NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

ARQUIMEDES MENDOZA, Petitioner-Appellant, v. MATTHEW CATE, Respondent-Appellee.	No. 21-16018 D.C. No. 2:09-cv-01710-MCE-DB MEMORANDUM[*]

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Argued and Submitted November 14, 2022
San Francisco, California

Before: RAWLINSON and HURWITZ, Circuit Judges, and CARDONE,[**]
District Judge.

Arquimedes Mendoza (Mendoza) appeals the district court's denial of his petition for a writ of habeas corpus predicated on ineffective assistance of counsel

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

[**] The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

(IAC). Reviewing "the denial of a Section 2254 habeas corpus petition de novo and any underlying factual findings for clear error," we affirm.[1] *Patsalis v. Shinn*, 47 F.4th 1092, 1097 (9th Cir. 2022) (citation omitted).

Relief on a § 2254 habeas claim is not warranted unless

> 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.

28 U.S.C. § 2254(d). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision. . . ." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citation and internal quotation marks omitted).

To succeed on an IAC claim, a petitioner must establish that his counsel's performance was deficient and that he was prejudiced as a result. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). When a petitioner alleges that his counsel was deficient in advising the petitioner of the consequences of accepting a plea bargain, "to satisfy the 'prejudice' requirement, the [petitioner] must show that

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[1] We elect to decide Mendoza's IAC claim on the merits. *See Holland v. Florida*, 560 U.S. 631, 645 ("[T]he AEDPA statute of limitations defense is not jurisdictional.") (citation, alterations, and internal quotation marks omitted).

there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (footnote reference omitted).

The California Superior Court's order was the last reasoned state-court decision. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991). The Superior Court concluded that although Mendoza established deficient performance, he failed to establish prejudice. Because we assume that summary denials of habeas relief adopt the rationale of the last reasoned decision, we must assume that the California Supreme Court's decision was also based on the absence of prejudice. *See id.*

This conclusion was not contrary to or an unreasonable application of *Strickland*. Notwithstanding Mendoza's wariness regarding another conviction for a strike offense, a fairminded jurist could conclude that Mendoza would not have proceeded to trial had he been properly advised that he was pleading guilty to a strike offense because he did not have a viable defense theory. *See United States v. Rodriguez*, 49 F.4th 1205, 1214 (9th Cir. 2022). It is highly unlikely that a jury would be persuaded that Mendoza's semen was found in the victim's vagina because Mendoza ejaculated on the carpet in the room where the victim was assaulted, another man came into contact with Mendoza's semen, and that man

transferred Mendoza's semen into the victim's vagina when he sexually assaulted the victim.

Neither did the Superior Court base its decision on an unreasonable determination of the facts. Given the record before it, the Superior Court did not rest its decision on an "objectively unreasonable" finding of fact. *Hibbler v. Benedetti*, 693 F.3d 1140, 1146 (9th Cir. 2012). And the lack of an evidentiary hearing did not render its factfinding procedure unreasonable. *See id.* at 1146-49.

AFFIRMED.