

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

SEP 26 2022

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

CIARAN PAUL REDMOND, AKA Irish,

No. 21-55142

Petitioner-Appellant,

D.C. Nos. 2:20-cv-05170-SVW

2:15-cr-00532-SVW-2

v.

Central District of California,

Los Angeles

UNITED STATES OF AMERICA,

ORDER

Respondent-Appellee.

Before: BERZON, BEA, and NGUYEN, Circuit Judges.

The Memorandum Disposition filed on May 25, 2022, is withdrawn and replaced with a superseding Memorandum Disposition filed concurrently with this order. With this superseding disposition, the petitions for rehearing and for rehearing en banc are denied. *See* Docket Entry No. 30. Future petitions for rehearing and for rehearing en banc may be filed with respect to the new memorandum.

NOT FOR PUBLICATION

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UNITED STATES OF AMERICA,

MEMORANDUM*

Respondent-Appellee.

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted December 6, 2021
Pasadena, California

Before: BERZON, BEA, and NGUYEN, Circuit Judges.

Ciaran Redmond was imprisoned in the United States Penitentiary in Victorville, California (“Victorville”) when he assaulted a fellow inmate with a metal shank. The attack was caught on security footage, and Redmond was charged and convicted of assault with intent to commit murder, assault with a dangerous weapon, and assault resulting in serious bodily injury in violation of 18 U.S.C. §§

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

113(a)(1), (a)(3), and (a)(6). Each charge required the government to prove, as an element of conviction, that the offense took place “within the special maritime and territorial jurisdiction of the United States.” 18 U.S.C. § 113(a).

In *United States v. Redmond*, No. 17-50004, 748 F. App’x. 760, 761 (9th Cir. 2018) (“*Redmond I*”), Redmond challenged his convictions on sufficiency of the evidence grounds, arguing that, while the prosecution introduced evidence that the assault occurred in a federal prison, there was no evidence at trial showing that the assault took place within the special maritime and territorial jurisdiction of the United States. The prior panel affirmed the judgment of conviction and took judicial notice of Victorville’s jurisdictional status.¹ *Id.* at 761-62. Redmond sought habeas relief. The district court denied the writ.

In this habeas appeal (“*Redmond II*”), Redmond challenges his conviction

¹ The prior panel took judicial notice of Victorville’s jurisdictional status by relying on several documents produced by the government. The two most relevant documents included a letter from the United States Department of War to the California governor, dated September 29, 1944, which accepted jurisdiction over the land underlying Victorville on behalf of the federal government, and a letter from the California State Lands Commission, dated September 27, 2002, stating that, while there was no information in the Commission’s files indicating that the War Department letter was recorded with the San Bernardino County Recorder, the Commission “presum[ed]” that it was. *Redmond I*, 748 F. App’x at 761.

These documents matter because, for the federal government to gain jurisdiction over state land, it must comply with 40 U.S.C. § 3112, which requires an “authorized officer” to “indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.”

again on two grounds: (1) he received ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), when his trial attorney failed to contest the jurisdictional element of the offense at trial, and (2) the government violated *Brady v. Maryland*, 373 U.S. 83 (1963), when it suppressed evidence that would tend to cast doubt on whether the federal government's jurisdiction over Victorville was legally effected.

We review de novo the district court's denial of a habeas petition brought under 28 U.S.C. § 2255, *United States v. Chacon-Palomares*, 208 F.3d 1157, 1158 (9th Cir. 2000), as well as the district court's *Brady* determinations, *United States v. Kohring*, 637 F.3d 895, 901 (9th Cir. 2011). For the reasons set forth below, we affirm the district court's denial of habeas relief.

1. Ineffective Assistance of Counsel

Ineffective assistance of counsel violates the Sixth Amendment. *Strickland*, 466 U.S. at 685-86. To establish ineffective assistance of counsel, Redmond must show: (1) his counsel's performance was deficient, and (2) the deficient performance caused prejudice. *Id.* at 687. "Failure to satisfy either prong of the *Strickland* test obviates the need to consider the other." *Rios v. Rocha*, 299 F.3d 796, 805 (9th Cir. 2002).

Here, we need reach only the first prong of Redmond's *Strickland* claim. To satisfy the deficiency prong, Redmond must show that his attorney's performance

fell below an objective standard of reasonableness. *Browning v. Baker*, 875 F.3d 444, 471 (9th Cir. 2017). “Judicial scrutiny of counsel’s performance must be highly deferential,” and “[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.” *Strickland*, 466 U.S. at 689. Thus, there is a “strong presumption that counsel’s representation was within the wide range of reasonable professional assistance.” *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (internal quotation marks omitted).

In *United States v. Inoue*, No. ED CR 09-380(A) VAP, 2010 WL 11537485, at *1 (C.D. Cal. Aug. 11, 2010) (unpublished), *aff’d on other grounds*, 463 F. App’x 643 (9th Cir. 2011) (unpublished), a prisoner at the same prison at issue here (Victorville) was charged under the same assault statute (18 U.S.C. § 113).² There, the district court took judicial notice of Victorville’s jurisdictional status based on the same documents the prior panel had at its disposal in *Redmond I*. See *Inoue*, 2010 WL 11537485, at *3-4. Although the district court decision in *Inoue* was not binding precedent, it was not unreasonable for Redmond’s attorney to decide not to argue Victorville’s jurisdictional status to the jury or in a motion for a judgment of acquittal to the trial court, as there was reason to believe that either course would be unsuccessful given the outcome in *Inoue*. The Sixth Amendment

² The Ninth Circuit memorandum disposition affirming *Inoue* did not discuss the question whether it was appropriate for the district court to take judicial notice of Victorville’s jurisdictional status. *Inoue*, 463 F. App’x at 644-46.

does not require attorneys to pursue arguments that have a low probability of success. *Lowry v. Lewis*, 21 F.3d 344, 346 (9th Cir. 1994).

2. The *Brady* Claim

A *Brady* violation has three elements: (1) the evidence at issue is favorable to the defendant, (2) the evidence was suppressed by the state, and (3) prejudice ensued. *Shelton v. Marshall*, 796 F.3d 1075, 1083 (9th Cir. 2015).

Redmond claims that the War Department letter and the State Lands Commission letter were suppressed in violation of *Brady* because they were not made known to Redmond until after trial, during the direct appeal of his conviction. But both letters were publicly filed with the district court in *Inoue*. See Government's Opposition to Defendant's Motion for a New Trial, Ex. A, *United States v. Inoue*, No. ED CR 09-380(A) VAP (C.D. Cal. Aug. 11, 2010). Given the similarities between Redmond's case and *Inoue*, Redmond had "enough information to be able to ascertain the supposed *Brady* material on his own," meaning that "there [was] no suppression by the government." *United States v. Aichele*, 941 F.2d 761, 764 (9th Cir. 1991).

AFFIRMED.