

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Jahuart Sahagun,

Petitioner

V.

Brian E. Williams, et al.,

Respondents

2:14-cv-00539-JAD-GWF

Order Denying Petition for Writ of Habeas Corpus

[ECF No. 6]

Petitioner Jauart Sahagun pled to and was convicted of four counts of trafficking in a controlled substance;¹ the Nevada Supreme Court affirmed his conviction on appeal.² He filed in state district court a post-conviction habeas corpus petition.³ The state district court denied the petition,⁴ which the Nevada Supreme Court also affirmed on appeal.⁵ He then filed this petition for a writ of habeas corpus⁶—which I have addressed and dismissed claims from before⁷—and I now dismiss his only remaining claim and deny the petition. And because reasonable jurists would not find my conclusions on any of the claims (those previously dismissed or the one I dismiss now) debatable or wrong I do not issue a certificate of appealability for any of them.

Discussion

Congress has limited the circumstances in which a federal court can grant relief to an

¹ ECF No. 17-14.

² ECF No. 18-9.

³ ECF No 18-13

4 ECE No. 18-16

5 ECE No. 18-25

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1 inmate who was convicted in state court. Once the inmate’s state-court habeas petition has been
2 denied, the federal court will also deny it unless the state court’s decision was: (1) “contrary to,
3 or involved an unreasonable application of clearly established Federal law, as determined by the
4 Supreme Court of the United States”; or (2) “based on an unreasonable determination of the facts
5 in light of the evidence presented in the State court proceeding.”⁸

6 “For purposes of § 2254(d)(1), ‘an unreasonable application of federal law is different
7 from an incorrect application of federal law.’”⁹ “A state court’s determination that a claim lacks
8 merit precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on the
9 correctness of the state court’s decision.”¹⁰ “[E]valuating whether a rule application was
10 unreasonable requires considering the rule’s specificity. The more general the rule, the more
11 leeway courts have in reaching outcomes in case-by-case determinations.”¹¹ “[A] habeas court
12 must determine what arguments or theories supported . . . the state court’s decision; and then it
13 must ask whether it is possible fairminded jurists could disagree that those arguments or theories
14 are inconsistent with [Supreme Court case law].”¹² The inmate “must show that the state court’s
15 ruling [on the habeas petition] was so lacking in justification that there was an error well
16 understood and comprehended in existing law beyond any possibility for fairminded
17 disagreement.”¹³

18 As his sole remaining claim, Sahagun contends that he was denied effective assistance of
19 counsel because his attorney failed to present mitigating evidence at sentencing. “[T]he right to
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22 ⁸ 28 U.S.C. § 2254(d).

23 ⁹ *Id.* (citation omitted).

24 ¹⁰ *Id.* (citation omitted).

25 ¹¹ *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004).

26 ¹² *Richter*, 562 U.S. at 102.

27 ¹³ *Id.* at 103.

1 counsel is the right to the effective assistance of counsel.”¹⁴ A petitioner claiming ineffective
2 assistance of counsel must demonstrate: (1) that the defense attorney’s representation “fell below
3 an objective standard of reasonableness”;¹⁵ and (2) that the attorney’s deficient performance
4 prejudiced the defendant such that “there is a reasonable probability that, but for counsel’s
5 unprofessional errors, the result of the proceeding would have been different.”¹⁶ “[T]here is no
6 reason for a court deciding an ineffective assistance claim to approach the inquiry in the same
7 order or even to address both components of the inquiry if the defendant makes an insufficient
8 showing on one.”¹⁷

9 In *Strickland v. Washington*, the Supreme Court expressly declined to articulate specific
10 guidelines for attorney performance beyond generalized duties, including the duty of loyalty, the
11 duty to avoid conflicts of interest, the duty to advocate the defendant’s cause, and the duty to
12 communicate with the client over the course of the prosecution.¹⁸ The Court would not define
13 defense counsel’s duties so exhaustively as to give rise to a “checklist for judicial evaluation of
14 attorney performance,” fearing that “[a]ny such set of rules would interfere with the
15 constitutionally protected independence of counsel and restrict the wide latitude counsel must
16 have in making tactical decisions.”¹⁹ So, review of an attorney’s performance must be “highly
17 deferential,” and must adopt counsel’s perspective at the time of the challenged conduct to avoid
18 the “distorting effects of hindsight.”²⁰ A reviewing court must “indulge a strong presumption
19 that counsel’s conduct falls within the wide range of reasonable professional assistance; that is,

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21 ¹⁴ *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970).

22 ¹⁵ *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

23 ¹⁶ *Id.* at 694.

24 ¹⁷ *Id.* at 697.

25 ¹⁸ *Id.* at 688.

26 ¹⁹ *Id.* at 688–89.

27 ²⁰ *Id.* at 689.

1 the defendant must overcome the presumption that, under the circumstances, the challenged
2 action ‘might be considered sound trial strategy.’”²¹

3 The Sixth Amendment does not guarantee effective counsel *per se* but rather a fair
4 proceeding with a reliable outcome.²² It is not enough to show that counsel fell below an
5 objective standard of reasonableness. The petitioner must also show that the attorney’s sub-par
6 performance prejudiced the defense.²³ There must be a reasonable probability that, but for the
7 attorney’s challenged conduct, the result of the proceeding in question would have been
8 different.²⁴ “A reasonable probability is a probability sufficient to undermine confidence in the
9 outcome.”²⁵ And I must be highly deferential when reviewing a state court’s *Strickland* analysis:

10 Establishing that a state court’s application of *Strickland* was
11 unreasonable under § 2254(d) is all the more difficult. The
12 standards created by *Strickland* and § 2254(d) are both “highly
13 deferential,” . . . and when the two apply in tandem, review is
14 “doubly” so The *Strickland* standard is a general one, so the
15 range of reasonable applications is substantial. Federal habeas
courts must guard against the danger of equating unreasonableness
under *Strickland* with unreasonableness under § 2254(d). When
§ 2254(d) applies, the question is not whether counsel’s actions
were reasonable. The question is whether there is any reasonable
argument that counsel satisfied *Strickland*’s deferential standard.²⁶

16 Sahagun alleges that he had told counsel about numerous people who wanted to come to
17 court and speak at his sentencing because they knew about his work helping people in the
18 community and in his automobile-repair business. He raised nearly the same claim in his state
19 post-conviction habeas corpus petition and supporting memorandum.²⁷ On appeal from the

21 ²¹ *Id.* (citation omitted).

22 ²² See *id.* at 691–92. See also *Jennings v. Woodford*, 290 F.3d 1006, 1012 (9th Cir. 2002).

23 ²³ *Strickland*, 466 U.S. at 691–92.

24 ²⁴ *Id.* at 694.

25 ²⁵ *Id.*

26 ²⁶ *Harrington v. Richter*, 562 U.S. 86, 105 (2011) (citations omitted).

27 ²⁷ ECF No. 18-13 at 18–19.

1 denial of the petition, the Nevada Supreme Court found this claim meritless:

2 [A]ppellant claimed that [his trial counsel] was ineffective for
3 failing to present mitigation evidence at sentencing. Appellant
4 failed to demonstrate deficiency or prejudice. Appellant's claim
5 that people wanted to speak on his behalf was a bare claim as he
6 did not state what the people would have said or how it would have
7 affected the outcome of the sentencing hearing. His claims that
8 counsel made no positive representations was belied by the record
as counsel noted his good family support and lack of a criminal
history, and the presentence investigation report noted that he
owned a business. Appellant did not state what other
representations counsel should have made. We therefore conclude
that the district court did not err in denying these claims.²⁸

9 The Nevada Supreme Court's assessment was correct: Sahagun did not allege who would have
10 spoken at sentencing, what they would have said, and how their words could have affected the
11 outcome of the sentencing.²⁹ He thus failed to meet his burden of pleading an ineffective-
12 assistance claim. The transcript of the sentencing supports the Nevada Supreme Court's other
13 conclusions,³⁰ and the court reasonably applied *Strickland* in rejecting this claim.

14 Because reasonable jurists would not find my conclusion to be debatable or wrong, I will
15 not issue a certificate of appealability.

16 Conclusion

17 IT IS THEREFORE ORDERED that the petition for a writ of habeas corpus is **DENIED**.
18 The **Clerk of Court is directed to enter judgment accordingly and CLOSE THIS CASE**.

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

20 DATED: September 15, 2017.

21 
22 Jennifer A. Dorsey
United States District Judge

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26 ²⁸ ECF No. 18-25 at 4-5.

27 ²⁹ ECF No. 18-13 at 18-19.

28 ³⁰ ECF No. 17-12 at 11.