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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Peter Castellanos,
Petitioner
v.
B. Stroud, et al.,
Respondents

Case No.: 2:16-cv-00966-JAD-GWF
**Order Dismissing Petition and Closing
Case**
[ECF No. 6]

9 Pro se petitioner Peter Castellanos petitions for a writ of habeas corpus under 28 U.S.C. §
10 2254.¹ He challenges his 2014 Nevada state conviction for attempted sexual assault after an
11 *Alford* plea.² After evaluating Castellanos's claims on their merits, I deny his petition and
12 dismiss this case with prejudice.

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Background

Castellanos was charged with two counts of sexual assault with a minor under 16 years of
age, two counts of statutory sexual seduction, three counts of open or gross lewdness, and five
counts of sexual assault.³ He pled guilty under an *Alford* plea to one count of attempted sexual
assault in exchange for the State's promise not to argue for a maximum term of imprisonment
exceeding 15 years.⁴ Castellanos was sentenced to 54–144 months and lifelong supervised
release.⁵ He challenged the conviction on state post-conviction review only, which was denied
on its merits.

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¹ ECF No. 6.

² ECF No. 9-10.

³ ECF No. 9-4.

⁴ ECF Nos. 9-6, 9-7, 9-8; *see also* ECF No. 9-18 at 11, 18.

⁵ ECF Nos. 9-9, 9-10.

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2 **Discussion**

3 **A. Standard of Review**

4 The Antiterrorism and Effective Death Penalty Act (AEDPA) imposes a “highly
5 deferential” standard of review for evaluating a state court’s decision to deny a claim on the
6 merits.⁶ A federal court may not grant habeas relief merely because it might conclude that the
7 decision was incorrect.⁷ The federal district court may grant relief only if the decision: (1) was
8 contrary to or involved an unreasonable application of clearly established U.S. Supreme Court
9 law; or (2) was based on an unreasonable determination of the facts in light of the evidence
10 presented to the state court.⁸

11 A state court decision is contrary to clearly established law only if it applies a rule that
12 contradicts the Supreme Court’s case law or if the decision confronts a set of facts that are
13 materially indistinguishable from a Supreme Court decision and nevertheless arrives at a
14 different result.⁹ A state court need not even be aware of Supreme Court precedents, as long as
15 neither the reasoning nor the result of its decision contradicts them.¹⁰ “A federal court may not
16 overrule a state court for simply holding a view different from its own, when the precedent from
17 [the Supreme] Court is, at best, ambiguous.”¹¹

18 A state court decision constitutes an “unreasonable application” of clearly established
19 federal law only if it’s demonstrated that the state court’s application of Supreme Court
20 precedent to the facts of the case was not only incorrect, but “objectively unreasonable.”¹² And

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22 ⁶ *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

23 ⁷ *Id.* at 202.

24 ⁸ *Id.* at 181–88; *see also* 28 U.S.C. § 2254(d).

25 ⁹ *See, e.g., Mitchell v. Esparza*, 540 U.S. 12, 15–16 (2003).

26 ¹⁰ *Id.*

27 ¹¹ *Id.* at 16.

28 ¹² *See, e.g., id.* at 18; *Davis v. Woodford*, 384 F.3d 628, 638 (9th Cir. 2004).

1 when a state court’s factual findings are challenged, federal courts “must be particularly
2 deferential” to that court’s findings.¹³ The governing standard is not satisfied by a showing
3 merely that the state court finding was “clearly erroneous.”¹⁴ The reviewing court must instead
4 “be convinced that an appellate panel, applying the normal standards of appellate review, could
5 not reasonably conclude that the finding is supported by the record.”¹⁵ State-court factual
6 findings are presumed to be correct unless rebutted by clear and convincing evidence.¹⁶ The
7 petitioner bears the burden of proving by a preponderance of the evidence that he is entitled to
8 habeas relief.¹⁷

9 **B. Ground 1: Counsel was ineffective for not appealing the conviction.**

10 In his first ground for relief, Castellanos alleges that he was denied effective assistance of
11 counsel when counsel didn’t appeal his conviction. He alleges that he “attempted to contact
12 defense counsel[] so that an appeal would be timely effect . . . [but] once petitioner signed the
13 plea agreement, he never heard from trial counsel again.”¹⁸ Castellanos does not identify any
14 nonfrivolous issue that defense counsel should have pursued on a direct appeal. In fact,
15 Castellanos waived his right to a direct appeal in his plea agreement.¹⁹

16 About six months after Castellanos was sentenced, he sent a letter to defense counsel
17 terminating the representation and asking for a copy of his defense file.²⁰ He filed a motion to
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19 ¹³ *Lambert v. Blodgett*, 393 F.3d 943, 972 (9th Cir. 2004); *see also* 28 U.S.C. § 2254(d)(2).

20 ¹⁴ *Id.* at 973.

21 ¹⁵ *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004); *see also Lambert*, 393 F.3d at 972.

22 ¹⁶ 28 U.S.C. § 2254(e)(1).

23 ¹⁷ *Pinholster*, 563 U.S. at 569.

24 ¹⁸ ECF No. 6 at 3.

25 ¹⁹ ECF No. 9-6 at 6 (“I understand this means I am unconditionally waiving my right to a direct
26 appeal of this conviction, including any challenge based upon reasonable constitutional,
27 jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS
177.015(4).”).

28 ²⁰ ECF No. 9-11 at 4.

1 the same effect around the same time.²¹ At a state court evidentiary hearing, Castellanos’s two
2 trial counsel, Michael Becker and Roger Bailey, testified. Becker testified that Castellanos had
3 never asked him to file an appeal and had not talked to him since the sentencing, and he claimed
4 that he had not received any messages from Castellanos or any of Castellanos’s relatives. He
5 also testified that the only contact he had with Castellanos was the request for a copy of the
6 defense file, which came five or six months after sentencing.²² Bailey also testified that he
7 didn’t remember Castellanos asking him to file an appeal.²³

8 Castellanos, on the other hand, testified that he had attempted to contact his lawyers a
9 couple times (by phone and by letter) but never actually spoke to them.²⁴ And he initially asked
10 his son and sister to reach out to his lawyers but then retracted his directions when he started
11 filing his own motions.²⁵ The state district court found Castellanos’s testimony not credible²⁶
12 and determined that his counsel was not ineffective for failing to file a direct appeal; the Nevada
13 appellate court agreed.²⁷

14 I find that the state appellate court’s rejection of this claim was neither contrary to, nor an
15 unreasonable application of, clearly established federal law. In *Roe v. Flores-Ortega*, the
16 Supreme Court rejected “a bright-line rule that counsel must always consult with the defendant
17 regarding an appeal.”²⁸ The Court instead established a standard for when trial counsel has a
18 duty to consult with the defendant about filing an appeal.²⁹ Counsel must consult only when

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20 ²¹ *Id.*

21 ²² ECF No. 9-18 at 12–15.

22 ²³ *Id.* at 18–21.

23 ²⁴ *Id.* at 21–28.

24 ²⁵ *Id.*

25 ²⁶ ECF No. 9-19 at 4–5.

26 ²⁷ ECF No. 9-22 at 3–4.

27 ²⁸ *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000).

28 ²⁹ *Id.*

1 there is reason to think that “a rational defendant would want to appeal (for example, because
2 there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably
3 demonstrated to counsel that he was interested in appealing.”³⁰ Courts must consider all of the
4 information that trial counsel knew or should have known, paying particularly close attention to
5 “whether the conviction follows a trial or a guilty plea . . . because a guilty plea reduces the
6 scope of potentially appealable issues and because such a plea may indicate that the defendant
7 seeks an end to judicial proceedings.”³¹ The court must also consider “whether the defendant
8 received the sentence bargained for as part of the plea and whether the plea expressly reserved or
9 waived some or all appeal rights.”³²

10 The state courts found that Castellanos did not request counsel to file an appeal within the
11 time to appeal. That factual finding was not unreasonable in light of the contradictory testimony
12 from both of Castellanos’s trial attorneys, and that finding is entitled to a presumption of
13 correctness.³³ The record also reflects that Castellanos expressly waived his direct-appeal rights
14 as part of the plea agreement, was sentenced within the potential ranged contemplated by the
15 plea agreement, and has not identified in either state or federal court any nonfrivolous grounds
16 for direct appeal that he could have pursued. The state appellate court’s rejection of this claim
17 was therefore neither contrary to, nor an unreasonable application of, clearly established federal
18 law. So, I find that ground 1 does not provide a basis for relief.

19 **C. Ground 2: Counsel was ineffective by ignoring “easily discoverable exculpatory**
20 **evidence.”**

21 In his second ground for relief, Castellanos argues that he was denied effective assistance
22 because counsel ignored “easily discoverable exculpatory evidence” that he presented. He urges

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24 ³⁰ *Id.*

25 ³¹ *Id.*

26 ³² *Id.* at 480–81.

27 ³³ Castellanos referred in a parenthetical in ground 1 to: “See Exhibit #1 Proof of attempt to
28 contact counsel.” There is no Exhibit 1 to the petition, and federal habeas review is limited to
the record that was before the state courts. *Pinholster*, 563 U.S. at 181–82.

1 that counsel “did not consult any experts, nor investigate exculpatory information or
2 impeachment evidence.” He does not include any factual specifics regarding the exculpatory
3 evidence, expert testimony, or impeachment evidence that counsel should have developed and
4 presented.³⁴

5 The claim presented to the state courts was similarly devoid of factual allegations.³⁵ The
6 state appellate court rejected this claim, noting that “[t]he district court found [that] Castellanos
7 failed to explain how a better investigation would have provided a more favorable outcome and
8 failed to identify the exculpatory evidence he presented to defense counsel.”³⁶ I find that the
9 state appellate court’s rejection of this conclusory claim was neither contrary to, nor an
10 unreasonable application of, *Strickland v. Washington*’s performance and prejudice prongs.³⁷ In
11 both state and federal court, “[c]onclusory allegations [that] are not supported by a statement of
12 specific facts do not warrant habeas relief.”³⁸ Ground 2 thus provides Castellanos no relief.

13 **D. Ground 3: Counsel was allegedly ineffective for failing to object to “multiple**
14 **prejudicial errors” in his sentencing documents.**

15 In his final ground for relief, Castellanos alleges that he was denied effective assistance
16 because counsel failed to object to “multiple prejudicial errors” in his presentence investigation
17 report and psychosexual evaluation. He makes various references to “these damning errors,”
18 “the PSI and PSE mistakes,” and “these errors” without identifying what the errors and mistakes
19 actually are. Castellanos posits that the state district court “must have been laboring under
20 mistakes of fact and faulty conclusions” because the court sentenced him to 54 to 144 months
21 rather than to either probation or 24–60 months, which Castellanos believes should have been his
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24 ³⁴ ECF No. 6 at 5.

25 ³⁵ ECF No. 9-16 at 8.

26 ³⁶ ECF No. 9-22 at 3–4.

27 ³⁷ *Strickland v. Washington*, 466 U.S. 668 (1984).

28 ³⁸ *See, e.g., James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994).

1 sentence. He alleges that his sentence was nearly twice the recommendation of 32 months from
2 parole and probation and that he was evaluated as having a low risk of recidivism.³⁹

3 Castellanos acknowledged in his plea agreement that he understood “that information
4 regarding charges not filed, dismissed charges, or charges to be dismissed [under the agreement]
5 may be considered by the judge at sentencing.”⁴⁰ Castellanos was charged with two counts of
6 sexual assault with a minor under 16 years of age, two counts of statutory sexual seduction, three
7 counts of open or gross lewdness, and five counts of sexual assault. The preliminary hearing
8 testimony tended to establish that Castellanos repeatedly raped his stepdaughter from the time
9 she was fifteen years old, that he forced her compliance with threats, that he took steps to avoid
10 being caught by family members, and that the assaults continued for several years until her
11 brother walked in on a rape in progress.⁴¹ The victim testified to the psychological harm that she
12 had suffered.⁴²

13 The post-conviction claim that Castellanos presented to the state courts, like the claim in
14 federal court, also failed to identify any specific error in the presentence investigation report or
15 psychosexual evaluation that counsel failed to correct at sentencing.⁴³ The state appellate court
16 rejected the claim, noting that “[t]he district court found Castellanos failed to identify the alleged
17 errors in these reports and therefore his claim was simply a bare allegation.” The court also
18 noted that “because Castellanos was originally charged with twelve criminal offenses, including
19 multiple counts of sexual assault, the district court would not have sentenced him to probation or
20 minimum incarceration.”⁴⁴

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23 ³⁹ ECF No. 6 at 7–8.

24 ⁴⁰ ECF No. 9-6 at 5.

25 ⁴¹ ECF No. 9-2 at 2–14.

26 ⁴² ECF No. 9-9 at 11–13.

27 ⁴³ ECF No. 9-16 at 9–10.

28 ⁴⁴ ECF No. 9-22 at 3.

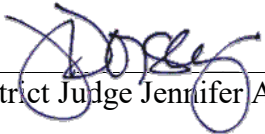
1 The state appellate court's rejection of this conclusory claim was neither contrary to nor
2 an unreasonable application of the performance and prejudice prongs under *Strickland*. As I
3 explained in Section(C), *supra*, unsupported conclusory allegations do not warrant habeas relief.
4 Castellanos has never identified a single error in either sentencing document that was not
5 corrected by defense counsel.⁴⁵ His supposition that, but for unspecified error in the sentencing
6 documents, an attempted-sexual-assault defendant in his situation would receive probation or
7 minimum incarceration ignores the serious charges and sentencing exposure that he faced before
8 he pled out to the lower offense. Castellanos's bare claim does not present specific factual
9 allegations that would remotely tend to establish a reasonable probability of a different outcome
10 at sentencing had counsel objected to unspecified errors in the sentencing documents. Ground 3
11 therefore does not provide a basis for relief.

12 Conclusion

13 Accordingly, IT IS HEREBY ORDERED that **Castellanos's petition for a writ of**
14 **habeas corpus [ECF No. 6] is DENIED** on its merits, and this action is **DISMISSED with**
15 **prejudice**. Because reasonable jurists would not find my decision to be debatable or wrong, I
16 decline to issue a certificate of appealability.

17 The **Clerk of Court** is directed to **ENTER JUDGMENT in favor of respondents and**
18 **against Castellanos and CLOSE THIS CASE.**

19 Dated: July 16, 2018

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22 U.S. District Judge Jennifer A. Dorsey
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27 ⁴⁵ See ECF No. 9-9 at 11-13 (defense counsel correcting an erroneous statement from the
28 prosecutor regarding a prior charge in reliance on the presentence investigation report).