the “Ninth Circuit in its boilerplate denial of a COA” wrongly “looked through” the “reasoned decision of a higher state court that did not decide a properly-presented constitutional question to the decision of a lower court adjudicating the claim on the merits.” (Pet. at 11.) Camargo’s attempt fails because he conflates two questions—the state court of appeals’ ruling on the timeliness of Carmago’s request to review the state post-conviction proceedings (thus affecting *whether* federal review is available—the issue previously resolved in Camargo’s favor by the Ninth Circuit leading to the instant Second Amended Petition) and the state post-conviction court’s summary dismissal of Camargo’s constructive-denial-of-trial-counsel claim on the merits.

II. A federal court should not ignore a reasoned merits decision by a state post-conviction court where a state appellate court wrongly applied a procedural bar to state appellate review to secure de novo review in a habeas petition from a state-court conviction.

Camargo seeks de novo review of his baseless constructive-denial-of-counsel claim so he conjures a circuit split regarding the “look through” doctrine to evade AEDPA and the existing state court record. However, no such split exists, and, moreover, this Court’s precedent controls this case.

In analyzing the post-conviction court’s decision, the Magistrate Judge correctly noted that “[t]he PCR court dismissed [Camargo’s petition] ‘for the reasons stated in the Response to the Petition filed by the State.’” (Pet. App. D, at 56a.) However, that the state court failed to specifically identify its reasons for dismissing Camargo’s petition within the four corners of its order does not mean that the court’s order was not an adjudication of the merits on his “irreconcilable conflict” claim for purposes of § 2254(d). *See Harrington v. Richter*, 562 U.S. 86, 98 (2011) (§ 2254(d) does not require a state court to explain its reasonings). The post-conviction court’s order continued, explaining that Camargo’s post-conviction petition was summarily denied “pursuant to Rule 32.6(c), Ariz. R. Crim. P.” The 2010 version of Arizona Rule of Criminal Procedure 32.6(c) provided:

Summary Disposition. The court shall review the petition within twenty days after the defendant’s reply was due. On reviewing the petition, response, reply, files and records, and disregarding defects of form, the court shall identify all claims that are procedurally precluded under this rule. *If the court, after identifying all precluded claims, determines that no remaining claim presents a material issue of fact or law which would entitle the defendant to relief under this rule and that no purpose would be served by any further proceedings, the court shall order the petition dismissed . . .*

(Emphasis added.) Thus, the state court’s order unquestionably constitutes a merits decision for purposes of § 2254(d). By citing to the 2010 version of Rule 32.6(c), and not identifying any procedurally precluded claims, the state court implicitly held that it was denying Camargo’s claims on their merits—that, pursuant to the cited rule, no “claim present[ed] a material issue of fact or law which would entitle the defendant to relief[.]”

And because the state court’s order does not on its face specify the reasons for its denial of relief on his constructive-denial-of-counsel claim, Camargo was required to prove in his habeas proceeding that “there was no reasonable basis for the state court to deny relief.” *Richter*, 562 U.S. at 98. And in conducting this review, the district court was required to independently review the record that was before the state court. *Cullen v. Pinholster*, 563 U.S. 170, 181–82 (2011). Here, the District Court Judge correctly applied this standard of review, concluding that the Magistrate Judge wrongly concluded that Camargo’s claim was “colorable”—specifically citing state-court evidence that contradicted the Magistrate Judge’s characterization that there was a “breakdown in communication” and calling the Magistrate Judge’s conclusion regarding the trial court’s lack of sufficient inquiry into Camargo’s claims about his counsel “nonsense.” (Pet. App. C, at 17a–20a.)

The District Court Judge conducted a thorough review of the post-conviction court’s conclusions based on the state court record before it—which is the result Camargo desired when he successfully challenged the district court’s dismissal of his First Amended Petition on untimeliness grounds by persuading the Ninth Circuit to apply equitable tolling. *See Camargo*, 684 Fed. Appx. at 609–10. In other words, Camargo sought—and obtained—federal habeas merits review of his state conviction constitutional claim. However, he now seeks to avoid this result by quibbling with which state court decision was the last “reasoned” one on his claim, asserting that the erroneous state appellate timeliness dismissal cannot be “looked

through” to analyze the post-conviction court’s merits decision on the state court record, as the District Court Judge did here.

However, the District Court Judge’s approach was correct, and hardly controversial, much less a circuit split. Rather, it is in harmony with this Court’s controlling case law. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991) (“Where there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground.”) In *Ylst*, in order to analyze the constitutional claim, this Court began “by asking which is the last *explained* state-court judgment” on the constitutional claim. 501 U.S. at 805 (emphasis in original). Here, that is the post-conviction court’s dismissal on the merits in light of the state court record, which is precisely the process employed by the District Court Judge. *See also Wilson v. Sellers*, 133 S. Ct. 1188 (2018) (Applying *Ylst* “look through” doctrine to merits decision); *Premo v. Moore*, 562 U.S. 115, 123–33 (2011) (discussing and deferring exclusively to actual reasons for decision given by lower state court without regard to reviewing court’s summary affirmance).

Here, Camargo has essentially erased the state appellate court timeliness dismissal of review of the post-conviction court’s dismissal of his constructive-denial-of-trial-counsel claim to get federal review, and yet now claims that that defunct appellate court dismissal is the “last reasoned decision” on his constitutional claim, rather than looking through to the merits decision by the post-conviction court and the state court record. Camargo cannot have it both ways. The

Ninth Circuit granted him a merits review on his constructive-denial-of-counsel claim in federal district court, and he cannot now evade that by requiring the federal courts to ignore the last reasoned state court decision on the claim because he wants federal “look through” review to stop at the defunct state appellate court timeliness dismissal. This Court should deny review.

CONCLUSION

The petition for a writ of certiorari should be denied.

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