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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 24 2026

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

FORREST HENRY GILLIAM,

Petitioner - Appellant,

v.

PATRICK COVELLO, Warden,

Respondent - Appellee.

No. 26-830

D.C. No. 2:24-cv-01613-WBS-AC
Eastern District of California,
Sacramento

ORDER

Before: CALLAHAN and COLLINS, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

APPENDIX B

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FORREST HENRY GILLIAM, Petitioner, v. PATRICK COVELLO, Warden, Respondent.	No. 2:24-cv-1613 WBS AC P ORDER

Petitioner is a state prisoner proceeding through count-appointed counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 24, 2025, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 32. After obtaining an extension of time, petitioner filed timely objections to the findings and recommendations (ECF No. 35), to which respondent has replied (ECF No. 36).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations (ECF No. 32) are adopted in full;

2. The petition for writ of habeas corpus is denied;

3. For the reasons set forth in the magistrate judge's findings and recommendations, the court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253; and

4. The Clerk of the Court is directed to close this case.

Dated: January 8, 2026

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FORREST HENRY GILLIAM,

Petitioner,

v.

PATRICK COVELLO, Warden,

Respondent.

No. 2:24-cv-1613 WBS AC P

FINDINGS AND RECOMMENDATIONS

Petitioner is a California state prisoner proceeding through court-appointed counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The action proceeds on the amended petition filed on February 14, 2025, ECF No. 20, which challenges a 2022 jury finding that petitioner was legally sane at the time of the 2018 shooting which resulted in his conviction for first degree murder and related offenses. Respondent has answered, ECF No. 28, and petitioner has filed a traverse, ECF No. 31.

BACKGROUND

I. Proceedings in the Trial Court

A. Preliminary Proceedings and Competency

On October 16, 2018, petitioner was charged by criminal complaint with the murder of Gloria Navarro, the attempted murder of Steven Navarro, and related offenses. On November 28, 2018, the proceedings were suspended pursuant to Cal. Penal Code section 1368, to permit an

examination of petitioner's mental competency to stand trial. After an examination and hearing, the trial court found petitioner mentally incompetent on February 14, 2019. Petitioner was committed for inpatient treatment at the Department of State Hospitals, where he consented to anti-psychotic medication as part of his treatment. The trial court ordered the Atascadero State Hospital ("ASH") to provide regular reports regarding petitioner's progress.

On March 2, 2021, the trial court held a competency hearing and found that petitioner had sufficiently stabilized that he was mentally competent to stand trial. A preliminary hearing was held on May 25, 2021, and petitioner was held to answer on an amended information charging murder, attempted first degree murder, and illegal possession of a firearm, along with numerous enhancements and sentencing allegations. Petitioner plead not guilty and not guilty by reason of insanity.

B. The Evidence Presented at Trial: Guilt Phase[1]

1. Prosecution Case

The jury was presented evidence of the following facts. Petitioner lived with his friend Steven Navarro, with whom he had previously had a sexual relationship, Steven's mother Gloria, and another housemate. Petitioner used methamphetamine. He sometimes behaved bizarrely or said strange things. A few months before the shooting he had smashed a drinking glass into Steven's head in a dispute over a cell phone.

Petitioner was not at home on the night of October 13, 2018. In the early morning of October 14, 2018, he returned to the house and shot both Steven and Gloria in their beds. Gloria was killed, and Steven survived. Steven suffered from multiple gunshot wounds, required surgery, spent weeks in the hospital, and was left with permanent injuries to his hand.

Following his arrest, petitioner told a detective that he and Steven had a sexual relationship, and that sometimes he would wake up to Steven doing things to him, which petitioner did not like. Petitioner also said that Steven was his biological father, and he expressed

[1] Because petitioner does not challenge the verdicts of guilt, the court here provides a very abbreviated summary of the evidence.

anger toward Steven. He said that he shot Gloria because he was angry at her for taking his EBT card, locking him out of the house, and telling him when he could or could not shower. When the detective left petitioner alone in the interview room, he talked to himself.

2. Defense Case

Petitioner testified in his own defense that he took medication for schizophrenia. He said that Steven had harmed him by shooting out his teeth with a firearm called a "gardener" when no one else was home. Sometimes he woke up to find Steven touching him sexually. The unwanted sexual contact went on for about a year. He hit Steven with a glass cup after Steven had raped him. Petitioner acknowledged that he had used methamphetamine within 24 hours before the shooting. He said he shot Steven in a blackout, and had not intended to shoot him when he arrived at the house. He shot Gloria because he thought she was going for a pistol.

3. Outcome

The jury found petitioner guilty on all counts. The jury also found true that petitioner had personally and intentionally discharged a firearm causing death or great bodily injury, and that he had inflicted great bodily injury involving domestic violence. It found not true that petitioner had murdered Gloria while lying in wait.

C. The Evidence Presented at Trial: Sanity Phase

1. Defense Case

a. Testimony of Dr. Fraser[2]

Dr. Teresa Fraser was a psychologist and a forensic evaluator at ASH, who evaluated petitioner on at least two occasions during his time at the facility between May 2019 and March 2020. Petitioner appeared to experience hallucinations and exhibited delusional beliefs. Specifically, petitioner reported that that his brothers had persecuted him in various ways, including placing implants into his teeth. He believed that the implants were causing rotting and that worms and maggots were coming out of the holes in his teeth. Petitioner also believed that he had been shot in the mouth, causing the implants to leak poison. Id. He said that his brothers

[2] Dr. Fraser's testimony is found at ECF No. 17-19 at 13-34 (14 RT 878-899).

had provided an AK-47 to one of the victims, and that he knew Gloria was not dead because she talked to him.

Dr. Fraser diagnosed petitioner with schizophrenia, antisocial personality disorder, stimulant use disorder (moderate to severe), and cannabis use disorder (moderate to severe). He responded positively to schizophrenia medication although some delusions and hallucinations persisted. Cognitive testing identified significant deficits in functional domains including the ability to process information and engage in perceptual reasoning.

Prior to hospitalization, petitioner's provisional diagnoses had included substance-induced psychosis as well as schizophrenia. Although methamphetamine use can induce psychotic symptoms, and it was possible that such use contributed to the onset of petitioner's symptoms, Dr. Fraser emphasized that petitioner's symptoms had persisted for more than six months at ASH following discontinuation of methamphetamine. Also, his symptoms did not readily resolve with antipsychotics, which would typically occur with a standard substance-induced psychotic disorder. Accordingly, she concluded that petitioner's condition was more consistent with a schizophrenia spectrum disorder than a short-term substance-induced disorder.

Dr. Fraser did not offer an opinion on the issue of sanity.

b. Testimony of Dr. Blak[3]

Dr. Richard Blak, a clinical and forensic psychologist, reviewed plaintiff's ASH file and other records, interviewed petitioner in May 2022, and reached a diagnosis of schizophrenia and substance abuse disorder. During the evaluation, petitioner expressed his continuing beliefs that his brother had shot out his teeth with a gun, leading to implants and to maggots or worms in his mouth; that his teeth were leaking poison; that Gloria was his mother or grandmother and Steven his father; that "Janet" was both his mother and his sister, and that petitioner was the product of a sexual encounter between "Janet" and Steven. Steven's desire to have sex with petitioner was therefore incestuous. These delusions had persisted for years, although petitioner's substance abuse disorder was in remission because of his custody. If petitioner's condition had been

[3] Dr. Blak's testimony is found at ECF No. 17-20 at 5-55 (15 RT 911-961).

induced by substances, it would have cleared up sooner or later. Because petitioner had been medicated for so long and still experienced delusions in the absence of methamphetamine, Dr. Blak concluded that schizophrenia was the major contributor or nexus that resulted in the offense.

Dr. Blak opined that petitioner had experienced schizophrenia on the day of the offense, which affected his perception of external reality and of what he believed to be true. Petitioner's schizophrenia also affected his judgment and his capacity to know morally right from wrong. According to Dr. Blak, petitioner was legally insane at the time of the shootings.

2. Prosecution Case

a. Testimony of Dr. Cavanaugh[4]

Dr. Gary Cavanaugh, a psychiatrist, had evaluated petitioner for competency in relation to another case in 2008, and evaluated him in relation to this case in September 2021. In 2008, Dr. Cavanaugh had found no evidence of any psychotic disorder. Given petitioner's age at the time of the instant offense (30) and lack of prior treatment for schizophrenia, Dr. Cavanaugh disagreed with the schizophrenia diagnosis as unsupported by the longitudinal record. He concluded that at the time of the shooting, petitioner suffered from methamphetamine-induced psychotic disorder, methamphetamine and cannabis use disorder, and severe antisocial personality disorder.

Dr. Cavanaugh explained that psychotic symptoms caused by methamphetamine abuse are similar to those exhibited by persons with schizophrenia. While psychotic symptoms from methamphetamine usually subside after a few days of non-use, long-term use can result in the persistence of symptoms after the person has stopped using. The manual used by psychiatrists to diagnose mental illnesses cautions against making a schizophrenia diagnosis in the face of chronic methamphetamine usage, because the two disorders can present identically.

When asked whether petitioner was capable of knowing and understanding the nature and quality of his acts on the day of the shooting, Dr. Cavanaugh explained: "[T]hat is a tough one, because I mean, you know, generally acts that are committed when under the influence of

[4] Dr. Cavanaugh's testimony is found at ECF No. 17-20 at 55-96 (15 RT 961-1002). He was a court appointed expert who was called as a prosecution witness.

substances are generally not allowed to be covered by a [legal insanity] assessment. I certainly think he was not able to think through his actions, there's no doubt about that. Since I did not really see him at the time, I can't be certain about this, but he probably was not aware that it was wrong, but that's based on methamphetamine psychotic disorder, not schizophrenia. Thus, it's a substance related offense."

Upon further questioning, Dr. Cavanaugh opined that petitioner "understood" and "knew what he was doing" on the day of the shooting, but might not have realized it was wrong based on the effects from the methamphetamine. Noting that petitioner heard voices and became angry after using methamphetamine, Dr. Cavanaugh concluded that petitioner was legally sane because he did not have a "mental disorder other than the methamphetamine induced psychotic disorder."

b. Testimony of Dr. Weiss[5]

Dr. Wendy Weiss, a forensic psychologist employed by the Board of Parole Hearings, interviewed petitioner twice in late 2021. He told her that he began using cannabis at age 12 and methamphetamine at age 14, was using methamphetamine daily at the time of the shooting, and was experiencing the effects of methamphetamine when he shot Steven and Gloria. Petitioner also reported that he began experiencing auditory hallucinations six years earlier, which Dr. Weiss noted is a symptom consistent with methamphetamine use.

Dr. Weiss concluded that petitioner was suffering from methamphetamine-induced psychosis at the time of the shooting and was not legally insane. She explained that, based on her interviews with petitioner and the materials she reviewed (e.g., medical and psychiatric records, police report, expert reports, competency evaluations from 2018 and 2020), petitioner did not appear to lack an ability to understand and appreciate his behavior due to a mental disorder, disease, or defect. Dr. Weiss further opined that any perceptual distortions petitioner may have experienced at the time of the shootings were the result of the methamphetamine intoxication.

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[5] Dr. Weiss's testimony is found at ECF No. 17-20 at 96-128 (15 RT 1002-1034). She was a court appointed expert who was called as a prosecution witness.

Dr. Weiss had considered and rejected the possibility that a disorder independent of methamphetamine use had caused petitioner's apparent psychosis on the day of the shooting. She found such a proposition unsupported by the records and history. She added that she saw evidence petitioner had acted in a "purposeful, goal directed way" which "revealed a more calculated consideration of what he was doing."

When asked how petitioner's methamphetamine use, which predated his purported auditory hallucinations, impacted her conclusion that defendant was suffering from methamphetamine-induced psychosis, Dr. Weiss stated: "[Petitioner's] methamphetamine abuse in my opinion likely precipitated the onset of a mental illness. . . . [H]aving read all the records, I think that he has developed a mental illness over time. The etiology is, I can't say with certainty that it's because he used methamphetamine. Perhaps he would have developed this disorder anyhow. It would certainly exacerbate it, his perceptual distortions and hallucinations and delusions that he has reported were certainly exacerbated and magnified if not solely caused by the methamphetamine use and intoxication."

3. Outcome

The jury found petitioner legally sane on all counts.

D. Sentencing

Petitioner was sentenced to a total term of 124 years to life.

II. Post-Conviction Proceedings

Petitioner timely appealed, and the California Court of Appeal affirmed the judgment of conviction. ECF No. 17-35. The California Supreme Court denied review on February 21, 2024. ECF No. 17-39. No applications for collateral post-conviction relief were filed in the state courts.

A pro se federal petition was docketed on June 6, 2024. ECF No. 1. The undersigned appointed counsel to represent petitioner, ECF No. 10, and the operative amended petition was filed by counsel on February 14, 2025, ECF No. 21. Respondent answered, ECF No. 28, and petitioner filed a traverse, ECF No. 31.

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STANDARDS GOVERNING HABEAS RELIEF UNDER THE AEDPA

I. Statutory Standards for Federal Habeas Review Under 28 U.S.C. § 2254

28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), provides in relevant part as follows:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

The statute applies whenever the state court has denied a federal claim on its merits, whether or not the state court explained its reasons. Harrington v. Richter, 562 U.S. 86, 99 (2011). State court rejection of a federal claim will be presumed to have been on the merits absent any indication or state-law procedural principles to the contrary. Id. (citing Harris v. Reed, 489 U.S. 255, 265 (1989) (presumption of a merits determination when it is unclear whether a decision appearing to rest on federal grounds was decided on another basis)). "The presumption may be overcome when there is reason to think some other explanation for the state court's decision is more likely." Id. at 99-100.

The phrase "clearly established Federal law" in § 2254(d)(1) refers to the "governing legal principle or principles" previously articulated by the Supreme Court. Lockyer v. Andrade, 538 U.S. 63, 71-72 (2003). Only Supreme Court precedent may constitute "clearly established Federal law," but courts may look to circuit law "to ascertain whether…the particular point in issue is clearly established by Supreme Court precedent." Marshall v. Rodgers, 569 U.S. 58, 64 (2013).

A state court decision is "contrary to" clearly established federal law if the decision "contradicts the governing law set forth in [the Supreme Court's] cases." Williams v. Taylor, 529 U.S. 362, 405 (2000). A state court decision "unreasonably applies" federal law "if the state

court identifies the correct rule from [the Supreme Court's] cases but unreasonably applies it to the facts of the particular state prisoner's case." Id. at 407-08. It is not enough that the state court was incorrect in the view of the federal habeas court; the state court decision must be objectively unreasonable. Wiggins v. Smith, 539 U.S. 510, 520-21 (2003).

Review under § 2254(d) is limited to the record that was before the state court. Cullen v. Pinholster, 563 U.S. 170, 180-181 (2011). The question at this stage is whether the state court reasonably applied clearly established federal law to the facts before it. Id. at 181-182. In other words, the focus of the § 2254(d) inquiry is "on what a state court knew and did." Id. at 182. Where the state court's adjudication is set forth in a reasoned opinion, §2254(d)(1) review is confined to "the state court's actual reasoning" and "actual analysis." Frantz v. Hazey, 533 F.3d 724, 738 (9th Cir. 2008) (en banc). A different rule applies where the state court rejects claims summarily, without a reasoned opinion. In Richter, supra, the Supreme Court held that when a state court denies a claim on the merits but without a reasoned opinion, the federal habeas court must determine what arguments or theories may have supported the state court's decision, and subject those arguments or theories to § 2254(d) scrutiny. Richter, 562 U.S. at 102.

II. Petitioner's Argument For De Novo Review[6]

Petitioner argues at length that the court should decline to apply § 2254(d)'s deferential standards in light of the U.S. Supreme Court's Decision in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). ECF No. 20 at 15, 34-44. Petitioner relies on Loper Bright for the proposition that "any attempt by Congress to curtail the Court's power to [interpret the federal Constitution independently of state court decisions] – such as that set forth in section 2254(d)(1) – is unconstitutional under Article III." Id. at 15. The undersigned rejects this contention. Loper

[6] Petitioner's argument that § 2254(d) should not apply is based on the asserted unconstitutionality of the statute. The court notes that petitioner has failed to comply with Rule 5.1, Fed. R. Civ. P., which requires notice to the Attorney General of the United States when the constitutionality of a federal statute is questioned in a pleading and provides an opportunity for intervention by the United States. Because the undersigned finds that petitioner's arguments do not present a potentially meritorious theory of unconstitutionality, petitioner's noncompliance will be overlooked. See Rule 5.1(c) (court may reject a constitutional challenge prior to United States' decision whether to intervene).

Bright overruled Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), which had required a significant degree of judicial deference to federal agency interpretations of federal statutes. No federal agency interpretation is at issue here, nor is this a case about federal court deference to a federal agency. Neither the Supreme Court nor the Ninth Circuit has indicated that Loper Bright casts any doubt on the ongoing validity of established habeas corpus jurisprudence.

Nothing in the holding or reasoning of Loper Bright implicates Congress's authority to limit federal habeas relief or compels a conclusion that the court's Article III authority is abridged by § 2254(d). The U.S. Supreme Court has specifically directed lower federal courts to apply § 2254(d) as a "constitutionally valid rule of decision." See Brown v. Davenport, 596 U.S. 118, 127 (2022) ("When Congress supplies a constitutionally valid rule of decision, federal courts must follow it. In AEDPA, Congress announced such a rule."). In Felker v. Turpin, 518 U.S. 651 (1996), the Supreme Court upheld AEDPA against arguments that it violated Article III. The Ninth Circuit has also expressly upheld the constitutionality of § 2254(d), rejecting the argument that it "supplants judicial judgment with legislative choice." Crater v. Galaza, 491 F.3d 1119, 1129 (9th Cir. 2007); see also Allen v. Ornoski, 435 F.3d 945, 960–61 & n.11 (9th Cir. 2006) (noting that § 2254(d) does not violate Article III or separation of power principles). Because Loper Bright has not been extended to the habeas context and Crater remains binding authority, the undersigned joins those courts which have rejected Loper Bright challenges to AEDPA. See, e.g., Townsel v. Davis, 2025 U.S. Dist. LEXIS 207244, *2-3 (E.D. Cal. 2025) (Thurston, D.J); Miles v. Phillips, 2025 U.S. Dist. LEXIS 171758, *24-26 (E.D. Cal. 2025) (Cota, M.J.); Burns v. Bean, 2025 U.S. Dist. LEXIS 145582, *9 n.5 (D. Nev. 2025); Mann v. Thornell, 2025 U.S. Dist. LEXIS 198127, *5-11 (D. Ariz. 2025).

DISCUSSION

I. Petitioner's Allegations and Pertinent State Court Record

Petitioner's sole claim for relief is that constitutionally insufficient evidence supported the jury's finding that petitioner was legally sane at the time of the commission of the offenses.

////

II. The Clearly Established Federal Law

Due process requires that each essential element of a criminal offense be proven beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970). In reviewing the sufficiency of evidence to support a conviction, "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 v. Virginia, 443 U.S. 307, 319 (1979). If the evidence supports conflicting inferences, the reviewing court must presume "that the trier of fact resolved any such conflicts in favor of the prosecution," and the court must "defer to that resolution." Id. at 326. "A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury." Cavazos v. Smith, 565 U.S. 1, 2 (2011) (per curiam).

III. The State Court's Ruling

Petitioner's claim was presented on direct appeal. Because the California Supreme Court denied discretionary review, the opinion of the California Court of Appeal constitutes the last reasoned decision on the merits and is the subject of habeas review in this court. See Ylst v. Nunnemaker, 501 U.S. 797 (1991); Ortiz v. Yates, 704 F.3d 1026, 1034 (9th Cir. 2012).

The state court ruled in pertinent part as follows:

> Defendant argues there is insufficient evidence to support the jury's sanity verdict. He claims there is no substantial evidence that he was legally sane at the time of the shooting, as the opinions of Dr. Cavanaugh and Dr. Weiss "were not grounded in the facts of the case." We are not persuaded.
>
> A. *Applicable Legal Principles and Standard of Review*
>
> If a defendant pleads both not guilty and not guilty by reason of insanity, the trial is bifurcated into guilt and sanity phases. In the guilt phase, the defendant is conclusively presumed to have been legally sane at the time of the offense. (*People v. Elmore* (2014) 59 Cal.4th 121, 140-141; § 1026, subd. (a).) If the defendant is found guilty, the trial proceeds to the sanity phase, in which the defendant has the burden to prove he was legally insane by a preponderance of the evidence. (*Elmore*, at p. 141; §§ 1026, subd. (a), 25, subd. (b).)
>
> Under California law, persons who are mentally incapacitated are deemed incapable of committing crimes. (§ 26; *People v. Powell* (2018) 5 Cal.5th 921, 955.) Mental incapacity is determined by the

M'Naghten test for legal insanity set forth in section 25, subdivision (b). (*Powell*, at p. 955.) Under *M'Naghten,* legal insanity is established if the defendant had a mental disease or defect when he committed the crimes, and because of that disease or defect, he was incapable of either knowing or understanding the nature and quality of his acts or was incapable of knowing or understanding that his acts were morally or legally wrong. (§ 25; subd. (b); *Powell*, at p. 955; *People v. Elmore*, *supra*, 59 Cal.4th at p. 140; CALCRIM No. 3450.) [fn. omitted] The defendant's insanity does not need to be permanent in order to establish a defense. The relevant inquiry is the defendant's mental state at the time the crimes were committed. (*People v. Kelly* (1973) 10 Cal.3d 565, 577.)

"A defendant may not be found insane solely on the basis of addiction to, or abuse of, intoxicating substances. (§ 29.8.) This provision 'makes no exception for brain damage or mental disorders caused solely by one's voluntary substance abuse but which persists after the immediate effects of the intoxicant have dissipated. Rather, it erects an absolute bar prohibiting use of one's voluntary ingestion of intoxicants as the sole basis for an insanity defense, regardless whether the substances caused organic [brain] damage or a settled mental disorder which persists after the immediate effects of the intoxicant have worn off.' " (*People v. McCarrick* (2016) 6 Cal.App.5th 227, 247; see also *People v. Robinson* (1999) 72 Cal.App.4th 421, 427 [discussing former § 25.5 before it was renumbered § 29.8].) However, "[w]here the mental disease or defect is caused *in part* by an addiction or abuse of alcohol" a legal insanity defense is still available "depending on whether the defendant proves that it was his mental disease or defect that caused him to be unable to tell right from wrong." (*People v. Cabonce* (2009) 169 Cal.App.4th 1421, 1436; see CALCRIM No. 3450 ["If the defendant suffered from a settled mental disease or defect caused by the long-term use of drugs or intoxicants, that settled mental disease or defect combined with another mental disease or defect may qualify as legal insanity. A *settled mental disease or defect* is one that remains after the effect of the drugs or intoxicants has worn off"].)

Only "individuals rendered insane solely because of their substance abuse should be treated differently than those afflicted by mental illness through no conscious volitional choice on their part." (*People v. Robinson*, *supra*, 72 Cal.App.4th at p. 428.) "Thus, there can be no insanity defense when the inability to tell right from wrong derived (1) solely from an addiction or abuse of intoxicating substances, *or* (2) from a mental defect or disorder that itself was caused solely by such addiction or abuse." (*People v. Cabonce*, *supra*, 169 Cal.App.4th at p. 1434.)

We review a jury's sanity determination for substantial evidence. (*People v. Powell*, *supra*, 5 Cal.5th at pp. 956-957.) We review the entire record in the light most favorable to the jury's determination and affirm that determination if it is supported by evidence that is reasonable, credible and of solid value. (*Id*. at p. 957.) "We do not question the credibility of a witness's testimony, so long as it is 'not inherently improbable,' nor do we reconsider the weight to be given

> any particular item of evidence." (*People v. Navarro* (2021) 12 Cal.5th 285, 302.)
>
> B. *Analysis*
>
> We see no basis for reversal. On the record before us, a reasonable jury could have found that defendant failed to prove he was legally insane at the time of the shooting by a preponderance of the evidence. "Because the defendant has the burden of proof on the issue of insanity, 'the question on appeal is not so much the substantiality of the evidence favoring the jury's finding as whether the evidence contrary to that finding is of such weight and character that the jury could not reasonably reject it.' " (*People v. McCarrick*, *supra*, 6 Cal.App.5th at pp. 247-248.) This standard has not been satisfied here. While the defense experts (Dr. Fraser and Dr. Blak) agreed that defendant suffered from a severe mental illness (schizophrenia), that fact does not conclusively establish that defendant was legally insane when he shot Steven and Gloria. (*People v. Powell*, *supra*, 5 Cal.5th at p. 955.) On this issue, the court-appointed experts (Dr. Cavanaugh and Dr. Weiss) disagreed with Dr. Blak. They concluded that defendant was not suffering from schizophrenia but rather methamphetamine-induced psychosis. Defendant asserts that Dr. Cavanaugh's and Dr. Weiss's opinions were flawed because they failed to consider certain evidence "bearing upon his sanity." However, "[i]t was for the jury to evaluate the testimony of the experts, examine the bases for their opinions and determine whom to believe." (*People v. Chavez* (2008) 160 Cal.App.4th 882, 891.) As our Supreme Court has explained, "The issue of legal sanity is . . . a complex and uncertain one about which fully competent experts can reasonably disagree." (*Powell*, at p. 958.) After considering the evidence presented, the jury found that defendant was legally sane at the time of the shooting. Providing the experts were adequately qualified, which defendant did not dispute, the jury was entitled to evaluate and weigh their opinions. (*Ibid.*) Nothing more is required to uphold the jury's sanity verdict (*ibid.*), and there is no legal basis for us to disturb that verdict.

ECF No. 17-37 at 12-15.

IV. Review Under 28 U.S.C. § 2254(d)

There can be no "unreasonable application" of federal law by a state court, as needed to overcome the statutory bar to federal relief, if the Supreme Court itself has never applied a rule in the particular context at issue. See White v. Woodall, 572 U.S. 415 (2014) (no unreasonable application of precedent where state court refused to give no-adverse-inference instruction related to petitioner's decision not to testify at penalty phase of capital trial, because Fifth Amendment right to such instruction is well-established only for guilt phase); see also Lopez v. Smith, 574 U.S. 1, 6 (2014) (AEDPA bars consideration of claim where "our case law does not clearly

establish the legal proposition needed to grant respondent habeas relief"). The U.S. Supreme Court has never held that due process review under Jackson v. Virginia applies categorically to sanity findings,[7] or to any other issue related to an affirmative defense on which the defendant bears the burden of proof. Nor has the Supreme Court recognized a right grounded in the Due Process Clause to any particular standard of proof in the sanity context. Accordingly, other courts have found that habeas relief is categorically unavailable on claims like the one presented here. See e.g., Pop v. Yarborough, 354 F. Supp. 2d 1132, 1138 (C.D. Cal. 2005) ("it does not appear that Petitioner's [due process] claim relating to his insanity defense is even cognizable under habeas because sanity was not an element of the offenses for which he was convicted."); Gall v. Parker, 231 F.3d 265, 307 (6th Cir. 2000) (finding claim that evidence was insufficient to establish sanity was not cognizable under § 2254 where sanity is not an element of crime), overruled on other grounds by Bowling v. Parker, 344 F.3d 487, 501 n.3 (6th Cir. 2003).

The undersigned agrees. The Jackson standard places guardrails on post-conviction deference to jury verdicts, specifically in order to protect the fundamental due process requirements that criminal offenses be proven by the prosecution beyond a reasonable doubt. Jackson, 433 U.S. at 315-318 (discussing Winship, supra). These requirements do not apply to affirmative defenses, which are independent of the prosecution's burden of proof and are subject to a different standard of proof. See People v. Hernandez, 22 Cal. 4th 512, 521-22 (2000) (defendant bears the burden of establishing insanity as an affirmative defense, by a preponderance of the evidence). Because sanity is not an element of criminal liability that must be proved by the prosecution beyond a reasonable doubt, Hernandez, 22 Cal. 4th at 522, Winship is inapplicable. Where Winship does not apply in the first instance, Jackson is inapposite by its own terms.[8]

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[7] In Moore v. Duckworth, 443 U.S. 713 (1979), the Supreme Court entertained a Jackson claim that due process was violated by insufficient evidence of sanity, but the state law applicable to the criminal trial in that case required the prosecution to prove the defendant's sanity beyond a reasonable doubt. Moore therefore does not support the proposition that Jackson applies where, as here, the defense bears the burden. See Hawkins v. Horal, 572 F. App'x 480, 480-481 (9th Cir. 2014) (reaching the same conclusion).

[8] Petitioner relies on Perez v. Cain, 529 F.3d 588 (5th Cir. 2008), in which the Fifth Circuit assumed (as had the state court of appeal) that a challenge to the sufficiency of evidence of sanity (continued…)

Jackson does not apply by necessary implication either, because the Supreme Court has never recognized a federal right to present an insanity defense. See Medina v. California, 505 U.S. 437, 449 (1992); Clark v. Arizona, 548 U.S. 735, 752 n.20 (2006). Absent an underlying due process entitlement at trial, there is nothing for Jackson to protect. In an unpublished case, the Ninth Circuit has relied on the absence of a constitutional right to an insanity defense to find that § 2254(d) bars relief on a claim challenging on due process grounds a trial court's failure to give an insanity instruction. Marquez v. Gentry, 708 Fed. Appx. 924, 924-925 (9th Cir. 2018). The same result is required here: because there is no substantive federal right to the insanity defense, postconviction review—in this case for sufficiency of the evidence—is entirely a matter of state law and provides no grounds for federal habeas relief. See id. at 925; Pop, 354 F. Supp. 2d at 1138.

Even assuming arguendo that Jackson applies by analogy and that petitioner's claim is cognizable in federal habeas, relief is unavailable. Application of Jackson would require the court to ask whether a rational factfinder could have concluded that petitioner failed to prove his insanity by a preponderance of the evidence. See Cavazos, 565 U.S. at 2 (verdict may be set aside "only if *no* rational trier of fact could have agreed with the jury") (emphasis added). A "double dose of deference" to the verdict is required when a Jackson claim is reviewed under the AEDPA. Boyer v. Belleque, 659 F.3d 957, 964 (9th Cir. 2011).

The California Court of Appeal did not apply Jackson to petitioner's sufficiency of the evidence claim, so this court asks broadly whether the state court made dispositive factual findings that were objectively unreasonable or relied on legal analysis that was contrary to or objectively unreasonable under Jackson. See Early v. Packer, 537 U.S. 3, 8 (2002) (even if state court fails to cite or indicate awareness of federal law, its decision must be upheld "so long as neither the reasoning nor the result of the state-court decision contradicts" clearly established U.S. Supreme Court authority). The appellate court provided sound reasons for its conclusion that the sanity

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was governed by Jackson even though defendant bore the burden of proving insanity under state law. Nothing in the opinion indicates that the Fifth Circuit considered the issues discussed above, and in any event Perez is not binding on this court. The undersigned does not find it persuasive.

verdict was adequately supported by evidence. Two out of three qualified experts who opined on the ultimate question of legal insanity found petitioner to have been sane.[9] As to the relationship of petitioner's psychotic symptoms to his chronic and long-term methamphetamine abuse, the expert witnesses were equally divided. The jury's decision which expert testimony to believe involves credibility determinations, and those are entitled to near total deference. See Jackson, 443 U.S. at 326. Although petitioner argues here that the evidence supported a contrary result, that is not the question. This court may not reweigh the evidence or make its own judgments about the credibility and value of various expert opinions, it may only review the state court's judgment for objective unreasonableness. For the reasons already explained, the court finds none.

CONCLUSION

For all the reasons explained above, the state courts' denial of petitioner's claim was not objectively unreasonable within the meaning of 28 U.S.C. § 2254(d). Accordingly, IT IS HEREBY RECOMMENDED that the petition for writ of habeas corpus be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. §636(b)(l). Within twenty-one days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." If petitioner files objections, he shall also address whether a certificate of appealability should issue and, if so, why and as to which issues. See 28 U.S.C. § 2253(c)(2). Any reply to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file

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[9] The undersigned does not mean to imply that the number of witnesses or quantum of evidence on each side of this or any issue is dispositive. Nonetheless, in light of Jackson's directive to view the evidence in the light most favorable to the prosecution, and the criminal defendant's burden to prove insanity by a preponderance of the evidence, this point is relevant. The court rejects petitioner's attacks on the conclusions drawn by Drs. Cavanaugh and Weiss, which are the sorts of arguments properly made to a jury.

objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: October 24, 2025

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

APPENDIX D

Court of Appeal, Third Appellate District
Colette M. Bruggman, Clerk
Electronically RECEIVED on 12/14/2023 by D. Marnock, Deputy Clerk

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Respondent, v. FORREST HENRY GILLIAM, Defendant and Appellant.	C097209 (Super. Ct. No. STK-CR-F-DV-2018-0012878)

Defendant Forrest Henry Gilliam shot two of his roommates while they were in their beds early one morning in October 2018. He was charged with several offenses and entered pleas of not guilty and not guilty by reason of insanity.

At the guilt phase, a jury found him guilty of first degree willful, deliberate, and premeditated murder (Pen. Code, § 187, subd. (a)), [1] attempted murder that was willful, deliberate, and premeditated (§§ 664/187, subd. (a)), and unlawful possession of a firearm by a felon (§ 29800, subd. (a)(1)). The jury also found true a firearm enhancement (§ 12022.53, subd. (d)) and a great bodily injury enhancement (§ 12022.7, subd. (e)). In a bifurcated proceeding, the trial court found defendant had a prior serious felony conviction (§ 667, subd. (a)) that qualified as a strike under the three strikes law (§§ 1170.12, subd. (b), 667, subd. (d)).

At the sanity phase, the jury found defendant was legally sane at the time he committed the offenses. Thereafter, in a bench trial, the court found true certain aggravating factors alleged under California Rules of Court,[2] rule 4.421. The court sentenced defendant to an aggregate term of 124 years to life in prison.

Defendant appeals, arguing that reversal is required because substantial evidence does not support the jury's sanity verdict. He contends his sentence violates the prohibition against cruel and unusual punishment under the federal and state Constitutions, and that the trial court erred by failing to dismiss the strike prior finding. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mental Competency and Bifurcation of Trial

After a criminal complaint was filed in October 2018 charging defendant with the offenses of conviction, defendant was declared mentally incompetent to stand trial and was committed to the Department of State Hospitals in February 2019. The criminal proceedings were suspended, and defendant was hospitalized at the Atascadero State

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[1] Undesignated statutory references are to the Penal Code.

[2] All further rule references are to the California Rules of Court.

Hospital for approximately 10 months. In March 2021, the trial court found defendant mentally competent to stand trial and reinstated the criminal proceedings. In May 2022, an amended information was filed, and a jury trial commenced shortly thereafter. As noted, the trial was bifurcated into guilt and sanity phases due to defendant's plea of not guilty by reason of insanity.

Guilt Phase

In 2018, defendant and several others lived in a house in Stockton. Shortly before 6:00 a.m. on October 14, 2018, defendant shot two of his roommates--Gloria and Steven Navarro (mother and son)--while they were in their beds, and then immediately fled the area on foot.[3] Steven was shot multiple times, including once in his chest. He was taken to the hospital and survived.[4] Gloria, who was also shot multiple times, died at the scene from her injuries.

When defendant was arrested later that same day, he was carrying a loaded nine-millimeter handgun, with one round in the chamber and three in the magazine. A criminalist subsequently determined that the eight shell casings found at the scene, as well as the expended bullets found at the scene and inside the victims' bodies, were fired by that gun.

During his police interview conducted the same day as the shooting, defendant said that he and Steven shared a room for approximately two years and had a sexual relationship, that there were times when Steven touched him in a sexual way while he was asleep (which he did not like), that he shot Gloria because he was angry at her, and

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[3] Because Gloria and Steven share the same last name, we refer to them by their first names to avoid confusion.

[4] Steven died prior to trial. His cause of death was unrelated to the injuries he sustained from the shooting giving rise to this case. At trial, Steven's testimony from the preliminary hearing was admitted.

that he told another person about the shooting shortly after it occurred. As for the shooting, defendant explained that he was upset with Gloria because she would take his EBT card[5] and not give it back to him, she decided when he could take a shower, and there were times when she locked him out of the house. At one point, defendant mentioned that he aimed his gun at Gloria before shooting her.

At trial, there was evidence that defendant talked to himself at times "about violence" and that he occasionally made "bizarre statements," including claiming that Steven was his father. There was also evidence that, approximately nine hours before the shooting (around 8:00 or 9:00 p.m. on October 13, 2018), defendant was at home and "appeared stressed"; his face looked serious or angry.

Defendant testified on his own behalf at trial as the sole defense witness. He testified that he and Steven had a sexual relationship, he took medication for schizophrenia (Zyprexa), and Steven had sexually assaulted (sodomized) him multiple times while he was asleep. In response to one of the incidents, defendant hit Steven with a glass cup. Defendant also claimed that, prior to the shooting, he believed Steven was his biological father, Steven had "[s]hot [his] teeth out with a .22 gardener," and there were implants in his teeth that allowed him to be tracked by "GPS."

As for the shooting, defendant explained that he had used methamphetamine and "blacked out" around the time he shot Steven, although defendant remembered that he shot at Steven three times after he retrieved his backpack. Defendant also recalled that Gloria yelled, "Get out" after Steven was shot, that he shot Gloria twice because he believed she was "going for a weapon," that he fled the scene immediately after the shooting, that he went to a friend's house and admitted to shooting Steven, and that his gun was fully loaded (eight bullets) prior to the shooting and contained four bullets when

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[5] An EBT (electronic benefit transfer) card is a state-issued card that provides food assistance to low-income individuals.

it was seized by the police later that same day, with one round in the chamber and three in the magazine.

At trial, defendant claimed that he no longer believed Steven was his biological father, but maintained that Steven had shot him in the mouth. When asked, defendant admitted that he was angry the night before the shooting and did not sleep at his house that night. Defendant also admitted that he had suffered four prior felony convictions: (1) a 2006 conviction for robbery (§ 211); (2) a 2007 conviction for receiving stolen property (§ 496, subd. (a)); (3) a 2008 conviction for driving or taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)); and (4) a 2012 conviction for unlawful possession of ammunition by a felon (§ 30305, subd. (a)(1), formerly § 12316, subd. (b)(1)).

On cross-examination, defendant acknowledged that he understood that a person shot in the chest would be "damage[d]."

Sanity Phase

Following defendant's convictions at the guilt phase, the same jury heard the trial of defendant's insanity defense. Four experts testified as to defendant's mental condition--two defense experts (Theresa Fraser, Ph.D. (psychology) and Richard Blak, Ph.D. (psychology)), and two court-appointed experts (Gary Cavanaugh, M.D. (psychiatry) and Wendy Weiss, Ph.D. (psychology)). It was undisputed that defendant had a history of substance abuse, and that, at the time of the shooting, he was 30 years old and experiencing the effects of methamphetamine. The principal disagreement among the experts was whether defendant was suffering from schizophrenia exacerbated by drug use or methamphetamine-induced psychosis. As we next explain, Dr. Blak concluded defendant was legally insane at the time of the shooting due to the effects of schizophrenia and methamphetamine. Dr. Cavanaugh disagreed with this conclusion, finding that defendant was not suffering from schizophrenia but rather psychosis induced

by methamphetamine. Dr. Weiss agreed with Dr. Cavanaugh. Dr. Fraser did not offer an opinion on the issue of insanity.

Defense Experts

Dr. Fraser, a forensic psychologist employed by the Department of State Hospitals, testified that defendant was a patient at the Atascadero State Hospital from May 2019 to March 2020. Dr. Fraser explained that, shortly after defendant's arrival, there was evidence suggesting he was experiencing hallucinations. Defendant discussed what appeared to be delusional beliefs, and demonstrated some thought disorganization when discussing those beliefs. Over the course of his hospitalization, defendant claimed his brothers had placed implants into his teeth, which caused rotting and worms and maggots to come out of holes in his teeth. Defendant also claimed that he had been shot in the mouth, which caused the implants to leak poison, that his brothers had provided an AK-47 to one of the victims, that Gloria was not dead, that his brothers had placed a chastity belt on him, and that he heard Gloria's voice sometimes.

Dr. Fraser diagnosed defendant with schizophrenia, antisocial personality disorder, and amphetamine and cannabis use disorder. Dr. Fraser noted that defendant was prescribed an antipsychotic medication (Zyprexa), which is primarily used to treat psychotic symptoms and can have a mood stabilizing effect. Defendant was initially given a 10-milligram dose, which was increased to 45 milligrams over time. Although defendant showed steady improvement, he was still experiencing delusions at the time he was discharged from the hospital. Dr. Fraser did not opine on whether, at the time of the shooting, defendant was legally insane. As for whether defendant's mental condition was caused by substance abuse, Dr. Fraser noted that, in a typical case, most symptoms related to a substance-induced psychosis resolve six months after a person stops using. Thus, she opined defendant's mental illness was not induced by substance abuse, as he continued to experience delusions throughout his hospitalization (even while taking antipsychotic medication), which is "more characteristic of a schizophrenia spectrum

disorder as opposed to just strictly a very short term substance-induced psychotic disorder."

However, Dr. Fraser noted that defendant's history of daily drug use (cannabis and methamphetamine) "seemed to cause clinically significant problems" for him (e.g., he was unable to maintain a job or stable living situation), and that methamphetamine can induce psychotic symptoms, which can be temporary or "become[] a more settled and stable psychotic disorder turning into schizophrenia, basically." Dr. Fraser also noted that defendant was impaired in "various different cognitive domains." For example, defendant's ability to communicate and "understand language" was significantly below average and he was unable to process information in an effective manner. Defendant's memory was also impaired, and he had difficulty focusing and concentrating, which Dr. Fraser acknowledged could have been caused by substance abuse. Although she acknowledged that she did not conduct any tests to determine whether defendant was malingering, she noted that she did not observe anything indicating as much.

Dr. Blak, a clinical and forensic psychologist, concluded that defendant suffered from schizophrenia and substance-abuse disorder (cannabis and methamphetamine) at the time of the shooting. In reaching his conclusion as to schizophrenia, Dr. Blak explained that defendant had a history of psychotic symptoms (e.g., delusions), and that defendant's delusions were fixed or "consistent" (i.e., the same over time) When interviewed in May 2022, defendant was experiencing the same delusions he described when he was hospitalized following the shooting. Dr. Blak noted that defendant believed (among other things) that his brothers had shot him in the mouth, and that he needed to carry a gun to protect himself from his brothers.

When Dr. Blak was asked to explain how he concluded defendant was suffering from schizophrenia rather than psychosis induced by substance abuse, he said: "In my experience people suffering from a severe mental disorder, which schizophrenia is, often self-medicate with street drugs. And so the two can go together, there isn't one versus

the other. There's evidence, in my opinion, for both diagnoses to be identified. And so he had a history of these signs and symptoms. He did not go to get psychiatric care while he was living in the community as far as I could tell. And so he relied on the cannabis and methamphetamine to self-medicate to feel a bit better." In response to a similar question, Dr. Blak stated: "Well, I don't think it's one or the other. I think you can be in a particular state in terms of how you're psychologically organized, if that's the way to say it, and then when you use methamphetamine, which is a disinhibitor which allows people then to act without much rational thinking about it, and so they work kind of like a perfect storm. You've already got somebody's like trouble perceiving and understanding things in an accurate manner, then they have some sort of aggressive feeling, for example, anger. And the [prefrontal] cortex is a part of the brain that's called the executive functioning which has to do with putting the brakes on impulse. So somebody may feel anger rather than thinking about a different way of resolving the problem. They don't modulate the aggression, so they act out aggressively because they don't know how to put the brakes on the urge."

In determining that defendant was not merely suffering from methamphetamine-induced psychosis, Dr. Blak reasoned as follows: "Basically you have a history of signs and symptoms of schizophrenia, you have auditory hallucinations, you have delusions. So the issue is if it's just substance induced psychosis then he would clear up sooner or later. And the fact he spent ten months at Atascadero tells that it didn't clear up very quickly at all, and he was on a high dose of Zyprexa, an antipsychotic medication which then is continued to this day. [¶] And although when I saw him for the interview . . . he was respectful and polite, but he still had symptoms of schizophrenia. So that tells me that those, schizophrenia was the major contributor or the nexus of his interaction with his relationships that led to his offense."

Dr. Blak concluded that defendant was legally insane because he was suffering from a mental illness (schizophrenia) that prevented him from knowing the nature and

quality of his actions and from being able to distinguish right from wrong at the time of the shooting. Dr. Blak noted that defendant claimed he had no memory of what he did (including using a firearm), although Dr. Blak acknowledged that defendant testified at the guilt phase that he shot Gloria and Steven.

When asked, Dr. Blak stated that he did not see any evidence that defendant was malingering. He indicated defendant was "in the low to below average intelligence level."

Court-Appointed Experts

Dr. Cavanaugh, a psychiatrist, concluded that, at the time of the shooting, defendant suffered from methamphetamine-induced psychotic disorder, methamphetamine and cannabis use disorder, and severe antisocial personality disorder.[6] In disagreeing with Dr. Blak's schizophrenia diagnosis, Dr. Cavanaugh explained that defendant had no history of or treatment for schizophrenia, even though he had "been in situations where outside people could assess" his mental state, and that the symptoms defendant described were consistent with methamphetamine-induced psychotic disorder. Dr. Cavanaugh further explained that psychotic symptoms caused by methamphetamine are similar to symptoms exhibited by persons with schizophrenia, and that while psychotic symptoms from methamphetamine usually subside after a few days of nonuse, "there are times with a long enough history of usage, or extended usage where the psychotic symptoms don't go away after the person has stopped using." Dr. Cavanaugh

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[6] Dr. Cavanaugh interviewed defendant in September 2021. During his testimony, Dr. Cavanaugh explained that he previously interviewed defendant in 2008 in connection with a competency hearing in an unrelated criminal matter. In that case, Dr. Cavanaugh found no "evidence of delusions or hallucinations," and concluded that defendant had "no psychotic disorder whatsoever." Dr. Cavanaugh determined that defendant--who had a history of methamphetamine use and academic problems--was suffering from antisocial personality disorder, which is a pattern of behaviors resulting in a failure to follow the rules, regulations, and structure of society.

noted that the manual used by psychiatrists to diagnose mental illnesses[7] "says that you can't really make [a schizophrenia] diagnosis in the face of chronic methamphetamine usage because they create conditions that look exactly the same."

When Dr. Cavanaugh was asked whether defendant was capable of knowing and understanding the nature and quality of his acts on the day of the shooting, he explained: "[T]hat is a tough one, because I mean, you know, generally acts that are committed when under the influence of substances are generally not allowed to be covered by a [legal insanity] assessment. I certainly think he was not able to think through his actions, there's no doubt about that. Since I did not really see him at the time, I can't be certain about this, but he probably was not aware that it was wrong, but that's based on methamphetamine psychotic disorder, not schizophrenia. Thus, it's a substance related offense."

Upon further questioning, Dr. Cavanaugh opined that defendant "understood" and "knew what he was doing" on the day of the shooting, but might not have realized it was wrong based on the effects from the methamphetamine. Noting that defendant heard voices and became angry after using methamphetamine, Dr. Cavanaugh concluded that defendant was legally sane because he did not have a "mental disorder other than the methamphetamine induced psychotic disorder."

Dr. Weiss, a forensic psychologist employed by the Board of Parole Hearings, concluded that defendant was suffering from methamphetamine-induced psychosis and was not legally insane at the time of the shooting. In so concluding, Dr. Weiss explained that, based on her interviews with defendant[8] and the materials she reviewed (e.g.,

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[7] Diagnostic and Statistical Manual of Mental Disorders.

[8] Dr. Weiss interviewed defendant in October and December 2021. During these interviews, defendant denied any history of mental health treatment and denied that he had ever been diagnosed with a mental disorder. Defendant explained that he began

medical and psychiatric records, police report, expert reports, competency evaluations (conducted in 2018 and 2020), defendant "did not appear to lack an ability to understand and appreciate his behavior due to a mental disorder, disease, or defect." Dr. Weiss further explained: "Maybe there was some distortions. I believe it was the result of the methamphetamine intoxication or maybe there were no distortions. . . . I think there might have been some perceptual distortions, but I believe they were the result of the methamphetamine intoxication."

When Dr. Weiss was asked whether she considered other reasons for defendant's psychosis, she said: "I would always consider other reasons when appointed to do an insanity evaluation. Somebody had raised an issue about whether [defendant] had some mental health problems that caused or contributed to the behavior or distorted perceptions that contributed to the behavior, so of course I consider that. There were very few statements that [defendant] . . . made or were available in the records that I reviewed to suggest that, but I certainly considered whether this was the result of a mental disorder, and I didn't see evidence of that." She added that she did see evidence defendant acted in a "purposeful, goal directed way" on the day of the shooting, which "revealed a more calculated consideration of what he was doing."

When questioned about how defendant's methamphetamine use, which predated his purported auditory hallucinations, impacted her conclusion that defendant was suffering from methamphetamine-induced psychosis, Dr. Weiss stated: "[Defendant's] methamphetamine abuse in my opinion likely precipitated the onset of a mental illness. . . . [H]aving read all the records, I think that he has developed a mental illness

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using cannabis at age 12 and methamphetamine at age 14, was using methamphetamine daily at the time of the shooting, and was experiencing the effects of methamphetamine when he shot Steven and Gloria. Defendant also reported that he began experiencing auditory hallucinations six years earlier, which Dr. Weiss noted is a symptom consistent with methamphetamine use.

over time. The etiology is, I can't say with certainty that it's because he used methamphetamine. Perhaps he would have developed this disorder anyhow. It would certainly exacerbate it, his perceptual distortions and hallucinations and delusions that he has reported were certainly exacerbated and magnified if not solely caused by the methamphetamine use and intoxication."

DISCUSSION

I

Sanity Verdict

Defendant argues there is insufficient evidence to support the jury's sanity verdict. He claims there is no substantial evidence that he was legally sane at the time of the shooting, as the opinions of Dr. Cavanaugh and Dr. Weiss "were not grounded in the facts of the case." We are not persuaded.

A. *Applicable Legal Principles and Standard of Review*

If a defendant pleads both not guilty and not guilty by reason of insanity, the trial is bifurcated into guilt and sanity phases. In the guilt phase, the defendant is conclusively presumed to have been legally sane at the time of the offense. (*People v. Elmore* (2014) 59 Cal.4th 121, 140-141; § 1026, subd. (a).) If the defendant is found guilty, the trial proceeds to the sanity phase, in which the defendant has the burden to prove he was legally insane by a preponderance of the evidence. (*Elmore*, at p. 141; §§ 1026, subd. (a), 25, subd. (b).)

Under California law, persons who are mentally incapacitated are deemed incapable of committing crimes. (§ 26; *People v. Powell* (2018) 5 Cal.5th 921, 955.) Mental incapacity is determined by the *M'Naghten* test for legal insanity set forth in section 25, subdivision (b). (*Powell*, at p. 955.) Under *M'Naghten*, legal insanity is established if the defendant had a mental disease or defect when he committed the crimes, and because of that disease or defect, he was incapable of either knowing or understanding the nature and quality of his acts or was incapable of knowing or

understanding that his acts were morally or legally wrong. (§ 25; subd. (b); *Powell*, at p. 955; *People v. Elmore*, *supra*, 59 Cal.4th at p. 140; CALCRIM No. 3450.)[9] The defendant's insanity does not need to be permanent in order to establish a defense. The relevant inquiry is the defendant's mental state at the time the crimes were committed. (*People v. Kelly* (1973) 10 Cal.3d 565, 577.)

"A defendant may not be found insane solely on the basis of addiction to, or abuse of, intoxicating substances. (§ 29.8.) This provision 'makes no exception for brain damage or mental disorders caused solely by one's voluntary substance abuse but which persists after the immediate effects of the intoxicant have dissipated. Rather, it erects an absolute bar prohibiting use of one's voluntary ingestion of intoxicants as the sole basis for an insanity defense, regardless whether the substances caused organic [brain] damage or a settled mental disorder which persists after the immediate effects of the intoxicant have worn off.' " (*People v. McCarrick* (2016) 6 Cal.App.5th 227, 247; see also *People v. Robinson* (1999) 72 Cal.App.4th 421, 427 [discussing former § 25.5 before it was renumbered § 29.8].) However, "[w]here the mental disease or defect is caused *in part* by an addiction or abuse of alcohol" a legal insanity defense is still available "depending on whether the defendant proves that it was his mental disease or defect that caused him to be unable to tell right from wrong." (*People v. Cabonce* (2009) 169 Cal.App.4th 1421, 1436; see CALCRIM No. 3450 ["If the defendant suffered from a settled mental disease or defect caused by the long-term use of drugs or intoxicants, that settled mental disease or defect combined with another mental disease or defect may qualify as legal insanity.

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[9] Subdivision (b) of section 25 states that a person can be found legally insane only if "he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." Our Supreme Court has interpreted this statutory language to mean that legal insanity can be shown under *either* the " 'nature and quality' " prong *or* the " 'right from wrong' " prong of the test. (*People v. Powell*, *supra*, 5 Cal.5th at p. 955, fn. 11.)

A *settled mental disease or defect* is one that remains after the effect of the drugs or intoxicants has worn off"].)

Only "individuals rendered insane solely because of their substance abuse should be treated differently than those afflicted by mental illness through no conscious volitional choice on their part." (*People v. Robinson*, *supra*, 72 Cal.App.4th at p. 428.) "Thus, there can be no insanity defense when the inability to tell right from wrong derived (1) solely from an addiction or abuse of intoxicating substances, *or* (2) from a mental defect or disorder that itself was caused solely by such addiction or abuse." (*People v. Cabonce*, *supra*, 169 Cal.App.4th at p. 1434.)

We review a jury's sanity determination for substantial evidence. (*People v. Powell*, *supra*, 5 Cal.5th at pp. 956-957.) We review the entire record in the light most favorable to the jury's determination and affirm that determination if it is supported by evidence that is reasonable, credible and of solid value. (*Id*. at p. 957.) "We do not question the credibility of a witness's testimony, so long as it is 'not inherently improbable,' nor do we reconsider the weight to be given any particular item of evidence." (*People v. Navarro* (2021) 12 Cal.5th 285, 302.)

B. *Analysis*

We see no basis for reversal. On the record before us, a reasonable jury could have found that defendant failed to prove he was legally insane at the time of the shooting by a preponderance of the evidence. "Because the defendant has the burden of proof on the issue of insanity, 'the question on appeal is not so much the substantiality of the evidence favoring the jury's finding as whether the evidence contrary to that finding is of such weight and character that the jury could not reasonably reject it.' " (*People v. McCarrick*, *supra*, 6 Cal.App.5th at pp. 247-248.) This standard has not been satisfied here. While the defense experts (Dr. Fraser and Dr. Blak) agreed that defendant suffered from a severe mental illness (schizophrenia), that fact does not conclusively establish that defendant was legally insane when he shot Steven and Gloria. (*People v. Powell*, *supra*,

5 Cal.5th at p. 955.) On this issue, the court-appointed experts (Dr. Cavanaugh and Dr. Weiss) disagreed with Dr. Blak. They concluded that defendant was not suffering from schizophrenia but rather methamphetamine-induced psychosis. Defendant asserts that Dr. Cavanaugh's and Dr. Weiss's opinions were flawed because they failed to consider certain evidence "bearing upon his sanity." However, "[i]t was for the jury to evaluate the testimony of the experts, examine the bases for their opinions and determine whom to believe." (*People v. Chavez* (2008) 160 Cal.App.4th 882, 891.) As our Supreme Court has explained, "The issue of legal sanity is . . . a complex and uncertain one about which fully competent experts can reasonably disagree." (*Powell*, at p. 958.) After considering the evidence presented, the jury found that defendant was legally sane at the time of the shooting. Providing the experts were adequately qualified, which defendant did not dispute, the jury was entitled to evaluate and weigh their opinions. (*Ibid*.) Nothing more is required to uphold the jury's sanity verdict (*ibid*.), and there is no legal basis for us to disturb that verdict.

II

Alleged Sentencing Errors

Defendant raises two claims of sentencing error, which we address in turn. As we shall explain, we find no merit in these claims.

A. *Cruel and Unusual Punishment*

As noted *ante*, defendant was sentenced to 124 years to life in prison. On appeal, defendant argues that his sentence (which is the functional equivalent of life without the possibility of parole) constitutes cruel and unusual punishment under the federal and state Constitutions because multiple experts determined he was incapable of understanding the nature and quality of his acts and he did not know the difference between right and wrong at the time of the shooting.

1. *Applicable Legal Principles*

The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Similarly, the California Constitution provides: "Cruel or unusual punishment may not be inflicted or excessive fines imposed." (Cal. Const., art. I, § 17.)

" ' "The cruel and unusual punishments clause of the Eighth Amendment to the United States Constitution prohibits the imposition of a penalty that is disproportionate to the defendant's 'personal responsibility and moral guilt.' [Citations.] Article I, section 17 of the California Constitution separately and independently lays down the same prohibition." ' " (*People v. Lucero* (2000) 23 Cal.4th 692, 739.)

Under the Eighth Amendment, "challenges to the length of term-of-years sentences" are reviewed by first "comparing the gravity of the offense and the severity of the sentence." (*Graham v. Florida* (2010) 560 U.S. 48, 59-60.) "This analysis can consider a particular offender's mental state and motive in committing the crime, the actual harm caused to his victim or to society by his conduct, and any prior criminal history." (*Id*. at p. 88 (conc. opn. of Roberts, C.J.).) " '[I]n the rare case in which [this] threshold comparison . . . leads to an inference of gross disproportionality' the court should then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions. [Citation.] If this comparative analysis 'validate[s] an initial judgment that [the] sentence is grossly disproportionate,' the sentence is cruel and unusual." (*Id*. at p. 60.)

The federal and state approaches to cruel and unusual punishment claims largely "overlap" and both use " 'gross disproportionality' " as their " 'touchstone.' " (*People v. Baker* (2018) 20 Cal.App.5th 711, 733.) In assessing proportionality under California law, courts examine three criteria: (1) the nature of the offense and offender, with emphasis on his danger to society; (2) the penalty imposed compared with the penalties

for more serious crimes in California; and (3) the punishment for the same offense in other jurisdictions. (*In re Lynch* (1972) 8 Cal.3d 410, 425-427, superseded by statute on other grounds as stated in *People v. Caddick* (1984) 160 Cal.App.3d 46, 51; *Baker*, at p. 723.) " 'Disproportionality need not be established in all three areas.' " (*Baker*, at p. 723.) Here, defendant focuses on the first criterion in his appellate briefing, omitting any meaningful discussion of the second and third criteria. We do the same.

"[A] reviewing court must examine the circumstances of the offense, including motive, the extent of the defendant's involvement in the crime, the manner in which the crime was committed, and the consequences of the defendant's acts. The court must also consider the personal characteristics of the defendant, including . . . age, prior criminality, and mental capabilities. [Citation.] If the penalty imposed is 'grossly disproportionate to the defendant's individual culpability' [citation], so that the punishment ' " 'shocks the conscience and offends fundamental notions of human dignity' " ' [citation], the court must invalidate the sentence as unconstitutional." (*People v. Lucero*, *supra*, 23 Cal.4th at pp. 739-740; *People v. Boyce* (2014) 59 Cal.4th 672, 721-722.)

"Whether a particular punishment is disproportionate to the offense is, of course, a question of degree. The choice of fitting and proper penalties is not an exact science, but a legislative skill involving an appraisal of the evils to be corrected, the weighing of practical alternatives, consideration of relevant policy factors, and responsiveness to the public will; in appropriate cases, some leeway for experimentation may also be permissible. The judiciary, accordingly, should not interfere in this process unless a statute prescribes a penalty 'out of all proportion to the offense' [citations], i.e., so severe in relation to the crime as to violate the prohibition against cruel or unusual punishment." (*In re Lynch*, *supra* 8 Cal.3d at pp. 423-424.) "Only in the rarest of cases could a court declare that the length of a sentence mandated by the Legislature is unconstitutionally excessive." (*People v. Martinez* (1999) 76 Cal.App.4th 489, 494; see *Rummel v. Estelle*

(1980) 445 U.S. 263, 272 ["Outside the context of capital punishment, successful challenges to the proportionality of particular sentences have been exceedingly rare"].)

" 'Whether a punishment is cruel or unusual is a question of law for the appellate court, but the underlying disputed facts must be viewed in the light most favorable to the judgment.' " (*People v. Mantanez* (2002) 98 Cal.App.4th 354, 358; see also *People v. Edwards* (2019) 34 Cal.App.5th 183, 190.)

2. *Analysis*

As an initial matter, we agree with the People that defendant has forfeited his claim of error. (See *People v. Brewer* (2021) 65 Cal.App.5th 199, 212 [failure to raise cruel and unusual punishment claim at sentencing results in forfeiture on appeal].) But even if we were to overlook forfeiture, defendant's claim fails on the merits.

Our Supreme Court has repeatedly rejected claims that a defendant's severe mental illness categorically prohibits the death penalty, regardless of the circumstances of the crime. (See, e.g., *People v. Steskal* (2021) 11 Cal.5th 332, 373-374; *Boyce*, *supra*, 59 Cal.4th at pp. 721-722.) The high court has also rejected claims that a defendant's low IQ, brain damage, and/or mental illness rendered a death sentence grossly disproportionate to his crime. (See *Boyce,* at pp. 719-721 [discussing cases and rejecting claim that death penalty was disproportionate in light of the defendant's schizotypal disorder and subaverage intelligence].) In assessing the constitutionality of a death sentence on a mentally ill defendant, "we examine *the circumstances of the offense*, including the defendant's motive, the extent of his involvement in the crime, the manner in which it was committed, and the consequences of his acts, as well as the defendant's age, prior criminality, and mental capabilities." (*Id*. at p. 721.)

While we agree with defendant that, as a practical matter, his sentence is equivalent to life without the possibility of parole, we cannot conclude that it " ' " ' shocks the conscience and offends fundamental notions of human dignity.' " ' " (*Lucero, supra,* 23 Cal.4th at p. 740; see *People v. Sullivan* (2007) 151 Cal.App.4th 524,

572 [fact that sentence of 210 years to life meant defendant would spend rest of his life in prison did not render it cruel and unusual].) The jury found that defendant deliberately (and with premeditation) shot two of his roommates multiple times early one morning while they were in bed, killing one of them. There was evidence that defendant had a long history of substance abuse, using methamphetamine made him angry, he was suffering from methamphetamine-induced psychosis and antisocial personality disorder at the time of the shooting, and he engaged in purposeful, goal directed behavior in connection with the shooting, including aiming for Gloria's body and immediately fleeing the scene. There was also evidence of motive; defendant admitted in his police interview that he was angry at Gloria and Steven for various reasons. At no point did defendant express any remorse for the shooting. And the record reflects that defendant had a long history of antisocial behavior, including (among other things) "fighting with peers" during his childhood, "involvement with the juvenile justice system," and four felony convictions as an adult. As the trial court observed, defendant's current offenses--shooting two unarmed, defenseless victims--and criminal history evince that he is a clear threat to society. (See *People v. Stone* (1999) 75 Cal.App.4th 707, 715 [recidivism poses a manifest danger to society, justifying the imposition of longer sentences for subsequent offenses].) Indeed, defendant's ongoing criminality shows an inability to follow the law, with tragic consequences. Defendant points to nothing in the record suggesting that his mental condition played a role in his decision to shoot the victims. (*Boyce, supra*, 59 Cal.4th at p. 720 ["Although defendant offered evidence of his schizotypal disorder and subaverage intelligence, there was no evidence that either condition played any role in the killing"].)

In short, after considering the relevant factors, this is not one of those "rarest of cases" in which we could "declare that the length of a sentence mandated by the Legislature is unconstitutionally excessive." (*People v. Martinez, supra*, 76 Cal.App.4th at p. 494.) Therefore, defendant's cruel and unusual punishment claim fails.

B. *Strike Prior Finding*

Next, defendant argues the trial court erred in failing to dismiss the strike prior finding under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). In making this argument, defendant acknowledges that he did not specifically request or invite the trial court to grant such relief. Nonetheless, he asserts that his claim of error is cognizable because the trial court should have construed his sentencing memorandum, which requested dismissal of all *enhancements* pursuant to Senate Bill No. 81 (2021-2022 Reg. Sess.) as an invitation to dismiss the strike prior finding under *Romero*. We see no basis for reversal.

1. *Applicable Legal Principles*

Under section 1385, subdivision (a), a trial court, on its own motion or upon the prosecutor's application, has the power to strike or vacate a finding under the three strikes law that a defendant has a prior serious and/or violent felony conviction, "in furtherance of justice." (*People v. Carmony* (2004) 33 Cal.4th 367, 373 (*Carmony*).) A defendant has no right to make such a motion, and the court has no obligation to make a ruling, but a defendant "does have the right to 'invite the court to exercise its power by an application to strike a count or allegation of an accusatory pleading, and the court must consider evidence offered by the defendant in support of his assertion that the dismissal would be in furtherance of justice.' " (*Id.* at p. 375.) In exercising its discretion to dismiss a strike prior finding, the trial court "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

Effective January 1, 2022, Senate Bill No. 81 amended section 1385 to add subdivision (c) (Stats. 2021, ch. 721, § 1), which provides, in part:

"(c)(1) Notwithstanding any other law, the court shall dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute.

"(2) In exercising its discretion under this subdivision, the court shall consider and afford great weight to evidence offered by the defendant to prove that any of the [listed] mitigating circumstances . . . are present. Proof of the presence of one or more of these circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety."

The mitigating circumstances listed in subdivision (c) of section 1385 include, as relevant here, that "[m]ultiple enhancements are alleged in a single case," "[t]he application of an enhancement could result in a sentence over 20 years," "[t]he current offense is connected to mental illness," and "[t]he enhancement is based on a prior conviction that is over five years old." (See § 1385, subd. (c)(3)).)

2. *Analysis*

We agree with the People that defendant has forfeited his claim of error. (*Carmony*, *supra*, 33 Cal.4th at pp. 375-376 ["[A]ny failure on the part of a defendant to invite the court to dismiss under section 1385 following *Romero* waives or forfeits his or her right to raise the issue on appeal."]; *People v. Scott* (1994) 9 Cal.4th 331, 352-353 [forfeiture results where a defendant fails to object to a trial court's discretionary sentencing choices].) Contrary to defendant's suggestion, the trial court did not err in failing to treat his motion to dismiss all *enhancements* pursuant to Senate Bill No. 81 as including a request or invitation to dismiss the strike prior finding. (*People v. Burke* (2023) 89 Cal.App.5th 237, 243 ["the Three Strikes law is not an enhancement; it is an alternative sentencing scheme for the current offense"]; *People v. Williams* (2014) 227 Cal.App.4th 733, 744 [the three strikes law is a penalty provision, not an enhancement, as it does not add an additional term of imprisonment to the base term]; see also *Romero,*

supra, 13 Cal.4th at p. 527 [the three strikes law "articulates an alternative sentencing scheme for the current offense rather than an enhancement"].)

Forfeiture aside, defendant has not demonstrated that the trial court's sentencing decision was an abuse of discretion. (*Carmony*, *supra*, 33 Cal.4th at pp. 375-376 [failure to dismiss strike prior subject to review for abuse of discretion].) Here, defendant's prior strike was a 2006 conviction for robbery. At sentencing, the trial court observed that defendant had "multiple prior felonies,"[10] and refused his request to strike the enhancements due to (among other things) mental illness. In doing so, the court explained that "the most important overriding consideration" for sentencing was that defendant presented "a clear threat to society," as he shot two defenseless people in "cold blood" while they were in bed early in the morning. With respect to the strike prior, the trial court stated: "[A]s far as the strike -- whether to impose the strike or not -- it's only 12 years old, which isn't that old. Plus, he was imprisoned for that for a certain amount of time. But I think it's a very recent strike prior. And, once again, he is a clear threat to society, which I think is the overriding factor for sentencing." In imposing consecutive sentences for the murder and attempted murder convictions, the court stated: "I believe [defendant] should be imprisoned for as long as possible as a result of this incident." The court acted within its discretion in implicitly finding that defendant fell within the spirit of the three strikes law. We cannot say the sentencing decision was irrational or arbitrary.[11]

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[10] In addition to the four felony convictions identified *ante*, defendant also suffered a 2007 misdemeanor conviction for possession of a switchblade, (§ 21510, formerly § 653k), and a 2010 conviction for violating the federal larceny statute (18 U.S.C. § 641).

[11] Because we have rejected defendant's claims of sentencing error on the merits, we need not and do not consider his ineffective assistance of counsel arguments.

DISPOSITION

The judgment is affirmed.

Duarte, Acting P. J.

We concur:

Renner, J.

Krause, J.

APPENDIX E

SUPREME COURT
FILED
FEB 21 2024
Jorge Navarrete Clerk
Deputy

Court of Appeal, Third Appellate District - No. C097209

S283412

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

FORREST HENRY GILLIAM, Defendant and Appellant.

The petition for review is denied.

Gezi
DOCKETED
FEB 23 2024
By D. Lemont
SA2023300234

GUERRERO
Chief Justice