UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

HAROLD EDWARDS, Petitioner-Appellant, v. STATE OF NEVADA; ATTORNEY GENERAL FOR THE STATE OF NEVADA, Respondents-Appellees.	No. 21-16515 D.C. No. 2:18-cv-00346-JAD-BNW District of Nevada, Las Vegas ORDER

Before: O'SCANNLAIN and BYBEE, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 3) is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAROLD EDWARDS, Petitioner-Appellant, v. STATE OF NEVADA; ATTORNEY GENERAL FOR THE STATE OF NEVADA, Respondents-Appellees.	No. 21-16515 D.C. No. 2:18-cv-00346-JAD-BNW District of Nevada, Las Vegas ORDER

Before: NGUYEN and FORREST, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Harold Edwards,

Petitioner

v.

State of Nevada, et al.,

Respondents

Case No.: 2:18-cv-00346-JAD-BNW

Order Denying Habeas Petition

[ECF No. 3]

Pro se federal habeas petitioner Harold Edwards pled guilty to burglary, possession of credit or debit card without cardholder's consent, and battery on a protected person after stealing a Bellagio employee's backpack from her employee locker. He was adjudicated under Nevada's large habitual-criminal statute and sentenced to a term of 10–25 years in state prison. Edwards filed this petition under 28 U.S.C. § 2254[1] in 2018, and last year I dismissed four of his five grounds as defaulted or not cognizable in federal habeas.[2] The only remaining ground—ineffective assistance of counsel—has been fully briefed. I now address the claim on its merits. Because Edwards has not shown that his defense counsel was deficient in advising him to plead guilty and stipulate to habitual-offender status, or that he was prejudiced by counsel's investigation into his case, or that the state court's decision to the contrary unreasonably applied *Strickland v. Washington*, I deny the petition on its merits.

[1] ECF No. 1-1.

[2] ECF No. 46.

Background

Edwards pled guilty to burglary, battery on a protected person, and five counts of possession of credit or debit card without cardholder's consent,[3] after a Bellagio employee's backpack went missing from her employee locker and surveillance tape showed Edwards emerging from an employee-only area with it.[4] In accordance with his guilty plea agreement, Edwards was adjudicated under the large habitual-criminal statute, and the state district court sentenced him to a term of 10–25 years in prison.[5] The judgment of conviction was filed on December 21, 2016.[6]

Edwards initially appealed, but he then filed a notice of withdrawal of appeal.[7] The Nevada Supreme Court ordered the appeal dismissed,[8] but ultimately affirmed the denial of his state postconviction habeas corpus petition.[9] In February 2018, Edwards dispatched his federal habeas petition for filing.[10] After I dismissed four of the petition's five grounds,[11] respondents answered the remaining ground,[12] and Edwards replied.[13]

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[3] Exh 18. Exhibits referenced in this order are exhibits to respondents' motion to dismiss, ECF No. 27, and are found at ECF Nos. 28–29.

[4] Exh. 3.

[5] Exh. 25.

[6] Exh. 30.

[7] Exhs. 26, 35.

[8] Exh. 36.

[9] Exh. 57.

[10] ECF No. 3.

[11] ECF No. 46.

[12] ECF No. 48.

[13] ECF No. 49.

Discussion

I. Legal standards

A. Antiterrorism and Effective Death Penalty Act (AEDPA)

If a state court has adjudicated a habeas corpus claim on its merits, a federal district court may only grant habeas relief on that claim if the state court's adjudication "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 "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."[14] A state court acts contrary to clearly established federal law if it applies a rule contradicting the relevant holdings or reaches a different conclusion on materially indistinguishable facts.[15] And a state court unreasonably applies clearly established federal law if it engages in an objectively unreasonable application of the correct governing legal rule to the facts.[16] Section 2254 does not, however, "require state courts to *extend*" Supreme Court precedent "to a new context where it should apply" or "license federal courts to treat the failure to do so as error."[17] The "objectively unreasonable" standard is difficult to satisfy;[18] "even 'clear error' will not suffice."[19]

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[14] 28 U.S.C. § 2254(d).

[15] *Price v. Vincent*, 538 U.S. 634, 640 (2003).

[16] *White v. Woodall*, 134 S. Ct. 1697, 1705–07 (2014).

[17] *White*, 134 S. Ct. 1705–06.

[18] *Metrish v. Lancaster*, 569 U.S. 351, 357–58 (2013).

[19] *Wood v. McDonald*, 135 S. Ct. 1372, 1376 (2015) (per curiam) (citation omitted); *see also Schriro v. Landrigan*, 550 U.S. 465, 473 (2007) ("The question . . . is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold.").

Here Can because there is a

→ Habeas relief ~~may only~~ be granted ~~if "there is no~~ possibility [that] fairminded jurists could disagree that the state court's decision conflicts with [the Supreme Court's] precedents."[20] As "a condition for obtaining habeas relief," a petitioner must show that the state-court decision "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility of fairminded disagreement."[21] "[S]o long as 'fairminded jurists could disagree' on the correctness of the state court's decision," habeas relief under Section 2254(d) is precluded.[22] AEDPA "thus imposes a 'highly deferential standard for evaluating state-court rulings,' . . . and 'demands that state-court decisions be given the benefit of the doubt.'"[23]

If a federal district court finds that the state court committed an error under § 2254, the district court must then review the claim de novo.[24] The petitioner bears the burden of proving by a preponderance of the evidence that he is entitled to habeas relief,[25] but state-court factual findings are presumed correct unless rebutted by clear and convincing evidence.[26]

In the instant case State Court factual findings are incorrect by Clear and Convincing evidence

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[20] *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

[21] *Id.* at 103.

[22] *Id.* at 101.

[23] *Renico v. Lett*, 559 U.S. 766, 773 (2010) (citations omitted).

[24] *Frantz v. Hazey*, 533 F.3d 724, 735 (9th Cir. 2008) (en banc) ("[I]t is now clear both that we may not grant habeas relief simply because of § 2254(d)(1) error and that, if there is such error, we must decide the habeas petition by considering de novo the constitutional issues raised.").

[25] *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

[26] 28 U.S.C. § 2254(e)(1).

B. Ineffective Assistance of Counsel (IAC)

The right to counsel embodied in the Sixth Amendment provides "the right to the effective assistance of counsel."[27] Counsel can "deprive a defendant of the right to effective assistance[] simply by failing to render 'adequate legal assistance[.]'"[28] In the hallmark case of *Strickland v. Washington*, the United States Supreme Court held that an ineffective-assistance claim requires a petitioner to show that: (1) his counsel's representation fell below an objective standard of reasonableness under prevailing professional norms in light of all of the circumstances of the particular case;[29] and (2) it is reasonably probable that, but for counsel's errors, the result of the proceeding would have been different.[30]

A reasonable probability is "probability sufficient to undermine confidence in the outcome."[31] Any review of the attorney's performance must be "highly deferential" and must adopt counsel's perspective at the time of the challenged conduct so as to avoid the distorting effects of hindsight.[32] "The question is whether an attorney's representation amounted to incompetence under prevailing professional norms, not whether it deviated from best practice or most common custom."[33] The burden is on the petitioner to overcome the presumption that counsel made sound trial-strategy decisions.[34]

Clark

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[27] *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)).

[28] *Id.* (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 335–36 (1980)).

[29] *Strickland*, 466 U.S. at 690.

[30] *Id.* at 694.

[31] *Williams v. Taylor*, 529 U.S. 362, 390–91 (2000).

[32] *Strickland*, 466 U.S. at 689.

[33] *Harrington*, 562 U.S. at 104.

[34] *Id.*

The *Strickland* standard applies in the context of guilty pleas.[35] In a guilty-plea case, to prove deficient performance, the petitioner must show that his guilty plea did not "represent[] a voluntary and intelligent choice among the alternative[s] open to" him.[36] He "may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases."[37] To prove prejudice, the petitioner must show that "there is a reasonable probability that, but for counsel's errors, [the petitioner] would not have pleaded guilty and would have insisted on going to trial."[38]

The United States Supreme Court has described federal review of a state supreme court's decision on an ineffective-assistance claim as "doubly deferential."[39] So, district courts must "take a 'highly deferential' look at counsel's performance . . . through the 'deferential lens of § 2254(d)'" and consider only the record that was before the state court that adjudicated the claim on its merits.[40]

II. Evaluating Edwards's remaining claim

In his only remaining ground for federal habeas relief, Edwards argues that his Sixth Amendment right to counsel was violated because his defense attorney was ineffective. Edwards lists three reasons: counsel (a) "allowed [Edwards] to plead guilty and stipulate to habitual[-]offender status without reviewing the documents for proof of [prior] convictions," (b)

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[35] *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

[36] *Id.* at 56 (citation omitted).

[37] *United States v. Signori*, 844 F.2d 635, 638 (9th Cir. 1988).

[38] *Hill*, 474 U.S. at 59.

[39] *Cullen*, 563 U.S. at 190 (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)).

[40] *Id.* at 181–84, 190.

"unreasonably fail[ed] to meaningfully investigate [Edwards's] innocence," and (c) "fail[ed] to adequately investigate the facts of the case and prepare for trial."[41] None of these reasons constitutes ineffective assistance of counsel under *Strickland*; even if they did, the state supreme court's decision to the contrary was reasonable under AEDPA.

A. Ground 3(a)—allowing Edwards to plead guilty and stipulate to status

A defendant's "representations" at a plea "hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings."[42] They are "give[n] 'substantial weight"[43] and "carry a strong presumption of verity"[44] because they are the "best evidence"[45] of the defendant's then-existing state of mind. A petitioner's "subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal."[46] Thus, a proper plea canvass is "sufficient" evidence of a knowing and voluntary plea.[47]

In his plea canvass, Edwards repeatedly responded that he was satisfied with his attorney's services and had discussed the plea agreement with his attorney, that he had read and understood the plea agreement, and that he was signing the agreement "voluntarily" and not "under duress or coercion."[48] Edwards said that he understood that the parties "stipulate[d] to adjudication under the large[-]habitual[-]criminal statute;" that he would receive a 10–25-year

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[41] ECF No. 3 at 25.

[42] *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977).

[43] *United States v. Kaczynski*, 239 F.3d 1108, 1115 (9th Cir. 2001).

[44] *Blackledge*, 431 U.S. at 74.

[45] *United States v. Jimenez-Dominguez*, 296 F.3d 863, 869 (9th Cir. 2002).

[46] *Id.* at 75 (citations omitted).

[47] *United States v. Baramdyka*, 95 F.3d 840, 844 (9th Cir. 1996).

[48] Exh. 17 at 7–8.

sentence; and that he was waiving his right to testify in his own defense, confront adverse witnesses at trial, and appeal his conviction.[49] He further acknowledged that "accepting [the] plea bargain [was] in his best interest and a trial would [have] be[en] contrary to [his] best interest," and that, per the agreement, two charges would be dismissed and Edwards's sentence in this case would run concurrently with another he was going to serve.[50] When the presiding judge asked him why he was pleading guilty, Edwards answered "I don't want to get life without parole."[51] And, before the judge accepted the negotiation, he asked Edwards whether he committed the crime he was pleading guilty to, and Edwards answered in the affirmative.[52]

At Edwards's first sentencing hearing, he argued that the three Illinois judgments of conviction that were submitted to the court to support his large-habitual-criminal adjudication were constitutionally infirm.[53] He contended that there was no proof that he was represented by counsel in two of the prior convictions because they did not list the name of his attorneys and the third was not a felony in Nevada.[54] The presiding judge continued the sentencing so the relevant documents could be retrieved from "the vault."[55] At Edwards's second sentencing hearing, the district judge, having "reviewed . . . the certified copies of convictions," and, "following [the] stipulation" in the negotiated plea agreement, found that "the State ha[d] met [its] responsibility" and "Mr. Edwards [was] wrong" about his rights being violated.[56]

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[49] *Id.* at 5–6.

[50] *Id.* at 6, 8.

[51] *Id.* at 9.

[52] *Id.* at 9–10.

[53] Exh. 24 at 4–5.

[54] *Id.* at 4–5, 9.

[55] *Id.* at 3, 9.

[56] Exh. 25 at 3.

Upon state postconviction proceedings, the Nevada Supreme Court rejected Edwards's claim that counsel should not have convinced him to plead guilty because he "fail[ed] to demonstrate a reasonable probability that he would have insisted on going to trial absent counsel's alleged error given the benefit he received."[57] The court noted that, as a result of his pleading guilty, Edwards was given the least-harsh sentence available under Nevada law, two charges were dismissed, and the sentence would run concurrently with another district court case.[58] And the court recognized that the three "separate judgments of conviction[] were constitutionally valid on their face" and Edwards "failed to rebut the presumption of constitutional firmity."[59]

Here, Edwards repeats the conclusory allegations he presented to the state courts. He has not demonstrated that the prior judgments of conviction were constitutionally infirm or that, given the benefits he received in return for his plea, he would have proceeded to trial if counsel had brought the alleged infirmities to light. Even if these facts amounted to ineffective assistance under *Strickland*, Edwards fails to show that the state court's decision was "contrary to, or an unreasonable application of" *Strickland* or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding" as required by AEDPA.[60] Federal habeas relief is denied as to ground 3(a).

B. Grounds 3(b) and 3(c)—inadequate investigation

Edwards asserts that his counsel was ineffective because he failed to investigate Edwards's "claim of innocence and credible story" and failed to "investigate the facts of the case

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[57] Exh. 57 at 4–5.

[58] *Id.*

[59] *Id.* (citations omitted).

[60] 28 U.S.C. §2254(d).

and prepare for trial."[61] In support of this claim, Edwards cites his counsel's failure to file timely motions for discovery or case consolidation, and he alleges that counsel only visited him a couple of times and never discussed defense strategy.[62] The Nevada Supreme Court rejected both of these sub-grounds, noting that Edwards did not identify what "counsel would have discovered with a more thorough or timely investigation" that would have led him to insist on going to trial.[63] And Edwards did not show a reasonable probability that he would have gone to trial absent counsel's alleged deficient performance because his petition stated that he would "have preferred to have this case transferred to a different department and not that he would have insisted on going to trial."[64]

Edwards's claims in his federal petition that his counsel failed to investigate are similarly bare and unsupported. He concedes that his counsel visited the scene of the crime to investigate his story.[65] Counsel filed an ex-parte motion to permit access to non-public areas of the Bellagio and renewed Edwards's pro per discovery motion, both of which the court granted.[66] The state supreme court's decision correctly points out that Edwards never alleges that, if counsel had investigated more, Edwards would have gone to trial—only that he would have preferred a different district-court department. Counsel's performance was neither deficient nor prejudicial to Edwards, and the state court's decision was therefore a reasonable application of *Strickland.* Federal habeas relief is thus denied as to grounds 3(b) and 3(c).

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[61] ECF No. 3 at 25.

[62] *Id.* at 27–29.

[63] Exh. 57 at 4 (citing *Molina v. State*, 87 P.3d 533, 538 (Nev. 2004)).

[64] *Id.* at 4.

[65] ECF No. 3 at 28–29.

[66] Exhs. 12, 13, 15.

III. Certificate of Appealability

The right to appeal from the district court's denial of a federal habeas petition requires a certificate of appealability. To obtain that certificate, the petitioner must make a "substantial showing of the denial of a constitutional right."[67] "Where a district court has rejected the constitutional claims on the merits," that showing "is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."[68] Because I have rejected petitioner's constitutional claims on their merits, and he has not shown that this assessment of his claims is debatable or wrong, I find that a certificate of appealability is unwarranted in this case.

Conclusion

IT IS THEREFORE ORDERED that the petition **[ECF No. 3] is DENIED**. And because reasonable jurists would not find my decision to deny this petition to be debatable or wrong, a **certificate of appealability is DENIED**.

The Clerk of the Court is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE.**

U.S. District Judge Jennifer A. Dorsey
September 1, 2021

[67] 28 U.S.C. § 2253(c).

[68] *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also James v. Giles*, 221 F.3d 1074, 1077–79 (9th Cir. 2000).

Court of Appeals Ninth Circuit
Case No.: 21-15573
D.C. NO.: 2:18-cv-00346-JAD-BNW

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Harold Edwards,

Petitioner

v.

State of Nevada, et al.,

Respondents

Case No. 2:18-cv-00346-JAD-BNW

Order Granting Respondents' Motion to Dismiss and to File the PSR under Seal, Denying Petitioner's Motion for Summary Judgment, and Setting Merits Briefing Schedule

[ECF Nos. 27, 30, 40]

Pro se petitioner Harold Edwards pled guilty to burglary, possession of credit or debit card without cardholder's consent, and battery on a protected person after stealing a Bellagio employee's backpack from her employee locker. He was adjudicated under the [redacted] habitual-criminal statute and sentenced to a term [redacted] years in Nevada state prison. Edwards seeks a writ of habeas corpus under 28 U.S.C. § 2254.[1] Respondents move to dismiss grounds 1, 2, 4, and 5 as either not cognizable in federal habeas or defaulted, leaving unchallenged only his ineffective-assistance claims.[2] They also move to seal Edwards's presentence investigation report, which is filed as Exhibit 20 to the motion to dismiss. Edwards opposes the motion to dismiss,[3] and he filed a motion for summary judgment.[4]

Because I find that Ground 2 alleges only a state-law error for which federal habeas relief is not available, and because Grounds 1, 4, and 5 are procedurally barred, I dismiss these grounds. I also seal Exhibit 20 because it contains sensitive, confidential information. I then deny Edwards's summary judgment motion because that relief is not procedurally appropriate here.

[1] ECF No. 1-1.

[2] ECF No. 27.

[3] ECF No. 33.

[4] ECF No. 40.

Procedural History and Background

Edwards pleaded guilty to burglary, five counts of possession of credit or debit card without cardholder's consent, and battery on a protected person,[5] after a Bellagio employee's backpack went missing from her employee locker and surveillance tape showed Edwards emerging from an employee-only area with it.[6] In accordance with his guilty plea agreement, Edwards was adjudicated under the large habitual-criminal statute, and the state district court sentenced him to a term of [redacted] years in prison.[7] The judgment of conviction was filed on December 21, 2016.[8]

Edwards initially appealed, but he then filed a notice of withdrawal of appeal.[9] The Nevada Supreme Court ordered the appeal dismissed.[10] Ultimately, the Nevada Supreme Court affirmed the denial of his state postconviction habeas corpus petition.[11] In February 2018, Edwards dispatched his federal habeas petition for filing.[12]

Discussion

I. Motion to Dismiss Grounds 1, 2[redacted]5 [ECF No. 27]

A. Ground 2 is a state-law claim that is not cognizable in federal habeas.

A state prisoner is entitled to federal habeas relief only if he is being held in custody in violation of the constitution, laws, or treaties of the United States.[13] Unless an issue of federal constitutional or statutory law is implicated by the facts presented, the claim is not cognizable

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[5] Exh 18. Exhibits referenced in this order are exhibits to respondents' motion to dismiss, ECF No. 27, and are found at ECF Nos. 28–29.

[6] Exh. 3.

[7] Exh. 25.

[8] Exh. 30.

[9] Exhs. 26, 35.

[10] Exh. 36.

[11] Exh. 57.

[12] ECF No. 3.

[13] 28 U.S.C. § 2254(a).

under federal habeas corpus.[14] A petitioner may not transform a state-law issue into a federal one merely by asserting a violation of due process.[15] Alleged errors in the interpretation or application of state law do not warrant habeas relief.[16]

In Ground 2, Edwards asserts that the state district court abused its discretion when it denied his motion to withdraw his guilty plea.[17] Respondents argue that this is a state-law claim only.[18] They also point out that Edwards does not even identify a constitutional right impacted by these factual allegations. Indeed, Ground 2 alleges an error only in the application of Nevada state law. Therefore, I dismiss Ground 2 for failure to state a claim for which federal habeas relief may be granted.

B. Grounds 1, 4, and 5 are barred.

28 U.S.C. § 2254(d), a provision of the Antiterrorism and Effective Death Penalty Act (AEDPA), authorizes this court to grant habeas relief if the relevant state court decision was either: (1) contrary to clearly established federal law as determined by the Supreme Court or (2) involved an unreasonable application of clearly established federal law as determined by the Supreme Court. A federal court will not review a claim for habeas relief if the state-court decision rested on a procedural state-law ground that is independent of the federal question and adequate to support the judgment[19] "unless the prisoner can demonstrate cause for the default and actual prejudice" from "the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice."[20] The procedural-default

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[14] *Estelle v. McGuire*, 502 U.S. 62, 68 (1991).

[15] *Langford v. Day*, 110 F.3d 1380, 1381 (9th Cir. 1996).

[16] *Hubbart v. Knapp*, 379 F.3d 773, 779–80 (9th Cir. 2004).

[17] ECF No. 3 at 23–25.

[18] ECF No. 27 at 6.

[19] *Coleman v. Thompson*, 501 U.S. 722, 730–31 (1991).

[20] *Coleman*, 501 U.S. at 750; *see also Murray v. Carrier*, 477 U.S. 478, 485 (1986).

doctrine ensures that the state's interest in correcting its own mistakes is respected in all federal habeas cases.[21]

To demonstrate cause for a procedural default, the petitioner must be able to "show that some objective factor external to the defense impeded" his efforts to comply with the state procedural rule.[22] For cause to exist, the external impediment must have prevented the petitioner from raising the claim.[23] To demonstrate a fundamental miscarriage of justice, a petitioner must show that the constitutional error complained of probably resulted in the conviction of an actually innocent person.[24] This is a narrow exception, and it is reserved for extraordinary cases only.[25] Bare allegations unsupplemented by evidence do not tend to establish actual innocence sufficient to overcome a procedural default.[26]

All of Edwards's claims in Grounds 1, 4, and 5 are procedurally barred. In Ground 1, Edwards argues that the court failed to comply with the requirements of the large habitual criminal statute at sentencing in violation of his Fourteenth Amendment due-process rights.[27] In Ground 4, he contends that the prosecutor committed misconduct when he retaliated against Edwards by proffering a plea deal that was less favorable to Edwards than an initial global plea deal involving another case that Edwards rejected.[28] And in Ground 5, Edwards asserts that his adjudication as a habitual criminal was so disproportionate to the offense that it constitutes cruel and unusual punishment in violation of the Eighth Amendment.[29] Edwards withdrew his direct

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[21] *See Koerner v. Grigas*, 328 F.3d 1039, 1046 (9th Cir. 2003).

[22] *Murray*, 477 U.S. at 488 (emphasis added).

[23] *See McCleskey v. Zant*, 499 U.S. 467, 497 (1991).

[24] *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998). "'[A]ctual innocence' means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998).

[25] *Sawyer v. Whitley*, 505 U.S. 333, 340 (1992).

[26] *Thomas v. Goldsmith*, 979 F.2d 746, 750 (9th Cir. 1992).

[27] ECF No. 3 at 3–23.

[28] *Id. at* 30–33.

[29] *Id.* at 33–40.

appeal.[30] He then raised these three grounds for the first time in his state postconviction habeas petition.[31] The Nevada Supreme Court affirmed the denial of these claims (among others) as procedurally barred because they fell outside the scope of claims permissible in a postconviction habeas petition challenging a judgment of conviction based on a guilty plea.[32]

The Ninth Circuit Court of Appeals has held that, at least in non-capital cases, application of the procedural bar at issue in this case—NRS 34.810—is an independent and adequate state ground.[33] Therefore, the Nevada Supreme Court's determination that federal grounds 1, 4, and 5 were procedurally barred under NRS 34.810(1)(b) was an independent and adequate ground to affirm the denial of the claims in the state petition. The burden thus falls on Edwards to prove good cause for the default and actual prejudice.[34] Although Edwards responds that his claims demonstrate that his constitutional rights were violated, he does not argue that he can demonstrate cause and prejudice to excuse the default. I thus dismiss Grounds 1, 4, and 5 as procedurally barred.

II. Motion to Seal Exhibit 20 [ECF No. 30]

Respondents move for leave to file Exhibit 20 to their motion to dismiss under seal.[35] Unless a particular court record is one "traditionally kept secret," there is a "strong presumption in favor of access" to the record.[36] Parties seeking to seal a judicial record must overcome this presumption by "articulat[ing] compelling reasons supported by specific factual findings" that outweigh the traditional right of public access to each document they seek to seal.[37] In general, compelling reasons for sealing exist when court records might become a vehicle for improper

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[30] Exhs. 35, 36.

[31] Exh. 37.

[32] Exh. 57; NRS 34.810(1)(a).

[33] *Vang v. Nevada*, 329 F.3d 1069, 1073–75 (9th Cir. 2003); *see also Bargas v. Burns*, 179 F.3d 1207, 1210–12 (9th Cir. 1999).

[34] NRS 34.810(3).

[35] ECF No. 30.

[36] *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

[37] *Id.*

purposes, such as "to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets."[38]

Exhibit 20 is Edwards's presentence investigation report. I find that respondents have demonstrated compelling reasons to seal this document. A presentence investigation report is a type of state-court record that is traditionally given confidential treatment because it contains sensitive and private information like social-security numbers, family history, and medical information. The need to protect the personal and sensitive nature of the information in this document outweighs the traditional right of public access to this record. Accordingly, I grant respondents' motion to seal Exhibit 20 and direct the Clerk of Court to maintain the seal on this document.

III. Edwards's Motion for Summary Judgment [ECF No. 40]

Finally, I note that Edwards has filed a motion for summary judgment asking the court to grant his habeas petition.[39] Summary judgment is available under Federal Rule of Civil Procedure 56 when the movant demonstrates in a civil lawsuit that there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law.[40] With no explanation of why this substitute procedure should apply in this case, Edwards essentially asks this court to bypass a merits decision on his petition under 28 U.S.C. § 2254 in favor of a truncated summary-judgment decision.

But federal habeas relief is governed by statute and allows the court to grant a petition only if the state-court adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state-court proceeding. For this court to make that determination, it must first evaluate the full merits briefing on this petition, which has not yet been completed. This court will rule on

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[38] *Demaree v. Pederson*, 887 F.3d 870, 884 (9th Cir. 2018) (quoting *Kamakana*, 447 F.3d at 1179).

[39] ECF No. 40.

[40] Fed. R. Civ. P. 56.

the merits of Edwards's petition after the respondents file an answer to the remaining claims and Edwards has an opportunity to reply. The motion for summary judgment is denied.

Conclusion

IT IS THEREFORE ORDERED that respondents' motion to dismiss **[ECF No. 27] is GRANTED. Grounds 1, 2, 4, and 5 are dismissed,** leaving only the ineffective-assistance-of-counsel claims in Ground 3.

IT IS FURTHER ORDERED that respondents' motion for leave to file the presentence investigation report under seal **[ECF No. 30] is GRANTED. The Clerk of Court is directed to MAINTAIN THE SEAL on ECF No. 31.**

IT IS FURTHER ORDERED that petitioner's motion for summary judgment **[ECF No. 40] is DENIED.**

IT IS FURTHER ORDERED that **respondents have until April 28, 2020, to file an answer** to the petition; **petitioner will then have 45 days** after service of respondents' answer to file a reply.

U.S. District Judge Jennifer A. Dorsey
Dated: February 26, 2020

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76590

FILED

MAR 15 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

In his March 6, 2017, petition, appellant claimed: (1) the habitual criminal adjudication violated his due process rights, (2) the district court did not let him argue at sentencing or address errors in the presentence investigation report, (3) the State improperly filed a notice of intent to seek habitual criminal adjudication instead of amending the information to include a count of habitual criminality, (4) the district court abused its discretion in denying his presentence motion to withdraw a guilty plea, (5) the prosecution was vindictive and the prosecutor committed

[1]Having considered the pro se brief filed by appellant, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. *See* NRAP 34(f)(3).

misconduct, and (6) the large habitual criminal adjudication constituted cruel and unusual punishment. These claims fell outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. *See* NRS 34.810(1)(a). And contrary to appellant's assertions, the appeal-waiver language in the guilty plea agreement permitted appellant to challenge his conviction through a postconviction petition but only in compliance with the procedural rules set out in NRS chapter 34. Because these claims exceed the scope of the petition, the district court did not err in rejecting them.

Next, appellant claims that he received ineffective assistance of trial counsel.[2] To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

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[2]We note that appellant represented himself at the sentencing hearings.

Appellant claims that trial counsel failed to meaningfully investigate his claim of innocence and prepare for trial. Appellant asserts that counsel did not file a discovery motion, did not file a timely motion to consolidate cases, delayed in filing a motion to access the crime scene, and visited him only a couple of times. Appellant fails to demonstrate that his trial counsel's performance was deficient because he did not identify what information trial counsel would have discovered with a more thorough or timely investigation. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Consequently, appellant did not demonstrate a reasonable probability that he would have gone to trial absent trial counsel's performance. We further note that appellant's stated dissatisfaction with the timing of the motion to consolidate is that he would have preferred to have this case transferred to a different department and not that he would have insisted on going to trial. Thus, the district court did not err in denying these claims.

Appellant next claims that trial counsel was ineffective for allowing him to plead guilty and stipulate to habitual criminal status without reviewing the prior convictions. Appellant argues that the prior convictions were constitutionally infirm because two of the prior convictions did not list the name of the attorney, two of the prior convictions were prosecuted in the same information, and one of the prior convictions was not a felony in Nevada. Appellant fails to demonstrate that his trial counsel's performance was deficient because the three prior convictions that

were submitted for consideration,[3] involving three separate judgments of conviction, were constitutionally valid on their face and appellant failed to rebut the presumption of constitutional firmity. *See* NRS 207.010(1)(b) (setting forth that a prior conviction may be considered a felony when it is a felony in this state or in the situs state); NRS 207.016(5) (stating that a certified copy of a felony conviction is prima face evidence of conviction of a prior felony); *Dressler v. State*, 107 Nev. 686, 693, 819 P.2d 1288, 1292-93 (1991) (recognizing that a judgment of conviction is entitled to a presumption of regularity and holding that after the State has presented valid records of a judgment of conviction which do not, on their face, raise a presumption of constitutional infirmity, it is the defendant's burden to establish by a preponderance of the evidence that the conviction is constitutionally infirm). No authority requires the specific name of an attorney appear in the documents in order to establish that a defendant was represented by counsel in the prior proceedings. Appellant further fails to demonstrate a reasonable probability that he would have insisted on going to trial absent counsel's alleged error given the benefit he received, a stipulation to the least harsh sentence under NRS 207.010(1)(a), the dismissal of two other cases, and the agreement to run the sentence in this case concurrently with another district court case. Therefore, the district court did not err in denying this claim.

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[3]The district court heard appellant's argument challenging the validity of the prior convictions and continued sentencing for an examination of the facial validity of the prior convictions.

FRCP
Fed. Rules of Civil Procedure
Rule 11(a)

Appellant next claims that trial counsel coerced his guilty plea by informing him that no one would believe his story and the district court could sentence him to life without the possibility of parole. Appellant also complains that he was not presented sufficient time to consider the offer. The record does not support appellant's contention that his plea was coerced or involuntarily entered. It is not deficient for trial counsel to inform a client of the maximum possible sentence. During the plea canvass, appellant affirmatively acknowledged that his plea was entered voluntarily and that he was not acting under duress or coercion. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Stiglich

_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Harold Edwards
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk