IN THE SUPREME COURT OF THE UNITED STATES

ARMANDO MARTINEZ,
Petitioner,

v.

RICHARD MARTINEZ AND ATTORNEY GENERAL OF NEW MEXICO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
AFTER DIRECT APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW MEXICO, THE
HONORABLE MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE,
CASE NO. 21-CV-0848,
TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT,
NO. 24-2105

PETITIONER ARMANDO MARTINEZ'S PETITION FOR WRIT OF CERTIORARI

SCOTT M. DAVIDSON
COUNSEL FOR PETITIONER ARMANDO MARTINEZ
THE LAW OFFICE OF SCOTT M. DAVIDSON,
PH.D., ESQ.
1011 LOMAS BOULEVARD NW
ALBUQUERQUE, NM 87102
505-255-9084
scott@justappeals.net

Questions Presented for Review

There are two issues presented, both of which stem from Mr. Martinez's severe intellectual disability, underscored by his verbal IQ of 63, performance IQ of 73, full scale IQ of 65, and full verbal IQ of 55, and the testimony from a forensic psychologist that he has a three-year-old child's language development, socialization, self-direction, and communication abilities.

The first issue is whether the district court unreasonably denied Mr. Martinez's habeas corpus petition under 28 U.S.C. § 2254, where the state court conviction was secured despite that fact that he was not competent to stand trial, due to his inability to understand the serious felony charges brought against him, what an incriminating statement is, the implications of deciding whether or not to testify, or other basic aspects of the trial process.

The second issue is whether the district court unreasonably denied Mr. Martinez's habeas corpus petition under 28 U.S.C. § 2254, where the state court conviction was obtained through the introduction of a coerced statement obtained during a middle-of-the-night interrogation where the detective improperly exploited Mr. Martinez's severe intellectual disability—and his demonstrated tendency to be "very agreeable" and "go with the flow"—by extracting from him a false incriminating statement, after Mr. Martinez had steadfastly and consistently protested the consensual nature of the sexual relationship between him and his former special education teacher.

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Petitioner Armando Martinez respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Tenth Circuit denying habeas relief under 28 U.S.C. § 2254.

Opinions Below

The Order and Judgment of the United States Court of Appeals for the Tenth Circuit is attached in Appendix A. The Tenth Circuit's Order Granting Certificate of Appealability is attached in Appendix B. The District Court's Order Denying Certificate of Appealability is attached in Appendix C. The District Court's Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition is attached in Appendix D. The District Court's Final Judgment is attached in Appendix E. The Magistrate Judge's Proposed Findings and Recommended Disposition are attached in Appendix F.

JURISDICTION

The United States Court of Appeals for the Tenth Circuit issued its order and judgment denying habeas corpus relief under 28 U.S.C. § 2254 on August 22, 2025. *See* Appendix A. A petition for writ of certiorari is timely if filed on or before November 20, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(l).

FEDERAL CONSTITUTIONAL PROVISIONS INVOLVED

The relevant portion of the Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence."

The relevant portion of the Fourteenth Amendment to the United States Constitution provides that no State shall "deprived any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

This petition for writ of certiorari follows a direct appeal to the United States Court of Appeals for the Tenth Circuit from the United States District Court for the District of New Mexico's denial of Mr. Martinez's petition under 28 U.S.C. § 2254 challenging the validity of his New Mexico state conviction, and the district court's order denying certificate of appealability.

On June 19, 2015, a New Mexico state court jury found Mr. Martinez guilty of two counts of false imprisonment contrary to NMSA 1978, § 30-4-3 (1963), aggravated battery, contrary to NMSA 1978, § 30-3-5(B) (1969), and two counts of second-degree criminal sexual penetration, contrary to NMSA 1978, § 30-9-11(E)(3) (2013).

Mr. Martinez filed a direct appeal to the New Mexico Court of Appeals, raising four issues: (1) whether being forced to stand trial—in spite of his incompetence due to severe intellectual deficiency—violated his right to due process under the Fourteenth Amendment to the United States Constitution; (2) where a detective exploited his severe intellectual deficiency during a middle-of-the-night interrogation and extracted inculpatory statements, even after Mr. Martinez had repeatedly professed his innocence, whether his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and the due process clause were violated when those statements were used against him at trial; (3) whether convicting Mr. Martinez of false imprisonment for restraint that was incidental to another offense violated his Fourteenth Amendment right to due process, and related to this, whether the Fifth Amendment prohibition against double jeopardy was violated when he was convicted for false imprisonment and CSP for the same conduct; and (4) whether his Sixth

Amendment right to counsel was violated due to ineffective assistance of counsel.

Observing that the issue whether Mr. Martinez was denied the right to counsel was better suited to habeas corpus proceedings, during which adequate facts supporting the claim could be developed at an evidentiary hearing, the New Mexico Court of Appeals demurred on his ineffective assistance claim on appeal; it affirmed on all other issues.

On July 11, 2018, Mr. Martinez filed a habeas corpus petition in state court, raising just one claim, *viz.*, that "[t]rial defense counsel was ineffective for failing to recognize the relevance of [his] DSM diagnosis to both the voluntariness inquiry, and as a defense at trial. Counsel operated under a mistake of law."

On March 19, 2019, through his state habeas corpus counsel, Mr. Martinez argued that his trial counsel provided ineffective assistance of counsel by not pursuing an available defense that a reasonably competent attorney would have presented, and by not presenting expert testimony to the jury to show that "he possessed neither the intelligence to understand the significance" of making an incriminating statement, "nor the adaptive behavior for navigation of what (for him) amounted to a *sui generis* social interaction." In addition, Mr. Martinez's lawyer argued that "expert

testimony contextualizing [his] unwavering and ongoing claim that he was involved in an ongoing sexual relationship with the victim, within [his] specific developmental disabilities and his aptitude for elaborate dishonesty about something as sophisticated as sexuality, could very easily have swayed the jury" in his favor.

Mr. Martinez's state habeas counsel further explained that "expert testimony about [his] aptitude and disabilities—in the context of explaining what was said during the interrogation with law enforcement—would have been the missing piece to Petitioner's defense at trial, inasmuch as it would have provided defense counsel with a viable avenue for undercutting the significance of the confession, and also paving the way for the jury to view [him] as very vulnerable by virtue of being at the intellectual mercy of his former teacher, and ultimately assign significantly greater credibility to [him] after reevaluating the competing claims as to whether [he] and the victim had actually been romantically involved."

On October 28, 2019, a second state habeas counsel filed a supplemental brief, observing that the so-called confession was as follows:

Detective: [W]hile you're having [sex] during this argument, do you think that maybe she didn't want it?

Mr. Martinez: I think so.

Detective: You think so? Did she tell you, "Nah, not right now Armando, I'm upset?"

Mr. Martinez: She told me "not right now." She was upset.

In the supplemental brief, Mr. Martinez's court-appointed attorney observed that he

> stated repeatedly that he and Ms. Lucero had consensual sex. When Detective David accused him of lying, or told him to tell the truth, or told him that his only hope was to tell him the whole truth, [Mr. Martinez] eventually changed his story. This was directly in response to Detective David's 'disapproval' of [Mr. Martinez's] answers. [He] eventually repeated exactly what Detective David told him. This was done . . . to please or seek approval of an authority figure, the only one that [he] believed would help him.

Mr. Martinez's state habeas corpus lawyer noted that "[r]esearch also found that interview techniques that would not be coercive to a person of normal intelligence will have a disproportionate coercive effect on a mentally retarded suspect." Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U.L. Rev. 979, 1117 (1997); Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. of the Am. Acad. of Psychiatry and the L. 332 (Fall 2007).

Mr. Martinez's habeas counsel noted that trial counsel's failures were not the result of informed strategic decisions; instead, they were "simply a failure . . . to familiarize himself with prior proceedings and the law."

After holding an evidentiary hearing, the New Mexico state court ruled that counsel's performance was objectively unreasonable and deficient under *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). But it denied habeas relief because state habeas counsel apparently assumed that if counsel was deficient there would be prejudice; as a result, state habeas counsel failed to "even attempt to present evidence that [Mr. Martinez] was prejudiced."

After the New Mexico Supreme Court declined to review the state habeas corpus court's denial of relief, Mr. Martinez filed a federal habeas corpus petition in the district court below pursuant to 28 U.S.C. § 2254. Although Mr. Martinez's 2254 petition initially included seven claims, the magistrate judge proposed to find that it was a mixed petition, combining exhausted and unexhausted claims. Mr. Martinez, through undersigned counsel, gave notice that he was voluntarily dismissing the unexhausted claims, electing to proceed with only the exhausted claims.

The district court dismissed two unexhausted claims—Grounds 5 and 6—from Mr. Martinez's original petition to the extent they pertained to representation at the *suppression* stage. In addition, the district court

dismissed unexhausted Ground 7 in its entirety, and allowed Mr. Martinez to proceed with the exhausted claims–*viz.*, Grounds 1-4 and Grounds 5 and 6 to the extent they pertained to Mr. Martinez's trial attorney's representation at the *trial* stage.

In Mr. Martinez's amended petition focusing on the four exhausted claims, as follows:

(1) denial of due process due to his being forced to stand trial in spite of his incompetency;

(2) double jeopardy arising from conviction for false imprisonment for conduct that was unitary with the conduct constituting another offense, and denial of due process arising from conviction for false imprisonment for conduct that was incidental restraint to another offense;

(3) violation of his due process and *Miranda* rights, when an inculpatory statement was used against him at trial, even though it was the product of coercion by a detective who exploited his intellectual deficiency and got him to agree with the detective, even though Mr. Martinez had been consistently and repeatedly denying the allegation; and

(4) violation of his right to counsel due trial counsel's failure to show the jury through expert testimony and argument that his severe intellectual deficiencies rendered his statement involuntary and inadmissible.

Without holding an evidentiary hearing or ordering additional briefing on any particular legal issues, the magistrate judge recommended summary denial of Mr. Martinez's petition in its entirety. The district court, also without holding an evidentiary hearing, accepted the magistrate judge's recommendation and summarily denied Mr. Martinez's 2254 motion. The Tenth Circuit, without oral argument, denied Mr. Martinez's appeal in an unpublished order and judgment.

With respect to the first issue, the Magistrate Judge proposed to find "that the state district court did not unreasonably determine he was competent to stand trial," discounting the significance of Mr. Martinez's intellectual disability. The evidence of Mr. Martinez's intellectual disability was glossed over by the Magistrate Judge in the PFRD. The district court accepted the magistrate judge's recommendation. The district court ruled that Mr. Martinez had "waived" this issue. The court also ruled that Mr. Martinez "does not argue or point to facts showing that he did, in fact, misunderstand any of the terms of the indictment or the jury instructions, or otherwise argue that he lacked sufficient present ability to consult with his lawyer under the *Dusky* standard." The court concluded that "the Magistrate Judge's finding that the state court did not unreasonably determine that Petitioner was competent to stand trial was neither clearly erroneous nor

contrary to law." The Tenth Circuit affirmed the district court's ruling on this issue.

With respect to the second issue—voluntariness of his statement to the detective—the gravamen of Mr. Martinez's claim was that his right to counsel was violated because of deficiencies in how his attorney presented the voluntariness issue to the state court. The Magistrate Judge proposed that the Court agree with the state court's findings and conclusions as to the prejudice prong under *Strickland*.

With respect to the third issue, the Magistrate Judge parroted the decision of the New Mexico Court of Appeals and recommended denial of relief.

On the fourth issue, the Magistrate Judge recommended denial of Mr. Martinez's ineffective assistance of counsel claim, asserting that he did not challenge the state court's *Strickland* ruling regarding prejudice.

On June 28, 2024, the district court issued its order adopting magistrate judge's proposed findings and recommended disposition. On the same date, the district court issued its final judgment.

On July 24, 2024, Mr. Martinez filed a timely notice of appeal.

On August 19, 2024, the district court issued an order denying certificate of appealability, in which it made a finding that Mr. Martinez "has not 'made a substantial showing of the denial of a constitutional right,' [and] he is not entitled to a COA [certificate of appealability]."

On April 25, 2025, the Tenth Circuit granted a certificate of appealability and ordered the State to respond to Mr. Martinez's opening brief. On August 22, 2025, the Tenth Circuit issued its unpublished memorandum opinion without holding oral argument.

Reasons for Granting the Writ

Petitioner Martinez's petition for writ of certiorari should be granted because the United States Court of Appeals for the Tenth Circuit's order and judgment conflicts with *Dusky v. United States*, 362 U.S. 402, 402 (1960), and *Strickland v. Washington*, 466 U.S. 668 (1984).

Mr. Martinez's severe intellectual deficiency should have precluded his standing trial on these charges, but due to the state court's failings, he was tried and convicted in spite of his incompetence. At the trial that should never have been held, his attorney should have vigorously argued that Mr. Martinez's inculpatory statement was the product of a clever detective's duplicitous exploitation of his diminished capacity. And trial counsel should

have presented to the jury expert testimony on this issue, showing how Mr. Martinez was so easily manipulated into confessing falsely.

The state habeas court's error in denying habeas relief was repeated by the district court's denial of relief under 28 U.S.C. § 2254. It falls on this Court to break the chain and correct this egregious miscarriage of justice.

ARGUMENT

1. Mr. Martinez's competency claim was unreasonably denied without an evidentiary hearing.

A. Standard of review.

Review of denial of habeas corpus under 28 U.S.C. § 2254 is *de novo* review. *See Hooks v. Workman*, 689 F.3d 1148, 1163-64 (10th Cir. 2012).

B. It was a violation of due process to try Mr. Martinez on serious felony charges in spite of his having the mental capacity of a three-year old.

It was manifestly unreasonable for the New Mexico state courts to find and conclude that Mr. Martinez is somehow competent when he operates at the level of a three-year old toddler as to language development, socialization, self-direction, and communication abilities. His IQ scores are as follows—*viz.*, verbal IQ of 63, performance IQ of 73, full scale IQ of 65 and full scale verbal IQ of 55. It is unreasonable to assume that "adaptive functioning" alone is sufficient to transform someone with Mr. Martinez's

substantial and severe intellectual deficiencies into someone who can comprehend the complexities inherent in a criminal prosecution on serious felony charges *and* somehow have the ability to assist his attorney with the important decisions to make at multiple junctures in criminal proceedings.

With respect to the competency issue, the district court's denial is fatally flawed. The court below devoted less than two pages to the important competency issue, leaning heavily on the false claim that Mr. Martinez "waived" the issue and did not argue or point to facts showing his inability to understand terms in the indictment or jury instructions.

The curious claim by the court below that Mr. Martinez "waived" the competency issue is unfounded and false. Furthermore, there is no truth to the claim that Mr. Martinez failed to "argue or point to facts showing that he did, in fact, misunderstand any of the terms of the indictment or the jury instructions."

On the contrary, Mr. Martinez consistently argued that he lacked the mental competency to stand trial. With respect to particularized facts of Mr. Martinez's lack of competency to stand trial, he gave specifics: "Mr. Martinez suffers from severe intellectual deficiencies–verbal IQ of 63, performance IQ of 73, full scale IQ of 65, and full verbal IQ of 55. Even as a grown man, his language development, socialization, self-direction, and communication

abilities are those of a three-year-old toddler." Thus, contrary to the court's claim, Mr. Martinez did in fact "point to facts" showing that he lacked the ability to understand terms of the indictment and jury instructions.

Mr. Martinez pointed to the testimony of a forensic psychologist, Dr. Susan Cave, who testified that he "had a tendency to repeat things that were said to him, and like many developmentally delayed adults, was 'very agreeable' and would 'go with the flow.' Due to this characteristic, she testified that he would likely agree to what someone tells him to do without understanding what that meant or what the consequences would be." Again, Mr. Martinez pointed to facts in the record.

Mr. Martinez repeatedly argued that he was not competent to stand trial. Mr. Martinez tied this argument to the right of due process under the Fourteenth Amendment, citing federal case law and New Mexico cases applying federal case law. *See McGregor v. Gibson*, 248 F.3d 946, 952 (10th Cir. 2001) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960) ("The trier of fact must consider 'whether [defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him."); *United States v. Williams*, 113 F.3d 1155, 1159 (10th Cir. 1997) ("That defendant can recite the charges

against [him], list witnesses, and use legal terminology are insufficient" to demonstrate that he had a rational, as well as factual, understanding of the proceedings."); *State v. Montoya*, 2010-NMCA-067, ¶11, 148 N.M. 495 (quoting *State v. Flores*, 2005-NMCA-1125, ¶15, 138 N.M. 636 (quoting *Drope v. Missouri*, 420 U.S. 162, 171 (1975) ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial. . . . [T]he failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial."))).

Mr. Martinez specifically contended that he "lacked the intellectual capacity to provide reasonable assistance to his attorney in preparation for and during trial. Consequently, his conviction constitutes a violation of due process." The claim by the court below that he did not argue this point is false.

Both the magistrate judge and the district court failed to hold an evidentiary hearing—or a hearing of any sort—and dismissed Mr. Martinez's 2255 petition. Mr. Martinez argued that "it is manifestly unreasonable for the New Mexico state courts to find and conclude that Mr. Martinez is

somehow competent when he operates at the level of a three-year old toddler as to language development, socialization, self-direction, and communication abilities. His IQ scores are below or at the margins of intellectual deficiency—*viz.*, verbal IQ of 63, performance IQ of 73, full scale IQ of 65, and full scale verbal IQ of 55."

Mr. Martinez argued that due to his severe intellectual deficiencies and the inability of adaptive functioning to fully compensate for these critical deficiencies, he was unable to "comprehend the complexities inherent in a criminal prosecution on serious felony charges and . . . [to] assist an attorney with the important decisions to make at multiple junctures in criminal proceedings."

Mr. Martinez argued that the state court's determination that he "was competent to stand trial is an unreasonable application of established federal law regarding competency, and its factual determination that Mr. Martinez was somehow competent to stand trial was an unreasonable factual determination in light of the evidence presented to the New Mexico courts." He cited and discussed *Dusky*. He argued that "in order for his trial to pass muster, he must have been capable of having 'a rational as well as factual understanding of the proceedings against him.'"

Mr. Martinez identified his intellectual deficiencies with specificity and with factual detail. He discussed the testimony of the forensic psychologist who testified in state court. He tied this testimony to the violation of his right to due process, emphasizing that because of his severe intellectual disabilities, he was unable to meaningfully assist his attorney at least in part because he was unable to understand, on either a rational or factual level, important specifics of the proceedings against him:

> These characteristics are highly problematic in the context of a criminal prosecution in which a severely mentally-deficient person is charged with serious felonies and is tasked with assisting their attorney in defending against these charges. If his attorney recommends a course of action, Mr. Martinez would be incapable of exercising independent judgment and rational thought sufficient to understand the pros and cons, risks and benefits of matters such as whether to testify.

Mr. Martinez supported this argument with specific language from the proceedings against him. For instance, he individuated the four charges against him in state court, specifying what was alleged in the indictment. Next, he explored the jury instructions corresponding to each charge. Then he tied the instructions to the due process violation by pointing out that Mr. Martinez was unable to understand important concepts in these jury instructions. For instance, he argued that due to his intellectual disability he would not be able to understand terms and concepts in the jury instructions.

quoting the standard articulated in *Dusky*. He argued that his trial "violates due process because he lacked a 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding,' and he was incapable of having 'a rational as well as factual understanding of the proceedings against him.'"

Mr. Martinez went on to argue that due to "his three-year-old interpersonal capabilities and his severe intellectual deficiencies," he was unable to understand "the following sentence from Instruction No. 14: 'A person acts intentionally when he purposely does an act which the law declares to be a crime.'" He also noted that there were important terms that he was unable to understand:

- "painful temporary disfigurement,"
- "proof beyond a reasonable doubt,"
- "a penetration for purposes of custodial care or other lawful purpose,"
- "mental anguish,"
- "temporary loss or impairment of the functions of a member or organ of the body," and
- "coercion."

Mr. Martinez observed that these are terms found "in the charging document or the jury instructions. They are key terms that would necessarily be part of a criminal defendant's comprehension of what he is being tried for, what the prosecution is required to prove, what he and his attorney are trying to defend against, and so forth."

Mr. Martinez argued that he did not have a "sufficient comprehension of all of these concepts so as to be in a position to provide meaningful assistance to his attorney throughout the criminal process."

He argued that "the state courts' findings and conclusions" are "an unreasonable application of *Dusky*," and that the district court should reject the magistrate judge's proposed finding "that the state court 'did not unreasonably determine he was competent to stand trial.'"

Mr. Martinez concluded his competency argument as follows:

> We do not put three-year-old toddlers on trial. For all practical purposes, Mr. Martinez's intellectual functioning is that of a three-year old; yet the New Mexico state courts unreasonably decided he could somehow comprehend the proceedings and assist his lawyer regarding critical decisions that arise in the context of a trial. This is an unreasonable decision by the New Mexico state courts. As such, the [district court] should set aside his state court conviction due to this violation of the due process guarantee of the Fourteenth Amendment.

In spite of these detailed arguments by Mr. Martinez showing he lacked competency, the court below found that he had somehow "waived" his competency argument. The court below also asserted that Mr. Martinez had not argued or pointed to facts showing that he could not understand terms in the indictment or jury instructions.

The court apparently failed to take into account the pages and pages of Mr. Martinez's argument doing just that—arguing and pointing to facts about his intellectual deficiency that stood in the way of his ability to understand specific key concepts and terms in the indictment and jury instructions.

The lower court's rejection of the competency claim on grounds of waiver has no basis; it is refuted by the record of Mr. Martinez's extensive and detailed written arguments. The court's rejection on grounds of waiver is legal error, warranting reversal, yet the Tenth Circuit affirmed. *See Hooks*, 689 F.3d at 1163-64 (applying *de novo* review to lower court's legal analysis of state court decision in 2254 context).

2. Mr. Martinez's ineffective assistance claim was unreasonably denied without an evidentiary hearing.

A. Standard of review.

As with Issue #1, in the context of review of a lower court's denial of a habeas corpus petition under 28 U.S.C. § 2254, *de novo* review applies to the district court's legal analysis of the state court's denial of Mr. Martinez habeas corpus petition. *See Hooks*, 689 F.3d at 1163-64.

B. It was ineffective assistance of counsel for trial counsel not to vigorously argue and present expert testimony to show the jury that Mr. Martinez lacked the intellectual capacity to voluntarily waive his *Miranda* rights.

The courts below rejected Mr. Martinez's claim that he was denied the right to counsel due to his trial counsel's failures with respect to the issue of the involuntary waiver of *Miranda* rights due, at least in part, to Mr. Martinez's intellectual deficiency.

The court below asserted that Mr. Martinez did not argue prejudice in his amended petition. But this assertion is refuted by a review of the record. In Mr. Martinez's amended petition, he argued that his "right to counsel under the Sixth and Fourteenth Amendments was denied because his counsel failed to argue at trial that these cognitive deficiencies made his statements involuntary." Mr. Martinez cited *Strickland*, 466 U.S. at 688-94.

Arguing the deficient performance prong of the test for ineffective assistance of counsel, Mr. Martinez argued that trial counsel "also failed to present expert testimony to show that Mr. Martinez's statement was not voluntary. Trial counsel failed to present a cogent defense. The jury should have been presented with a defense built on the undeniable fact that Mr. Martinez's severe intellectual deficiency."

Arguing the prejudice prong, Mr. Martinez argued that had counsel presented this testimony and argument, "[i]t would have allowed the jury to make a factual finding on the issue of voluntariness, with the aid of vigorous argument and supporting expert testimony that Mr. Martinez was simply incapable of providing a voluntary statement under the circumstances of this case." The circumstances referred to include Mr. Martinez's severe intellectual deficiency, which he specifically tied to the issue of the voluntariness of his statement and waiver of *Miranda* rights:

> Due to Mr. Martinez's severe intellectual deficiency, he was in no way capable of waiving his *Miranda* rights. In addition, although the detective's tactics might not have been coercive if applied to a suspect with normal intellectual capabilities, when the same tactics were applied to someone with severe intellectual deficiencies—verbal IQ of 63, performance IQ of 73, full scale IQ of 65, and full verbal IQ of 55—they produce a false confession, as in this case. An objective examination of the facts surrounding the detective's interrogation of Mr. Martinez in the early morning hours after he was taken to the police station reveals that his statement cannot be considered voluntary.

The district court's assertion that this issue was not argued by Mr. Martinez is unfounded.

The assertion by the court below that Mr. Martinez failed to request an evidentiary hearing is picayune and should be rejected. In Mr. Martinez's 2254 petition, he asked for reversal of the conviction "with (1) orders he was incompetent to stand trial with dismissal or other associated relief; (2) exclusion of his statements to police; (3) vacating false imprisonment; and (4) at a minimum, retrial with evidence of mental capacity and voluntariness, or any other relief to which petitioner may be entitled."

In the amended petition, Mr. Martinez attacked the state court's denial of habeas corpus relief on both factual and legal grounds. He emphasized his severe intellectual deficiency and the implications of this for the lack of voluntariness of his waiver of *Miranda* rights. In his objections, he specifically argued that an evidentiary hearing was required. He highlighted the magistrate judge's failure to conduct a searching factual inquiry that would accompany an evidentiary hearing; he observed that the "evidence of Mr. Martinez's intellectual deficiency was glossed over by the Magistrate Judge in the PFRD." He noted what he would show "[a]t an evidentiary hearing." The lower courts' rejection of Mr. Martinez's ineffective assistance

claim on grounds that he "waived" the argument, or failed to request an evidentiary hearing, is error and should be reversed by this Court.

Conclusion

For the foregoing reasons, the Tenth Circuit's affirmance of the district court's denial of his §2254 petition is unreasonable. Reasonable jurists could debate whether—or agree that—Petitioner Martinez's § 2254 habeas corpus petition should have been resolved differently. Petitioner Martinez respectfully requests that this Court grant this petition for writ of certiorari, and reverse the Tenth Circuit's denial of habeas relief.

Respectfully submitted,

/s/ Scott M. Davidson (electronically filed)
Scott M. Davidson
Counsel for Petitioner Armando Martinez
The Law Office of Scott M. Davidson, Ph.D., Esq.
1011 Lomas Boulevard NW
Albuquerque, NM 87102
505-255-9084
scott@justappeals.net

Certificate of Service

I hereby certify that on the twelfth day of December 2025, I electronically filed the certiorari petition and appendices on behalf of Petitioner Perkins with the Clerk of the Court for the United States Supreme Court. I further certify that I have sent on this twelfth day of December 2025 via U.S. Mail to this Court the original and ten copies of the petition for writ of certiorari and appendices. In addition, I certify that I have sent on this twelfth day of December 2025 via U.S. Mail a copy of the petition for writ of certiorari and appendices to Counsel of Record for the Respondent.

/s/ Scott M. Davidson (electronically filed)
Scott M. Davidson
Counsel for Petitioner Armando Martinez
The Law Office of Scott M. Davidson, Ph.D., Esq.
1011 Lomas Boulevard NW
Albuquerque, NM 87102
505-255-9084
scott@justappeals.net

FILED
United States Court of Appeals
Tenth Circuit

August 22, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ARMANDO MARTINEZ,

Petitioner - Appellant,

v.

RICHARD MARTINEZ; ATTORNEY GENERAL OF THE STATE OF NEW MEXICO,

Respondents - Appellees.

No. 24-2105
(D.C. No. 2:21-CV-00848-MV-DLM)
(D. N.M.)

ORDER AND JUDGMENT*

Before **McHUGH**, **KELLY**, and **FEDERICO**, Circuit Judges.

New Mexico prisoner Armando Martinez appeals from the district court's denial of his 28 U.S.C. § 2254 habeas application. Exercising jurisdiction under 28 U.S.C. §§ 1291 and 2253(a), we affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

BACKGROUND

Mr. Martinez is intellectually disabled, with a "verbal IQ of 63, performance IQ of 73, full scale IQ of 65, and full verbal IQ of 55." Aplt. Opening Br. at 8. A forensic psychologist opined that "he has the language development, socialization, self-direction, and communication abilities of a three-year-old child." *Id.*[1] His habeas claims are rooted in his intellectual disability.

When Mr. Martinez was accused of engaging in criminal sexual conduct, a detective interviewed him. Although he initially said his conduct was consensual, he eventually agreed with the detective's suggestion that it was not consensual. After the state court found Mr. Martinez competent to be tried, the prosecution introduced that statement along with other evidence at trial. A jury convicted Mr. Martinez of two counts of second-degree criminal sexual penetration, one count of false imprisonment, and one count of aggravated battery. Mr. Martinez unsuccessfully pursued a direct appeal and state habeas proceedings in which he argued, among other issues, that he was incompetent to be tried and that his counsel was ineffective in failing to recognize the importance of his intellectual disability, both as to the voluntariness of his statement to the detective and as a defense at trial.

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[1] Mr. Martinez demonstrated somewhat higher equivalent mental ages in other areas. "In the domains of economic activity; numbers and times; responsibility; and vocational activity, Mr. Martinez's equivalent mental age ranged from between four years, six months, to seven years, six months." Aplee. Resp. Br. at 7. But "[i]n the independent-functioning domain . . . Mr. Martinez's mental-age equivalent was above that of an average sixteen[-]year[-]old, and for domestic activity . . . his mental-age equivalent was that of an average fourteen[-]year[-]old." *Id.*

Mr. Martinez brought several claims in his § 2254 application. As relevant here, he asserted that he was incompetent and therefore trying him violated his right to due process. He also asserted that, in light of his intellectual disability, his counsel was ineffective for not challenging the voluntariness of his statement and not presenting a defense based on mental deficiency. The magistrate judge issued proposed findings and a recommended disposition (PFRD) rejecting the claims. The district court overruled Mr. Martinez's objections, denied the § 2254 application, and denied a COA.

We granted a COA on the claims that (1) Mr. Martinez's right to due process was violated because he was incompetent to be tried, and (2) in light of his intellectual disability, his counsel was ineffective in not challenging the voluntariness of his statement to a detective and not presenting a defense based on mental deficiency. The State filed a response brief advocating for affirmance. Mr. Martinez did not file a reply brief.

DISCUSSION

I. Legal Standards

"We review the district court's legal analysis of the state court decision *de novo* and its factual findings, if any, for clear error." *Newmiller v. Raemisch*, 877 F.3d 1178, 1194 (10th Cir. 2017) (internal quotation marks omitted).

Under 28 U.S.C. § 2254(d), a habeas applicant must demonstrate that the state court's adjudication of his claim "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," § 2254(d)(1), 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," § 2254(d)(2). It is Mr. Martinez's burden to satisfy the "demanding standards" for habeas relief. *Meek v. Martin*, 74 F.4th 1223, 1249 (10th Cir. 2023).

A state-court decision is "contrary to" Supreme Court "precedent if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law" or "if the state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at a result opposite to [the Court's]." *Williams v. Taylor*, 529 U.S. 362, 405 (2000). A decision is "an unreasonable application of" Supreme Court precedent when "the state court identifies the correct governing legal rule from [the Supreme] Court's cases but unreasonably applies it to the facts of the particular state prisoner's case." *Id.* at 407.

"[D]eference and reasonableness are our watchwords as we review [state-court] rulings" in habeas cases. *Meek*, 74 F.4th at 1248. "[I]t is insufficient to show that the state court's decision was merely wrong or even clear error. The prisoner must show that a state court's decision is so obviously wrong that no reasonable judge could arrive at the same conclusion given the facts of the prisoner's case." *Id.* (citation and internal quotation marks omitted). "It bears repeating that even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

II. Competency

"[T]he criminal trial of an incompetent defendant violates due process." *Medina v. California*, 505 U.S. 437, 453 (1992). The test for competency to stand trial is "whether [a defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam); *see also Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996) (describing the *Dusky* standard as "well settled").

The state trial court held a pre-trial competency hearing at which it heard the testimony of forensic psychologist Dr. Susan Cave. Although Dr. Cave opined that Mr. Martinez was incompetent to be tried, the trial court found Mr. Martinez competent. After reviewing Dr. Cave's testimony (some of which supported the finding of competency, and some of which undermined it), the New Mexico Court of Appeals (NMCA) identified evidence supporting the finding:

> Dr. Cave testified as to Defendant's ability to consult with his attorney and assist in his defense. According to Dr. Cave, Defendant was able to identify and name his attorney. Defendant also understood he could help his defense by telling his lawyer his version of events, and importantly, knew what confidentiality was in his concrete way of expressing himself.
>
> Dr. Cave also testified as to Defendant's understanding of the nature of the proceedings against him and acknowledged that Defendant expressed an understanding of the pleas he could enter in court and knew the definitions of "guilty" and "not guilty." Although he had some difficulty understanding the district attorney's role, he accurately characterized the roles of other courtroom players, such as the public defender, judge, and jury. Of note, when asked to define the public defender's role, Defendant said, "He is there to defend me." Defendant also demonstrated an

> understanding of probation and was also able to tell Dr. Cave what some of the specific conditions of probation might be, such as, no weapons, alcohol, or contact with Victim. He further understood that there would be no probation if he was found not guilty. Defendant also knew that if he accepted a plea bargain he would be giving up his rights.
>
> Dr. Cave's testimony additionally indicates that Defendant comprehended the nature of the charges against him and the reasons for punishment. Defendant knew he was charged with [criminal sexual penetration] and for "hitting" Victim. He appreciated the difference between misdemeanors and felonies and that felonies were more serious offenses. Defendant was aware that he could go to prison if he was found guilty. Moreover, Defendant knew that he did not have to testify and defined evidence as "proof."

R. at 465-69 (alterations, citations, and internal quotation marks omitted). The NMCA therefore upheld the trial court's finding of competency. The New Mexico Supreme Court denied a writ of certiorari.

In considering the § 2254 application, the magistrate judge recommended the federal district court hold that the NMCA's decision was not an unreasonable application of the *Dusky* standard. Mr. Martinez objected, stating that the decision was unreasonable because the indictment and jury instructions were too complex for a person with his intellectual disability to understand. The district court rejected the claim, holding that (1) Mr. Martinez waived his argument about the indictment and jury instructions because he did not make it in his amended § 2254 application, but instead asserted it for the first time in his objections, and (2) the argument failed on the merits. It stated that Mr. Martinez "does not argue or point to facts showing that he did, in fact, misunderstand any of the terms of the indictment or the jury instructions, or otherwise argue that he lacked sufficient present ability to consult

with his lawyer under the *Dusky* standard." R. at 895. And he did not "cite[] to any clearly established federal law (as he must) to support his position that he should have been deemed incompetent based on a theoretical supposition that he *could not have* understood the terms in the indictment and/or jury instructions, with no basis for that supposition in fact." *Id.*

Mr. Martinez asserts that "[i]t was manifestly unreasonable for the New Mexico state courts to find and conclude that [he] is somehow competent when he operates at the level of a three-year[-]old toddler as to language development, socialization, self-direction, and communication abilities." Aplt. Opening Br. at 19. We cannot conclude, however, that Mr. Martinez is entitled to relief under § 2254.

First, Mr. Martinez's competency argument heavily relies on his assertion that he could not understand the indictment and jury instructions. The district court held that he waived this argument. He states that he did not waive his competency argument, and it is true that he consistently has asserted that he was not competent to be tried. But he first asserted that he was not competent to be tried *because he could not understand the indictment or the jury instructions* in his objections to the PFRD. That was too late. *See United States v. Garfinkle*, 261 F.3d 1030, 1031 (10th Cir. 2001) ("In this circuit, theories raised for the first time in objections to the magistrate judge's report are deemed waived.").

Second, even disregarding waiver, Mr. Martinez has not shown he is entitled to relief on the competency claim. His argument about the indictment and jury instructions rests on a presumption, rather than facts: Mr. Martinez asserts that

because of his intellectual disability, he *could not have* understood the indictment and jury instructions, but he did not supply any evidence that he *did not* understand either the indictment or the jury instructions. But as the district court stated, he has not identified any Supreme Court precedent establishing a presumption that would apply in these circumstances. *See Harrington*, 562 U.S. at 101 ("It is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by [the Supreme] Court." (brackets and internal quotation marks omitted)).

The record before the state court included evidence in favor of and evidence undermining a finding of competency. On this record, "[a]t the very least, it is possible fairminded jurists could disagree regarding whether the [state court's] competency determination conflicts with Supreme Court precedent." *Grant v. Royal*, 886 F.3d 874, 914 (10th Cir. 2018) (internal quotation marks omitted). As such, Mr. Martinez has not demonstrated entitlement to habeas relief. *See Harrington*, 562 U.S. at 103 ("As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.").

Finally, Mr. Martinez suggests in passing that the district court should have held an evidentiary hearing with regard to his competency claim. "[A] passing reference to a matter is insufficient to present an issue for appellate review." *Tryon*

v. Quick, 81 F.4th 1110, 1151 n.22 (10th Cir. 2023), *cert. denied*, 144 S. Ct. 2586 (2024). Mr. Martinez fails to develop an argument on why he was entitled to hearing, despite the limitations on evidentiary hearings in § 2254 cases, *see* § 2254(e)(2). We thus do not consider the issue.

III. Ineffective Assistance of Counsel

To establish ineffective assistance of counsel, a defendant "must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

The state habeas court concluded that Mr. Martinez's counsel performed deficiently, but it denied relief on the prejudice prong. It noted that he "did not even attempt to present evidence that [he] was prejudiced," but instead he "seemed to assume that if counsel was deficient there was prejudice." R. at 628. It reviewed the totality of the evidence but did not find prejudice. The New Mexico Supreme Court denied a writ of certiorari.

The magistrate judge recommended denying the ineffective-assistance claim because Mr. Martinez did "not argue that the state habeas court unreasonably applied *Strickland* in finding he was not prejudiced, or that it made an unreasonable finding of fact in denying his claim." R. at 862. Mr. Martinez argued prejudice in his

objections, but the district court rejected the ineffective-assistance claim for two reasons: (1) Mr. Martinez waived his prejudice argument by failing to include it in his § 2254 application, and (2) the claim would fail on the merits because he had not shown prejudice. The district court also denied Mr. Martinez's request for an evidentiary hearing.

Before this court, Mr. Martinez asserts that the district court erred in holding he waived his prejudice argument. He also challenges the denial of an evidentiary hearing. But he does not address the district court's second reason for denying relief on this claim—that it would fail on the merits. "If the district court states multiple alternative grounds for its ruling and the appellant does not challenge all those grounds in the opening brief, then we may affirm the ruling." *Rivero v. Bd. of Regents of Univ. of N.M.*, 950 F.3d 754, 763 (10th Cir. 2020).

Even disregarding the failure to challenge the merits ruling, however, we cannot conclude the state court's decision was contrary to or an unreasonable application of *Strickland*. *See Harrington*, 562 U.S. at 101 ("The pivotal question is whether the state court's application of the *Strickland* standard was unreasonable."); *id.* at 105 ("The standards created by *Strickland* and § 2254(d) are both highly deferential, and when the two apply in tandem, review is doubly so." (citations and internal quotation marks omitted)). Although Mr. Martinez had not identified evidence of prejudice, the state court evaluated the prejudice prong. It found that even without the statement to the detective, there was sufficient evidence to convict Mr. Martinez, and it concluded that Mr. Martinez had "not met his burden of showing

that the outcome of his trial would have been different" and had not "undermined confidence in the outcome of this case." R. at 628. This discussion reflected the proper legal standards. *See Strickland*, 466 U.S. at 694; *Harrington*, 562 U.S. at 111-12. And at the very least, fair-minded jurists could disagree on whether the state court correctly concluded that Mr. Martinez did not show prejudice. *See Harrington*, 562 U.S. at 113 (recognizing "ample basis" for the state court "to think any real possibility of [the petitioner's] being acquitted was eclipsed by the remaining evidence pointing to guilt"). Mr. Martinez therefore is not entitled to habeas relief. *See id.* at 101, 103.

CONCLUSION

We affirm the district court's judgment.

Entered for the Court

Carolyn B. McHugh
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

August 22, 2025

Scott M Davidson
Scott M. Davidson, Ph.D., Esq., LLC
1011 Lomas Blvd. NW
Albuquerque, NM 87102

RE: 24-2105, Martinez v. Martinez, et al
Dist/Ag docket: 2:21-CV-00848-MV-DLM

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(d)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rule 40 and 10th Cir. R. 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: Jane Alissa Bernstein

CMW/lg

FILED
United States Court of Appeals
Tenth Circuit

April 25, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ARMANDO MARTINEZ,

Petitioner - Appellant,

v.

RICHARD MARTINEZ; ATTORNEY GENERAL OF THE STATE OF NEW MEXICO,

Respondents - Appellees.

No. 24-2105
(D.C. No. 2:21-CV-00848-MV-DLM)
(D. N.M.)

ORDER GRANTING CERTIFICATE OF APPEALABILITY

Before **McHUGH**, Circuit Judge.

Armando Martinez seeks to appeal the denial of his 28 U.S.C. § 2254 habeas application. To do so, he must obtain a certificate of appealability (COA). *See* 28 U.S.C. § 2253(c)(1)(A). The district court declined to issue a COA, and Mr. Martinez has now requested one from this court. I grant his request.

A COA is appropriate when a movant makes "a substantial showing of the denial of a constitutional right." § 2253(c)(2). For a COA where the district court denied the claims on the merits, Mr. Martinez "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). For a COA where the district court denied the claims on procedural grounds, Mr. Martinez must show that reasonable jurists would

debate both "whether the petition states a valid claim of the denial of a constitutional right" and "whether the district court was correct in its procedural ruling." *Id.* I conclude he has satisfied these standards with respect to (1) his claim that his right to due process was violated because he was incompetent to be tried, and (2) his claim that in light of his intellectual disability, his counsel was ineffective in not challenging the voluntariness of his statement to a detective and not presenting a defense based on mental deficiency.

Within 30 days of this order, the appellees shall file a response brief addressing these issues. That brief should comply with all Federal Rules of Appellate Procedure and local rules applicable to filing response briefs. Within 21 days of service of that brief, Mr. Martinez may file an optional reply brief. That brief should likewise comply with all Federal Rules of Appellate Procedure and local rules of this court applicable to reply briefs generally.

Entered for the Court

Carolyn B. McHugh
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ARMANDO MARTINEZ,

Petitioner,

v. No. 2:21-cv-0848 MV/DLM

RICHARD MARTINEZ and
ATTORNEY GENERAL
of the STATE of NEW MEXICO,

Respondents.

ORDER DENYING CERTIFICATE OF APPEALABILITY

THIS MATTER is before the Court on the Order from the Tenth Circuit remanding the matter for the limited purpose of determining whether to issue a certificate of appealability (COA). (Doc. 57.) Under Rule 11(a) of the Rules Governing Section 2254 Cases, a district court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing, a petitioner must demonstrate 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." *Johnson v. Keith*, 726 F.3d 1134, 1135 (10th Cir. 2013) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Determining whether a petitioner has met his burden requires a court to conduct "'a preliminary, though not definitive consideration of the legal framework' applicable to each of his claims." *Id.* (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003)) (alteration omitted). In other words, a petitioner must "prove something more than the mere absence or frivolity or the existence of mere good will[,]" but he need not demonstrate "that some jurists would grant the petition for habeas corpus." *Miller-El*, 537 U.S. at

338.

As an initial matter, Petitioner has not applied for a COA. (*See* Doc. 57 at 1.) Additionally, in reviewing the docket, the Court finds that there is no filing from which it might discern an argument requesting a COA. (*See* Docs. 50–55.) Accordingly, the Court bases its determination on the Proposed Findings and Recommended Disposition (PFRD) (Doc. 36) and the Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition (Order Adopting) (Doc. 48). After review of the PFRD and the Order Adopting, the Court finds that Petitioner "has not 'made a substantial showing of the denial of a constitutional right,' [and] he is not entitled to a COA." *Johnson*, 726 F.3d at 1135. Accordingly, the Court will deny a certificate of appealability.

IT IS ORDERED that a certificate of appealability is **DENIED**.

MARTHA VÁZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ARMANDO MARTINEZ,

Petitioner,

v. No. 2:21-cv-0848 MV/DLM

RICHARD MARTINEZ and
ATTORNEY GENERAL
of the STATE of NEW MEXICO,

Respondents.

ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

THIS MATTER comes before the Court on Petitioner Armando Martinez's Amended Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody [Doc. 30] and United States Magistrate Judge Damian L. Martinez's December 19, 2023 Proposed Findings and Recommended Disposition [Doc. 36]. In his PFRD, Magistrate Judge Martinez recommended that the Court deny Petitioner's Amended Petition. On February 23, 2024, Petitioner timely filed his Objections to the PFRD (Doc. 46), and on March 8, 2024, Respondents timely filed a response to those objections (Doc. 47). Plaintiff's Objections are now before the Court.

Under the legal standards described below, the Court has considered Petitioner's Amended Petition, the Magistrate Judge's PFRD, Petitioner's objections (Doc. 14), and Respondents' response to those objections (Doc. 15), and has conducted a de novo review. Based on the Court's de novo review, the Court finds that Petitioner's objections to the Magistrate Judge's PFRD are not well-taken and therefore will deny Plaintiffs' Amended Petition.

BACKGROUND

On June 19, 2015, a jury found Petitioner guilty of two counts of second-degree criminal sexual penetration ("CSP"), one count of fourth-degree false imprisonment, and one count of misdemeanor aggravated battery. Doc. 36 at 1. Petitioner was unsuccessful on direct appeal and in state post-conviction proceedings, and on August 27, 2021, filed a "mixed" *pro se* petition pursuant to 28 U.S.C. § 2254. Doc. 1; Doc. 8. On June 26, 2023, Petitioner, through counsel, voluntarily dismissed the unexhausted claims and, on October 10, 2023, amended the Petition. Docs. 10, 20, 30. Respondents filed their supplemental merits answer on November 7, 2023. Doc. 34. Petitioner did not file a reply. On December 19, 2023, Magistrate Judge Martinez entered his PFRD, in which he recommended denial of the Amended Petition in its entirety. Doc. 36. Thereafter, Petitioner filed his Objections to the PFRD, Doc. 14, which are now before the Court.

STANDARD

District courts may refer dispositive motions to a magistrate judge for a recommended disposition pursuant to 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b)(1). "Within 14 days after being served with a copy of the [magistrate judge's] recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1). When resolving objections to a magistrate judge's proposal, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The Court may place on the PFRD whatever reliance the Court, "in the exercise of sound discretion," deems appropriate, *see United States v. Raddatz*, 447 U.S. 667, 676

(1980), but "must . . . modify or set aside any part of the [PFRD] that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a).

"[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review." *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, "[i]ssues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996); *see also United States v. Garfinkle*, 261 F.3d 1030, 1031 (10th Cir. 2001) ("In this circuit, theories raised for the first time in objections to the magistrate judge's report are deemed waived.").

DISCUSSION

Petitioner presents three arguments in support of his objections to the PFRD. The Court addresses these arguments in turn.

First, Petitioner argues that it was "manifestly unreasonable for the New Mexico state court to find and conclude that Mr. Martinez is somehow competent." Doc. 46 at 1. According to Petitioner, if the Magistrate Judge had not "glossed over" his intellectual disabilities, he would have concluded that the New Mexico Court of Appeals unreasonably applied United States Supreme Court precedent in affirming the trial court's determination that Petitioner was competent to stand trial. *Id.* at 4. According to his Objections, the indictment and jury instructions were too complex for "someone" with Petitioner's intellectual disability to understand, and therefore he could not have meaningfully consulted with and assisted trial counsel. *Id.* at 10.

As an initial matter, Petitioner did not make this argument regarding competency in the Amended Petition; indeed, there is no mention in the Amended Petition that Petitioner did not understand the indictment or the jury instructions. This objection thus has been waived.

Even absent waiver, the competency argument would fail on the merits. First, Judge Martinez neither discounted the significance of nor glossed over the evidence of Petitioner's intellectual disability. *See* Doc. 36 at 7-10 (analyzing the state court's competency determination). To summarize the testimony of Dr. Susan Cave, the Magistrate Judge listened to the CD recording of the competency evaluation hearing, *id.* at 7, 7 n.3, and fully analyzed whether the trial court erred in finding that Petitioner's IQ scores did not render him incompetent. *Id.* at 9-10.

Further, in *Dusky v. United States*, the Supreme Court held that a defendant is competent to stand trial if "he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and . . . a rational as well as a factual understanding of the proceedings against him." 362 U.S. 402 (1960). Petitioner does not argue or point to facts showing that he did, in fact, misunderstand any of the terms of the indictment or the jury instructions, or otherwise argue that he lacked sufficient present ability to consult with his lawyer under the *Dusky* standard. Rather, he asserts that "it is inconceivable that he could have understood," and it "defies logic" that he "could have had a sufficient comprehension" of those terms. Doc. 46 at 10-11. Petitioner has not cited to any clearly established federal law (as he must) to support his position that he should have been deemed incompetent based on a theoretical supposition that he *could not have* understood the terms in the indictment and/or jury instructions, with no basis for that supposition in fact. *See Meek v. Martin*,74 F.4th 1223, 1251 (10th Cir. 2023) ("The presence of clearly established law, *i.e.*, 'on point holdings,' is a necessary condition to habeas relief; its 'absence . . . is dispositive,' and closes the door on a petitioner's claim.").

Accordingly, the Magistrate Judge's finding that the state court did not unreasonably determine that Petitioner was competent to stand trial was neither clearly erroneous nor contrary to law, and, based on its de novo review, the Court finds that Petitioner's objection to the PFRD

as to the competency issue should be overruled.

Second, Petitioner argues that "the state courts unreasonably denied Mr. Martinez's ineffective assistance of counsel claim on the issue of the voluntariness of Mr. Martinez's waiver of *Miranda* rights." Doc. 46 at 2. To assert an ineffective assistance claim, a petitioner must show both that (1) counsel's performance was deficient for falling below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defense, meaning that absent the alleged errors, it is reasonably probable that the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Petitioner's objection invokes the second, or prejudice prong of *Strickland*, asserting that he needs an evidentiary hearing to present "competent evidence" to show that, absent counsel's failure to retain an expert to testify as to the voluntariness of his police statement, it is reasonably likely that the result of the trial would have been different. *Id.* at 12-13.

But Petitioner did not make this prejudice argument, or request an evidentiary hearing to establish prejudice, in his Amended Petition. *See* Doc. 36 at 15 (noting that Petitioner "[did] not argue that the state habeas court unreasonably applied *Strickland* in finding he was not prejudiced, or that it made an unreasonable finding of fact in denying his claim"). Petitioner cannot raise these points for the first time in objections to the PFRD. As with his first objection, Petitioner thus has waived this second objection.

His ineffective assistance claim also would fail on the merits. Petitioner asserts that if "trial counsel had presented expert testimony as to the voluntariness issue, and made a compelling presentation regarding the voluntariness issue for the jury, the whole complexion of the trial could have been different." Doc. 46 at 13. The state habeas court, however, reasoned that the evidence was sufficient to convict, even in the absence of Petitioner's police statement – a point which the

Magistrate properly noted in the PFRD. Doc. 36 at 15; Doc. 8-1 at 525 ("The victim's testimony alone proves the offenses charged, so even if the confession . . . had been excluded, there would have been sufficient evidence to convict."). Accordingly, even if trial counsel had successfully persuaded the jurors that "Mr. Martinez was simply incapable of providing a voluntary statement," Petitioner has not shown that it is reasonably probable that the jury would have returned a different verdict. Doc. 30 at 17. Nor has Petitioner established that he is entitled to an evidentiary hearing, as he provides no indication of what "competent evidence" he would proffer, or whether that evidence would exceed the record that was before the state court. *See Andrew v. White*, 62 F.4th 1299, 1346 (10th Cir. 2023) (noting that "review is limited to the record that was before the state court").

Accordingly, the Magistrate Judge's finding that the state habeas court did not unreasonably deny Petitioner's ineffective assistance claim is neither clearly erroneous nor contrary to law and, based on its de novo review, the Court finds that Petitioner's objection to the PFRD as to the ineffectiveness of counsel issue should be overruled.

Third, Petitioner argues that "the state courts unreasonably found and concluded that the acts committed by Mr. Martinez are not unitary, thus violating the prohibition against double jeopardy," and that, in agreeing that convictions for CSP and false imprisonment do not constitute double jeopardy, the Magistrate Judge "fundamental[ly] misunderst[ood] New Mexico law." Doc. 46 at 2-3. As the Magistrate Judge explained in the PFRD, "the Fifth Amendment guarantee against double jeopardy . . . protects against multiple punishments for the same offense." *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). "The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which

the other does not." *Blockburger v. United States*, 284 U.S. 299, 304 (1932) (citation omitted). To make that determination, a federal habeas court must "defer to the state court's interpretation of the relevant statutory provisions." *Lucero v. Kerby*, 133 F.3d 1299, 1316 (10th Cir. 1998) (citations omitted). Applying this standard, the Magistrate Judge found that a reasonable trier of fact could have found that the essential elements of false imprisonment were met, and thus that the crimes of false imprisonment and CSP were not unitary—i.e., they were separate offenses. Doc. 36 at 11. Accordingly, the Magistrate Judge found that a reasonable trier of fact could have found that the convictions for false imprisonment and CSP did not violate double jeopardy. *Id.*

In the PFRD, the Magistrate Judge specifically addressed Petitioner's argument that the Court should extend the principle set forth in *New Mexico v. Trujillo*, 289 P.3d 238 (N.M. Ct. App. 2012), to false imprisonment. Doc. 36 at 11. In *Trujillo*, the Court of Appeals of New Mexico had held that kidnapping could not be charged where the restraint involved was merely incidental to the underlying crime of battery. *Id.* In rejecting Petitioner's argument that *Trujillo* applies here, the Magistrate Judge explained that, in *New Mexico v. Lucero*, No. A-1-CA-35407, 2019 WL 5926983, at *2 (N.M. Ct. App. 2019), the Court of Appeals of New Mexico had considered, and rejected, that very argument, namely, that it should extend the incidental-restraint limitation on kidnapping established in *Trujillo* to false imprisonment. *Id.* at 12. The Magistrate Judge also explained that the court in *Lucero* went on to analyze the claim before it and determined that, "[b]ecause discrete acts underlie the convictions and because the offenses were completed at different points in time, the restraint was not merely incidental to the battery and was therefore not unitary." *Id.* The Magistrate Judge explained that the facts of the instant case were similar to the facts in *Lucero*, as Petitioner committed the crimes of false imprisonment and CSP at different times. *Id.*

The Magistrate Judge noted that, not only are federal courts "bound by the state courts' interpretation of the state's laws[, but i]f the state's highest court has not decided an issue, [a federal court's] task is to predict how it would rule." *Id.* at 12-13. Recognizing that *Lucero*, an unpublished decision, does not have full precedential value, the Magistrate Judge nonetheless found it instructive as to how a New Mexico court would interpret a nearly identical case. *Id.* at 13. As an additional point, the Magistrate Judge noted that, "although the denial of certiorari is certainly not dispositive, the Court is required to predict how the New Mexico Supreme Court would rule, and the denial of certiorari [in *Lucero*] at least provides some indication the New Mexico Supreme Court saw no error with the decision and would affirm similar reasoning if it were applied in Petitioner's case." *Id.*

Accordingly, separate and apart from noting the predictive value of the denial of certiorari in *Lucero*, the Magistrate found that the Court of Appeals in Petitioner's case had correctly determined that discrete events underlay Petitioner's offenses and that those offenses were completed at different times. *Id.* For this independent reason, the Magistrate Judge agreed with the Court of Appeals that Petitioner's offenses were not unitary and that all essential elements of false imprisonment and CSP were met, meaning that Petitioner's convictions were for distinct offenses and thus did not violate the prohibition against double jeopardy. *Id.*

In his objections, Petitioner misconstrues the PFRD. Specifically, he contends that the entirety of the Magistrate Judge's finding regarding double jeopardy was based on the incorrect notion that the New Mexico Supreme Court's denial of certiorari in *Lucero* necessarily implied its agreement with the Court of Appeals' decision. Doc. 46 at 15. This is not the case. As explained above, the Magistrate Judge (properly) applied the law to the facts before it to determine that Petitioner's offenses were not unitary. While admittedly he did add that the denial of certiorari

provided "some indication" of how the New Mexico Supreme Court would rule if determining the case on the merits, the Magistrate Judge was careful to note that the denial of certiorari was "certainly not dispositive." Doc. 36 at 13. Petitioner takes no issue with the Magistrate Judge's determination, save his insistence that the Magistrate Judge improperly relied on the denial of certiorari in reaching that determination. But because the Magistrate Judge reached his determination on proper grounds, Petitioner has provided no persuasive reason for the Court to find fault with the Magistrate Judge's finding as to double jeopardy.

Accordingly, the Magistrate Judge's finding that Petitioner failed to demonstrate that the state district court unreasonably applied clearly established federal law or made an unreasonable finding of fact in convicting him of false imprisonment and CSP is neither clearly erroneous nor contrary to law, and based on its de novo review, the Court finds that Petitioner's objection to the PFRD as to double jeopardy issue should be overruled.

CONCLUSION

For the foregoing reasons, the Court overrules each of Petitioner's objections to the PFRD, adopt the PFRD in its entirety, and denies the Amended Petition.

IT IS ORDERED that:

1. The Magistrate Judge's PFRD (Doc. 36) is **ADOPTED**;
2. Petitioner's Objections (Doc. 46) are **OVERRULED**;
3. Petitioner's Amended Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. 30) is **DENIED**; and
4. A final judgment shall be entered concurrently herewith.

MARTHA VAZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ARMANDO MARTINEZ,

Petitioner,

v. No. 2:21-cv-0848 MV/DLM

RICHARD MARTINEZ and
ATTORNEY GENERAL
of the STATE of NEW MEXICO,

Respondents.

FINAL JUDGMENT

Pursuant to Federal Rule of Civil Procedure 58(a), and consistent with the Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition filed contemporaneously herewith, the Court issues its separate judgment finally disposing of this civil case.

IT IS ORDERED that Petitioner's Amended Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. 30) is **DENIED**.

MARTHA VÁZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ARMANDO MARTINEZ,

Petitioner,

v. No. 1:21-cv-0848 MV/DLM

RICHARD MARTINEZ and
ATTORNEY GENERAL
of the STATE of NEW MEXICO,

Respondents.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

THIS MATTER is before the Court on Petitioner Armando Martinez's Amended Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, filed October 10, 2023. (Doc. 30.) United States District Judge Martha Vázquez referred this case to me pursuant to 28 U.S.C. § 636(b)(1)(B) and (b)(3) to conduct hearings, if warranted, and to perform any legal analysis required to recommend to the Court an ultimate disposition. (Doc. 18.)

Petitioner has filed an amended habeas corpus petition alleging four grounds for relief. I recommend denying his Amended Petition for failure to demonstrate that the underlying state-court decisions were unreasonable.

I. Factual and Procedural Background

On June 18, 2015, a jury found Petitioner guilty of two counts of second-degree criminal sexual penetration (CSP) and individual counts of false imprisonment and aggravated battery. (Doc. 8-1 at 124–27.) Petitioner appealed, arguing that:

1. Petitioner was incompetent to stand trial;
2. the State failed to prove false imprisonment, or alternatively, punishing false imprisonment and CSP constitutes double jeopardy;

3. Petitioner did not voluntarily waive his rights, and the investigating detective coerced the confession; and

4. trial counsel was ineffective for failing to recognize the relevance of Petitioner's mental capacity diagnosis to the voluntariness inquiry and as a defense at trial.

(*Id.* at 270–304.)

The state court of appeals affirmed as to the first three issues. (*Id.* at 360–78.) As to Petitioner's ineffective assistance claim, the New Mexico Court of Appeals noted the New Mexico Supreme Court's "preference for habeas corpus proceedings" to address such claims and instructed Petitioner to initiate habeas proceedings "if he [was] so inclined." (*Id.* at 378.) On July 11, 2018, Petitioner filed a pro se state habeas corpus petition, and habeas counsel filed a supplement on October 28, 2019, arguing that:

1) his trial counsel was ineffective for failing to challenge the voluntariness of the *Miranda* waiver and subsequent statements at trial; and

2) his trial counsel was ineffective for failing to present an expert witness on the issue of voluntariness at trial.

(*Id.* at 410–14, 497–508.)

The state habeas court found that trial counsel performed deficiently in not calling an expert and in failing to request a mental-capacity jury instruction. (*Id.* at 525.) The court found, however, that the evidence before the jury, including the testimony of the investigating officer and the victim herself, was compelling enough to prove the offenses charged even without Petitioner's confession. (*Id.*) The court, therefore, concluded that Petitioner was not prejudiced by his attorney's deficient performance. (*Id.*) On June 4, 2021, the New Mexico Supreme Court denied Petitioner's petition for writ of certiorari. (*Id.* at 653.)

On August 27, 2021, Petitioner filed a § 2254 federal habeas petition asserting the following seven grounds for relief:

1) Petitioner was incompetent to stand trial.

2) The state failed to prove restraint for false imprisonment.

3) Punishing both false imprisonment and CSP constituted double jeopardy.

4) Petitioner did not voluntarily waive his right to silence, and the interrogation tactics rendered his statements involuntary.

5) Trial counsel was ineffective for failing to argue that Petitioner's cognitive abilities rendered his statements involuntary either at the suppression stage or when the issue was before the jury.

6) Trial counsel was ineffective for failing to call an expert to challenge the voluntariness of Petitioner's statements either at the suppression stage or when the issue was before the jury.

7) Petitioner is actually innocent of the crime of CSP.

(Doc. 1 at 2–16.)

On June 13, 2023, the undersigned filed a PFRD that recommended finding Grounds 1–4 were exhausted completely and Grounds 5 and 6 were exhausted only as they related to trial. (Doc. 19 at 1.) The PFRD recommended finding that Grounds 5 and 6 were otherwise unexhausted and Ground 7 was entirely unexhausted. (*Id.*) On June 26, 2023, Petitioner filed a Notice of Dismissal, dismissing the claims the Court found were unexhausted. (Doc. 20.) Judge Vázquez adopted the PFRD in part, excluding only the portion of the PFRD recommending Petitioner be granted 30 days to dismiss his unexhausted claims. (Doc. 21.) After a series of extensions, Petitioner filed his Amended Petition on October 10, 2023. (Doc. 30.)

The Amended Complaint presents the following four grounds for relief:

1) Petitioner alleges his constitutional right to due process was violated because he was tried while incompetent;

2a) Petitioner alleges he was denied due process because he was convicted of false imprisonment despite the State's alleged failure to prove all essential elements of the offense;

2b) Petitioner alleges his convictions for false imprisonment and CSPviolate the prohibition against double jeopardy.

3) Petitioner alleges his statements to police were involuntary and made in violation of due process, because he was incapable of validly waiving his *Miranda* rights due to his intellectual disability; and

4) Petitioner alleges trial counsel was ineffective for failing to argue or present expert testimony that his intellectual disability rendered his statements involuntary.[1]

(Docs. 30 at 11–12; 34 at 2.) Respondents filed their Answer Brief on November 7, 2023. (Doc. 35.) Petitioner did not file a reply.

II. The Law Governing § 2254 Claims

A prisoner in state custody seeking federal habeas corpus relief under 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act (AEDPA), faces a "formidable barrier to [obtaining] federal habeas relief . . . ." *Burt v. Titlow*, 571 U.S. 12, 19 (2013) (explaining that AEDPA's amendments create a high threshold for relief because "state courts have the solemn responsibility equally with the federal courts to safeguard constitutional rights" and are "presumptively competent" to do so) (quotation marks and citations omitted). Indeed, the Supreme Court has stated repeatedly that the standard by which federal courts are to review state court rulings is a "highly deferential standard for evaluating state-court rulings." *Lindh v. Murphy*, 521 U.S. 320, 333 n.7 (1997); *see also Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (quoting *Lindh*); *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (quoting *Woodford*).

[1] Petitioner does not list his claims; instead, he merely refers to his remaining claims as being "organized into four claims—Claims 2 and 3 are combined; in addition, Claims 5 and 6 are combined." (Doc. 30 at 11–12.) Respondents, however, synthetize Petitioner's remaining claims into the list above. (Doc. 34 at 2.)

To carry his burden under that exacting standard, a prisoner's habeas corpus petition must show that the state court decision "(1) was contrary to, or involved an unreasonable application of, clearly established federal law or (2) was based on an unreasonable determination of the facts in light of the evidence presented in the state-court proceeding." *Cortez-Lazcano v. Whitten*, 81 F.4th 1074, 1082 (10th Cir. 2023) (quoting 28 U.S.C. § 2254(d)) (quotation marks and brackets omitted).

"Clearly established law" refers to Supreme Court holdings at the time of the state-court decision. *See Williams v. Taylor*, 529 U.S. 362, 412 (2000). A state court decision is contrary to, or involves an unreasonable application of, clearly-established law if it applies a rule contradicting law set out by a Supreme Court decision, or if it is faced with a set of facts "materially indistinguishable from" facts the Supreme Court has previously considered but arrives at a different conclusion than the Supreme Court. *See id.* at 405–06.

To highlight the deference owed to state court decisions, the Supreme Court has stated that "an *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quoting *Williams*, 529 at 410). In other words, to establish an *unreasonable* application of federal law, a petitioner must "show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error . . . beyond any possibility for fairminded disagreement." *Burt*, 571 U.S. at 19–20 (quoting *Harrington v. Richter*, 562 U.S. 86, 102 (2011)). Accordingly, a federal court may not grant a § 2254 petition simply because it "concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Torres v. Mullin*, 317 F.3d 1145, 1151 (10th Cir. 2003) (quoting *Williams*, 529 at 409). Indeed, "even a strong case for relief does not mean that the state court's contrary conclusion was unreasonable." *Harrington*, 562 U.S. at 102 (citation omitted). "If this standard is difficult to meet, that is because it was meant

to be." *See id.* "As amended by AEDPA, § 2254(d) . . . preserves authority to issue the writ in cases where there is *no possibility* fairminded jurists could disagree that the state court's decision conflicts with [the Supreme] Court's precedents. It goes no further." *Id.* (citation omitted) (emphasis added).

The standard of review for reviewing a state court's factual determinations mirrors the standard for analyzing the application of federal law. A federal court may not "conclude a state court's factual findings are unreasonable 'merely because [it] would have reached a different conclusion in the first instance.'" *Smith v. Duckworth*, 824 F.3d 1233, 1241 (10th Cir. 2016) (quoting *Brumfield v. Cain*, 576 U.S. 305, 313–14 (2015)). "Rather, [a federal court] must defer to the state court's factual determinations so long as 'reasonable minds reviewing the record might disagree about the finding in question.'" *Id.* (quoting *Brumfield*, 576 U.S. at 313–14). "Accordingly, a state court's factual findings are presumed correct, and the petitioner bears the burden of rebutting that presumption by 'clear and convincing evidence.'" *Id.* (quoting 22 U.S.C. § 2254(e)(1)). However, if a petitioner shows that the state court plainly misapprehended or misstated a material factual issue that is central to his claim, the fact-finding process is fatally undermined and that finding of fact is unreasonable. *Id.* (discussing *Ryder ex rel. Ryder v. Warrior*, 810 F.3d 724, 739 (10th Cir. 2016)).

III. Petitioner is not entitled to § 2254 relief.

Whether Petitioner will prevail depends on his ability to demonstrate that the trial court's decision was based on an unreasonable application of federal law or an unreasonable finding of fact. As stated above, however, that standard is incredibly difficult to satisfy and for good reason. State courts are entrusted with the same responsibility to protect constitutional rights as federal courts, and consistent with the principle of equal sovereignty, they are presumed competent to do

so. Their fact-finding is also presumptively sound. Only when a petitioner demonstrates there is no possibility of fairminded disagreement may a federal court find that a state court applied federal law unreasonably or made an unreasonable finding of fact. The Court finds that Petitioner did not meet his burden of demonstrating the trial court applied federal law unreasonably or made an unreasonable finding of fact. Accordingly, the Court recommends denying his petition.

A. Petitioner did not present evidence that the state district court unreasonably determined he was competent to stand trial.

Petitioner's first argument is that the trial court erred in finding him competent to stand trial despite having been found to be intellectually disabled.[2] (Doc. 30 at 12–13.) Petitioner argues that he "lacked the intellectual capacity to provide reasonable assistance to his attorney in preparation for and during trial[, and therefore,] . . . his conviction constitutes a violation of due process." (*Id.* at 13.) On February 6, 2015, the state district court held a competency evaluation hearing during which clinical and forensic psychologist Susan Cave Ph.D. was recognized as an expert and opined that Petitioner was legally intellectually disabled, unlikely to improve, not competent to stand trial, and not treatable to competency. (Competency evaluation hearing at 49:30–50:00; 54:00–55:50.)[3] On cross examination, however, Dr. Cave confirmed that Petitioner understood he was charged with felonies; that felonies are more serious than misdemeanors; he would give up certain rights if he pled guilty; and he was not required to testify. (*Id.* at 1:00:00–

[2] The Court notes that the parties use the term "mental retardation" throughout the briefing to reflect the state court's usage of the same. In 2013, however, the American Psychiatric Association updated the term for the diagnosis of "mental retardation" to "intellectual disability" in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders. *See* American Psychiatric Association, Intellectual Disability (2013), https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Intellectual-Disability.pdf. The Court will use the term "intellectual disability" in brackets in place of "mental retardation," but it refers to the same diagnosis.

[3] The Court listened to the CD that Respondents submitted to the Clerk of Court on November 7, 2023. (Doc. 35.) The Respondents' cite to the time of day during which the hearing took place—e.g., 15:59:33 refers to 3:59:33 pm. (*See* Doc. 34 at 6.) On the CD, however, the competency hearing was divided into three segments, so Respondents' citation format does not align with the recordings. Accordingly, the Court will refer to the audio timestamp of the file on the CD titled: "FTR COURTROOM 353_20150206-1519_01d0422042793210."

1:02:05; 1:02:22–1:02:32.) Dr. Cave further confirmed that Petitioner defined "evidence" as "proof." (*Id.* at 1:02:10–1:02:21.) She also acknowledged he had been convicted in other proceedings during which his competency was not raised. (*Id.* at 1:11:45–1:12:06.)

The state district court found that Petitioner did not demonstrate he was incompetent. The court reasoned that although Petitioner has "subaverage intellectual functioning[,]" he does not have "a deficit in adaptive behavior." (Doc. 8-1 at 10.) The court further determined that the presumption of intellectual disability was overcome by Petitioner's "level of adaptive functioning along with his performance on the Competency Assessment Inventory." (*Id.*) Following conviction and on appeal, the New Mexico Court of Appeals "dispensed with the notion that the district court was required to accept Dr. Cave's" conclusion as to Petitioner's incompetence. (*Id.* at 363.) The court of appeals specifically highlighted that "[intellectual disability] in and of itself, is not conclusive evidence that a defendant is incompetent." (*Id.* at 362 (quoting *New Mexico v. Linares*, 393 P.3d 691, 697 (N.M. 2017)).) Indeed, the court of appeals determined that Dr. Cave's own testimony provided support for the district court's determination that Petitioner was competent to stand trial. (*Id.* at 364–66 (discussing Petitioner's awareness and understanding of the proceedings, his role in them, and the potential consequences).) The New Mexico Supreme Court then denied discretionary review. (*Id.* at 407.)

"[T]he test [for determining competency] must be whether [a petitioner] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960) (quotation marks omitted); *see Lafferty v. Cook*, 949 F.2d 1546, 1550 (10th Cir. 1991) (noting that the Supreme Court has indicated that the standard above applies to "federal habeas review of state proceedings"). "To prove incompetency to stand

trial, the defendant must prove incompetency by a preponderance of the evidence." *United States v. Williamson*, No. CR 11-2784 JB, 2013 WL 1658021 at *24 (D.N.M. Mar. 20, 2013) (citing *Allen v. Mullin*, 368 F.3d 1220, 1239 (10th Cir. 2004)). In *United States v. Lewis*, District Judge James O. Browning highlighted that "[t]here is no consistent correlation between a clinical diagnosis of intellectual disability and a legal finding of incompetency to stand trial." No. CR 21-0660 JB, 2023 WL 4976402 at *12 (D.N.M. Aug. 3, 2023) (noting that "a defendant's competency to stand trial is a legal inquiry, not a medical inquiry, and the judge is the expert on what mental capabilities the litigant needs in order to be able to assist in the conduct of the litigation") (quoting *McManus v. Neal*, 779 F.3d 634, 658 (7th Cir. 2015) (quotation marks omitted)). Although a finding "of intellectual disability makes the death penalty an unconstitutional punishment[,]" such a finding is not dispositive of competency to stand trial. *Id.* (citing *Atkins v. Virginia*, 536 U.S. 304 (2002)).

The Court acknowledges that Petitioner has an intellectual disability but nevertheless finds that the state district court did not unreasonably determine he was competent to stand trial. Based on Dr. Cave's testimony at the competency evaluation hearing, the Court finds that Petitioner displayed a "reasonable degree of rational understanding" and "a rational as well as factual understanding" of both the charges he faced and the consequences of being convicted for those charges. *See Lewis*, 2023 WL 4976402 at *14 (quoting *Dusky*, 362 U.S. at 402). Petitioner may have an intellectual disability, but the competency requirement "has a modest aim: It seeks to ensure that [Petitioner] has the capacity to understand the proceedings and to assist counsel." *Godinez v. Moran*, 509 U.S. 389, 402 (1993) (opining that "[w]hile psychiatrists and scholars may find it useful to classify the various kinds and degrees of competence, and while States are free to adopt competency standards that are more elaborate than the *Dusky* formulation, the Due Process

Clause does not impose these additional requirements") (citation omitted). The Court finds that the state district court's determination achieved that modest aim. Accordingly, the Court finds that Petitioner failed to demonstrate the state court unreasonably applied clearly established federal law or made an unreasonable finding of fact.

B. Petitioner did not demonstrate that the State failed to prove every essential element of false imprisonment or that he was subject to double jeopardy.

Petitioner's second argument is that his conduct did not meet the essential elements of false imprisonment because it was incidental to the underlying crime of CSP; accordingly, Petitioner alleges, his convictions for both crimes violate the prohibition against double jeopardy. (Doc. 30 at 13–15.)

"[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be . . . to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318 (1979). The inquiry, however, does not concern whether the reviewing court itself believes the evidence established guilt or the logic by which the trier of fact reached its conclusion. *See id.* at 318–19; *Torres v. Mullin*, 317 F.3d 1145, 1151 (10th Cir. 2003). "Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319 (citation omitted).

"[T]he Fifth Amendment guarantee against double jeopardy . . . protects against multiple punishments for the same offense." *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969) (*overruled on other grounds by Alabama v. Smith*, 490 U.S. 794 (1989)). "The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision

requires proof of a fact which the other does not." *Blockburger v. United States*, 284 U.S. 299, 304 (1932) (citation omitted). To make that determination, a federal habeas court must "defer to the state court's interpretation of the relevant statutory provisions." *Lucero v. Kerby*, 133 F.3d 1299, 1316 (10th Cir. 1998) (citations omitted). New Mexico uses the following two-part test to determine legislative intent:

> The first part of our inquiry asks the question that Supreme Court precedents assume to be true: whether the conduct underlying the offenses is unitary, *i.e.*, whether the same conduct violates both statutes. The second part focuses on the statutes at issue to determine whether the legislature intended to create separately punishable offenses. Only if the first part of the test is answered in the affirmative, and the second in the negative, will the double jeopardy clause prohibit multiple punishment in the same trial.

Swafford v. New Mexico, 810 P.2d 1223, 1233 (N.M. 1991). Determining whether two events are separate offenses depends on the time and space between the events and "the quality and nature of the acts or . . . the objects and results involved." *Id.* at 1234 (citation omitted). However, "if the conduct is separate and distinct, inquiry is at an end." *Id.*; *see also New Mexico v. Silvas*, 343 P.3d 616, 619 (N.M. 2015) ("If the conduct is not unitary, the analysis ends and double jeopardy does not apply.") (citation omitted).

The Court finds that a reasonable trier of fact could have found the essential elements of false imprisonment were met. Because the essential elements of false imprisonment were met, a reasonable trier of fact could have found the crimes were not unitary—i.e., they were separate offenses. Accordingly, the court also finds that a reasonable trier of fact could have found that the convictions for false imprisonment and CSP did not violate double jeopardy. Petitioner, however, argues that the Court should extend the principle in *New Mexico v. Trujillo*, 289 P.3d 238 (N.M. Ct. App. 2012), to false imprisonment. (Doc. 30 at 13–15.) In *Trujillo*, the Court of Appeals of New Mexico held that kidnapping could not be charged where the restraint involved was merely

incidental to the underlying crime of battery. 289 P.3d at 250–51. In *New Mexico v. Lucero*, the Court of Appeals of New Mexico considered whether to extend the incidental-restraint limitation on kidnapping established in *Trujillo* to false imprisonment and declined to do so. No. A-1-CA-35407, 2019 WL 5926983, at *2 (N.M. Ct. App. 2019) (*cert. denied* S-1-SC-38003, 2019 WL 11693101 at *1 (N.M. 2019)) ("[W]e are unpersuaded by Defendant's argument that we should apply Trujillo to false imprisonment . . . ."). The court in *Lucero* nevertheless analyzed the claim and determined that "[b]ecause discrete acts underlie the convictions and because the offenses were completed at different points in time, the restraint was not merely incidental to the battery and was therefore not unitary." *Id.* (citations omitted).

Similarly, here, Petitioner committed the crimes of false imprisonment and CSP at different times. Petitioner forced his way into the victim's room, entered the bathroom where she was brushing her teeth, grabbed her, threw her to the floor, pinned her down, and raped her. (Doc. 8-1 at 520.) As Petitioner walked away and the victim was heading to the phone, he grabbed her again, threw her to the floor again, and raped her again. (*Id.*) Petitioner then left the room for about one minute, during which time the victim called the police. (*Id.*) When 911 called back, he answered the call, said everything was fine, threw the phone against the wall, and threw the victim on the bed and beat her. (*Id.*) The court of appeals found false imprisonment occurred once Petitioner had thrown the victim to the floor before the first time he raped her. (*Id.* at 373–76.) Alternatively, the court determined that false imprisonment could also have occurred after he threw the victim on the bed, punched her, and choked her because she was confined against her will. (*Id.* at 376.)

As an initial matter, in *Lucero*, the Court of Appeals of New Mexico already rejected Petitioner's argument that *Trujillo* should extend to false imprisonment, and not only are federal courts "bound by the state courts' interpretation of the state's laws[, but i]f the state's highest court

has not decided an issue, [a federal court's] task is to predict how it would rule." *Taylor v. Powell*, 7 F.4th 920, 932–32 (10th Cir. 2021) (quotation marks and citations omitted). Although *Lucero* is not a precedential case, it *is* instructive of how a New Mexico court would interpret a nearly identical case. Additionally, although the denial of certiorari is certainly not dispositive, the Court is required to predict how the New Mexico Supreme Court would rule, and the denial of certiorari at least provides some indication the New Mexico Supreme Court saw no error with the decision and would affirm similar reasoning if it were applied in Petitioner's case.

In any event, consistent with *Lucero*, the court of appeals in this case determined that discrete events underlie the offenses and the offenses were completed at different times. (Doc. 8-1 at 373–76.) In other words, the offenses were not unitary and all essential elements of false imprisonment and CSP were met, meaning that both convictions were for distinct offenses and do not violate the prohibition against double jeopardy. Accordingly, the Court finds that Petitioner failed to demonstrate that the state district court unreasonably applied clearly established federal law or made an unreasonable finding of fact in convicting him of false imprisonment and CSP.

C. Petitioner did not demonstrate the state court unreasonably determined that he voluntarily waived his right to remain silent.

Petitioner's third argument is that "[d]ue to [his] severe intellectual deficiency, he was in no way capable of waiving his *Miranda* rights." (Doc. 30 at 16.) As an initial matter, Petitioner does not identify any clearly established federal law to support that claim, which is sufficient to deny habeas relief. *See Grant v. Royal*, 886 F.3d 874, 889 (10th Cir. 2018) ("The absence of clearly established federal law is dispositive under § 2254(d)(1) and results in the denial of habeas relief.") (quotation marks and citation omitted). The Court nevertheless finds that Petitioner failed to demonstrate the state court unreasonably determined he voluntarily waived his right to remain silent.

"While the defendant's mental condition is an important consideration, to find a statement involuntary, the police must somehow overreach by exploiting a weakness or condition *known to exist.*" *United States v. Guerro*, 983 F.2d 1001, 1004 (10th Cir. 1993) (citations omitted) (emphasis added). In other words, although a person's individual characteristics and the circumstances under which he was interviewed are relevant, those "factors must be considered in relation to the tactics employed by the police to determine if police took unfair advantage of a defendant's traits or the surrounding circumstances." *Id.* Petitioner "appeared coherent" to the interviewing detective, and Petitioner himself concedes that the detective "knew nothing about [his] mental wherewithal" and "did not notice anything concerning his mental capacity." (Doc. 8-1 at 293, 368). In holding that Petitioner waived his right voluntarily, the New Mexico Court of Appeals noted Petitioner did not argue he was "subjected to any official intimidation, coercion, or deception . . . and the record [did] not reveal any." (*Id.* at 368.) In other words, the court of appeals' decision was consistent with *Guerro*, which requires a finding that the police exploit a condition that is *known to exist. See Guerro*, 983 F.2d at 1004. Accordingly, Petitioner failed to demonstrate the court of appeals unreasonably applied clearly established federal law or made an unreasonable finding of fact in finding that he voluntarily waived his right to remain silent.

D. Petitioner does not demonstrate that the state habeas court unreasonably denied his ineffective assistance of counsel claim.

Petitioner repeats arguments the state habeas court already rejected but does not argue that the state habeas court unreasonably applied *Strickland* or unreasonably determined the facts. (*See* Docs. 30 at 8–9; 8-1 at 504–07, 525.) To succeed on an ineffective assistance of counsel claim, a petitioner must show 1) that he received substandard representation and 2) that, but for the substandard representation, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Critically, however, "[i]n order to succeed on an

ineffective-assistance claim, a petitioner must satisfy both prongs of the Strickland test." *Ellis v. Raemisch*, 872 F.3d 1064, 1085 (10th Cir. 2017) (citing *Strickland*, 466 U.S. at 687). Petitioner prevailed on the first prong before the state habeas court, but the habeas court denied his ineffective assistance of counsel claim for failure to demonstrate he was prejudiced by the ineffective assistance he received. (Doc. 8-1 at 525.) The state habeas court determined that the detective and victim's testimony "was very compelling[, t]he victim's testimony alone prove[d] the offenses charged[, and e]ven if the confession . . . had been excluded, there would have been sufficient evidence to convict . . . ." (*Id.*) Because Petitioner does not argue that the state habeas court unreasonably applied *Strickland* in finding he was not prejudiced, or that it made an unreasonable finding of fact in denying his claim, the Court finds that he did not demonstrate he is entitled to federal habeas relief.

IV. Recommendation

The standard for a petitioner to demonstrate he is entitled to federal habeas relief requires a federal court to do more than disagree with a state court decision or even find that the state court's decision was incorrect. A federal court must determine that the state court applied clearly established federal law in such a manner that *no one* could disagree that the outcome was directly contrary to Supreme Court precedent. Similarly, to find a state court's findings of fact were unreasonable, a federal court must determine that *no one* could disagree that the state court misapprehended a fact central to the petitioner's claim. As the Court highlighted above, these standards are intentionally difficult to satisfy because state courts are entrusted with the same responsibility to safeguard constitutional rights as federal courts and are presumed to be competent to make findings of fact.

Petitioner failed to satisfy either standard in the arguments he made in support of his four

grounds for relief. The Court was not persuaded that the state courts' decisions or findings of fact were wrong, let alone that they applied clearly established federal law or made findings of fact unreasonably. Accordingly, the Court recommends denying Petitioner's Amended Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. (Doc. 30.)

THEREFORE, IT IS RECOMMENDED that Petitioner's Amended Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody be **DENIED**.

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the 14-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**

DAMIAN L. MARTINEZ
UNITED STATES MAGISTRATE JUDGE