

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 2 2015

FOR THE NINTH CIRCUIT

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

D. E. BLANKENSHIP, Jr.,

No. 12-15484

Petitioner - Appellant,

D.C. No. 3:08-cv-00641-LRH-
VPC

v.

LEONARD VARE; NEVADA
ATTORNEY GENERAL,

MEMORANDUM*

Respondents - Appellees.

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Argued and Submitted November 16, 2015
San Francisco, California

Before: THOMAS, Chief Judge and IKUTA and HURWITZ, Circuit Judges.

Donald Blankenship, who was convicted in Nevada state court of sexually assaulting his daughter, appeals the district court's denial of 28 U.S.C. § 2254 habeas relief. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

1. The conclusion of the Nevada Supreme Court that Blankenship “failed to show that there was a reasonable probability of a different result at trial” had testimony regarding certain prior bad acts not been elicited by defense counsel was not an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). The victim testified in detail as to each assault, and the case turned on her credibility. The testimony about prior bad acts was a minor portion of the evidence that the jury heard, and the state did not mention the bad acts in summation. Fairminded jurists could thus “disagree on the correctness of the state court’s decision.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (internal citations and quotation marks omitted).

2. We decline to expand the certificate of appealability and therefore do not address Blankenship’s remaining arguments.

AFFIRMED.