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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MATHEW LEE WILLIAMS,

Case No. 3:16-cv-00505-MMD-VPC

Petitioner,

ORDER

v.

ISIDRO BACA, *et al.*,

Respondents.

I. INTRODUCTION

This case is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Mathew Lee Williams, a Nevada prisoner serving a sentence of ten years to life in prison on a conviction of lewdness with a child under the age of fourteen years. (See Amended Petition for Writ of Habeas Corpus (ECF No. 39).) There are, before the Court, a motion to dismiss filed by Respondents and a motion for stay filed by Williams. The Court will grant the motion to dismiss in part and deny it in part; the Court will dismiss two of Williams’s grounds for relief (Grounds 5 and 9), and part of each of two other grounds for relief (part of Ground 3 and part of Ground 8), and will set a schedule for the briefing of the remainder of Williams’s claims on their merits. The Court will deny the motion for stay.

II. BACKGROUND

Williams was convicted, upon a guilty plea, in Nevada’s Second Judicial District Court, on November 29, 2012. (See Judgment, Respondents’ Exh. 24 (ECF No. 15-24).)

1 Williams appealed to the Nevada Supreme Court from his conviction, and the
2 Nevada Supreme Court affirmed on September 18, 2013. (See Appellant's Opening Brief,
3 Respondents' Exh. 51 (ECF No. 16-20); Order of Affirmance, Respondents' Exh. 57 (ECF
4 No. 16-26).)

5 Williams then filed a petition for writ of habeas corpus in the state district court,
6 and that court denied the petition on November 12, 2015. (See Petition for Writ of Habeas
7 Corpus (Post-Conviction), Respondents' Exh. 61 (ECF No. 17); Order of State District
8 Court, Respondents' Exh. 74 (ECF No. 17-13).) Williams appealed to the Nevada
9 Supreme Court from the denial of the petition, and the Nevada Supreme Court affirmed
10 on July 13, 2016. (See Appellant's Opening Brief, Respondents' Exh. 82 (ECF No. 17-
11 21); Order of Affirmance, Respondents' Exh. 89 (ECF No. 17-28).)

12 Williams initiated this federal habeas corpus action on August 29, 2016. (See
13 Petition for Writ of Habeas Corpus (ECF No. 6).)

14 On January 11, 2017, Respondents filed a motion to dismiss Williams's original
15 petition (ECF No. 14). Williams, in turn, filed a motion for stay (ECF No. 21), in which he
16 requested that this case be stayed while he returns to state court to exhaust any
17 unexhausted claims. The Court ruled on those motions on April 18, 2017. (See Order
18 entered April 18, 2017 (ECF No. 24).) The Court dismissed a claim based on alleged
19 ineffective assistance of Williams's state post-conviction counsel, and, in all other
20 respects, denied the motion to dismiss. (See *id.*) The Court denied Williams's motion for
21 stay as moot, finding that there were no viable claims yet to be exhausted in state court.
22 (See *id.*) Williams filed a motion for reconsideration, and the Court denied that motion.
23 (See Order entered June 30, 2017 (ECF No. 38).)

24 Williams then filed a motion for leave to amend, and another motion for stay. (ECF
25 Nos. 31, 32.) The Court granted the motion for leave to amend, and denied the motion
26 for stay, without prejudice, determining that it was premature. (See Order entered June
27 30, 2017 (ECF No. 38).)

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1 Williams's amended petition—now the operative petition in this case—was filed on
2 June 30, 2017. (ECF No. 39.) The Court reads the amended petition to contain the
3 following grounds for relief:

4 1. Williams was denied effective assistance of trial counsel, in violation
5 of his federal constitutional rights, because trial counsel failed to adequately
investigate the case before he pled guilty.

6 2. Williams's federal constitutional rights were violated because the
7 failure to consider his drug addiction in his sentencing amounts to cruel and
unusual punishment.

8 3. Williams's federal and state constitutional rights were violated
9 because the statute under which he was sentenced, and his sentence,
violate the constitutional prohibition of cruel and unusual punishment.

10 4. Williams was denied effective assistance of trial counsel, in violation
11 of his federal constitutional rights, because trial counsel failed to adequately
investigate the case before he pled guilty.

12 5. Williams was denied effective assistance of counsel on his direct
13 appeal, in violation of his federal constitutional rights, because of the claims
that his appellate counsel did and did not assert.

14 6. Williams was denied effective assistance of trial counsel, in violation
15 of his federal constitutional rights, because trial counsel misinformed him
about the strength of the State's case, and failed to adequately investigate
16 the case, before he pled guilty.

17 7. Williams was denied effective assistance of trial counsel, in violation
18 of his federal constitutional rights, because trial counsel failed to present
sufficient mitigating evidence at his sentencing.

19 8. Williams's federal constitutional rights were violated because his
20 guilty plea was not knowing, intelligent, and voluntary, as he did not
understand the plea agreement, and he was misled about the strength of
the State's case.

21 9. Williams was denied effective assistance of counsel on his direct
22 appeal, in violation of his federal constitutional rights, because his appellate
counsel did not adequately investigate his case and did not assert
23 meritorious claims.

24 (Amended Petition for Writ of Habeas Corpus (ECF No. 39).)

25 On November 13, 2017, Respondents filed their motion to dismiss Williams's
26 amended petition. (ECF No. 51.) In that motion, Respondents contend that Grounds 4, 5,
27 7, 8, and 9 are unexhausted in state court, and that part of Ground 3 is not cognizable in
28 this federal habeas corpus action. (*See id.*) Williams filed an opposition to the motion to

1 dismiss on December 18, 2017 (ECF No. 53), and Respondents replied on January 17,
2 2018 (ECF No. 57).

3 On December 18, 2017, with his opposition to the motion to dismiss, Williams also
4 filed a motion for stay, requesting that this case be stayed while he returns to state court
5 to exhaust his unexhausted claims. (ECF No. 52.) Respondents filed an opposition to that
6 motion on December 29, 2018 (ECF No. 55), and Williams replied on January 16, 2018
7 (ECF No. 56).

8 **III. DISCUSSION**

9 **A. Exhaustion – Legal Standards**

10 A federal court may not grant habeas corpus relief on a claim not exhausted in
11 state court. 28 U.S.C. § 2254(b). The exhaustion doctrine is based on the policy of federal-
12 state comity, and is intended to allow state courts the initial opportunity to correct
13 constitutional deprivations. *See Picard v. Conner*, 404 U.S. 270, 275 (1971). To exhaust
14 a claim, a petitioner must fairly present the claim to the highest state court, and must give
15 that court the opportunity to address and resolve it. *See Duncan v. Henry*, 513 U.S. 364,
16 365 (1995) (per curiam); *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992). A claim is
17 fairly presented to the state court if, before that court, the petitioner describes the
18 operative facts and legal theory upon which the claim is based. *See Anderson v. Harless*,
19 459 U.S. 4, 6 (1982) (per curiam); *Picard*, 404 U.S. at 275; *Batchelor v. Cupp*, 693 F.2d
20 859, 862 (9th Cir. 1982).

21 **B. Anticipatory Procedural Default**

22 The Supreme Court has recognized that under certain circumstances it may be
23 appropriate for a federal court to anticipate the state-law procedural bar of an
24 unexhausted claim, and to treat such a claim as subject to the procedural default doctrine.
25 “An unexhausted claim will be procedurally defaulted, if state procedural rules would now
26 bar the petitioner from bringing the claim in state court.” *Dickens v. Ryan*, 740 F.3d 1302,
27 1317 (9th Cir. 2014) (citing *Coleman v. Thompson*, 501 U.S. 722, 731 (1991)).

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1 In light of the procedural history of this case, it is plain that Williams’s unexhausted
2 claims would be ruled procedurally barred in state court, as untimely and successive (see
3 NRS §§ 34.726, 34.800, 34.810), if he were to return to state court to attempt to exhaust
4 those claims. The anticipatory default doctrine applies, and the Court considers Williams’s
5 unexhausted claims to be technically exhausted, but subject to the procedural default
6 doctrine. See *Dickens*, 740 F.3d at 1317.

7 In *Coleman*, the Supreme Court held that a state prisoner who fails to comply with
8 the State’s procedural requirements in presenting his claims is barred by the adequate
9 and independent state ground doctrine from obtaining a writ of habeas corpus in federal
10 court. *Coleman*, 501 U.S. at 731-32 (“Just as in those cases in which a state prisoner fails
11 to exhaust state remedies, a habeas petitioner who has failed to meet the State’s
12 procedural requirements for presenting his federal claims has deprived the state courts
13 of an opportunity to address those claims in the first instance.”). Where such a procedural
14 default constitutes an adequate and independent state ground for denial of habeas
15 corpus, the default may be excused only if “a constitutional violation has probably resulted
16 in the conviction of one who is actually innocent,” or if the prisoner demonstrates cause
17 for the default and prejudice resulting from it. *Murray v. Carrier*, 477 U.S. 478, 496 (1986).

18 To demonstrate cause for a procedural default, the petitioner must “show that
19 some objective factor external to the defense impeded” his efforts to comply with the state
20 procedural rule. *Murray*, 477 U.S. at 488. For cause to exist, the external impediment
21 must have prevented the petitioner from raising the claim. See *McCleskey v. Zant*, 499
22 U.S. 467, 497 (1991). With respect to the prejudice prong, the petitioner bears “the burden
23 of showing not merely that the errors [complained of] constituted a possibility of prejudice,
24 but that they worked to his actual and substantial disadvantage, infecting his entire
25 [proceeding] with errors of constitutional dimension.” *White v. Lewis*, 874 F.2d 599, 603
26 (9th Cir. 1989) (citing *United States v. Frady*, 456 U.S. 152, 170 (1982)).

27 In *Martinez v. Ryan*, 566 U.S. 1 (2012), the Supreme Court ruled that ineffective
28 assistance of post-conviction counsel may serve as cause, to overcome the procedural

1 default of a claim of ineffective assistance of trial counsel. In *Martinez*, the Supreme Court
2 noted that it had previously held, in *Coleman*, that “an attorney’s negligence in a
3 postconviction proceeding does not establish cause” to excuse a procedural default.
4 *Martinez*, 566 U.S. at 15 (citing *Coleman*, 501 U.S. at 746-47). The *Martinez* Court,
5 however, “qualif[ied] *Coleman* by recognizing a narrow exception: inadequate assistance
6 of counsel at initial-review collateral proceedings may establish cause for a prisoner’s
7 procedural default of a claim of ineffective assistance at trial.” *Id.* at 9. The Court described
8 “initial-review collateral proceedings” as “collateral proceedings which provide the first
9 occasion to raise a claim of ineffective assistance at trial.” *Id.* at 8.

10 Under *Martinez*, Williams might be able to overcome the anticipatory procedural
11 default of claims of ineffective assistance of trial counsel by showing ineffective
12 assistance of his state habeas counsel with respect to those claims. This issue, however,
13 is entwined with the question of the merits of the claims of ineffective assistance of trial
14 counsel, such that it cannot be properly addressed at this time, but will be better
15 addressed after Respondents file an answer. The Court will, therefore, deny
16 Respondents’ motion to dismiss Williams’s claims of ineffective assistance of trial counsel
17 as unexhausted, and therefore subject to the doctrine of anticipatory procedural default,
18 without prejudice to Respondents raising that defense in their answer.

19 **C. Ground 4**

20 In Ground 4, Williams claims that he was denied effective assistance of trial
21 counsel, in violation of his federal constitutional rights, because trial counsel failed to
22 adequately investigate the case before he pled guilty. (See Amended Petition for Writ of
23 Habeas Corpus (ECF No. 39) at 9-9c.) Williams alleges that his trial counsel was
24 ineffective for not investigating: his drug and alcohol use; his mental health; drug and
25 alcohol use by witnesses and the victim; inconsistent statements of witnesses; coerced
26 statements of witnesses; possible impeachment of witnesses; the lack of “a rape kit,” or
27 DNA testing of the victim; inconsistent statements of the victim; and other possible
28 impeachment of the victim and her family. (See *id.*)

1 In his state habeas action, Williams asserted a conclusory claim that his trial
2 counsel did not adequately investigate his case before he pled guilty. (See Petition for
3 Writ of Habeas Corpus (Post-Conviction), Respondents' Exh. 61 at 6 (ECF No. 17 at 7).)
4 There, Williams did not identify any specific matters that he believes his trial counsel
5 should have investigated.

6 Where the petitioner's presentation of a claim changes in federal court, the claim
7 is still considered fairly presented and exhausted in state court as long as the new
8 allegations in federal court do not fundamentally alter the claim. *See Dickens v. Ryan*,
9 740 F.3d 1302, 1318-19 (9th Cir. 2014) (en banc). However, where the new allegations
10 in federal court fundamentally alter the claim, the claim is unexhausted. That is the case
11 here with respect to Ground 4. Williams has fundamentally altered this claim, by adding
12 specificity to what was, in state court, a completely conclusory claim. Ground 4 is,
13 therefore, unexhausted in state court; or rather, as is discussed above, it is technically
14 exhausted but subject to the anticipatory procedural default doctrine.

15 Because Ground 4 is a claim of ineffective assistance of trial counsel, Williams
16 might be able to overcome the anticipatory procedural default by showing ineffective
17 assistance of his state habeas counsel. This issue, though, is entwined with the question
18 of the merits of the claim, such that it cannot be properly addressed at this time, but will
19 be better addressed after Respondents file an answer. The Court will, therefore, deny
20 Respondents' motion to dismiss with respect to Ground 4, without prejudice to
21 Respondents arguing, in their answer, that Ground 4 is procedurally defaulted.

22 **D. Grounds 5 and 9**

23 In Ground 5, Williams claims that he was denied effective assistance of counsel
24 on his direct appeal, in violation of his federal constitutional rights, because of the claims
25 that his appellate counsel did and did not assert. (See Amended Petition for Writ of
26 Habeas Corpus (ECF No. 39) at 11.) And, in Ground 9, Williams claims he was denied
27 effective assistance of counsel on his direct appeal, in violation of his federal
28 constitutional rights, because his appellate counsel did not adequately investigate his

1 case and did not assert meritorious claims. (*See id.* at 19-19b.) Williams alleges that his
2 appellate counsel should have investigated and asserted claims regarding particular
3 issues, including: his drug use; his mental health; “inconsistencies and invalidity of the
4 evidence;” the unknowing, unintelligent, and unknowing character of his guilty plea; “the
5 timeline of events;” his “whereabouts;” the “whereabouts of other parties involved;” the
6 credibility of the victim and her family; drug abuse by the victim and her family; drug use
7 by witnesses; and “incarceration” of the witnesses. (*See id.* at 11, 19-19b.)

8 In his state habeas action, Williams asserted a conclusory claim that his appellate
9 counsel was ineffective. (*See* Petition for Writ of Habeas Corpus (Post-Conviction),
10 Respondents’ Exh. 61 at 6 (ECF No. 17 at 7).) There, however, Williams did not describe
11 any specific matters that his appellate counsel should have investigated, or any particular
12 claims that she should have asserted. Rather, Williams’s entire claim of ineffective
13 assistance of appellate counsel, in his state habeas action, was as follows:

14 On my direct appeal, I believe that my appointed attorney purposely
15 brought forth an argument that had no valid merit, and no chance of
surviving a direct appeal.

16 To my knowledge, there were no known investigations done by either
17 my trial counsel, nor my post-conviction counsel. (for direct appeal)

18 (*Id.*)

19 Therefore, as with Ground 4, Williams has, in federal court, fundamentally altered
20 his claim of ineffective assistance of appellate counsel in Grounds 5 and 9. Grounds 5
21 and 9 are unexhausted in state court, or rather, as is discussed above, technically
22 exhausted but subject to the anticipatory procedural default doctrine. Grounds 5 and 9
23 are not claims of ineffective assistance of trial counsel; they are claims of ineffective
24 assistance of appellate counsel. *Martinez* does not apply to claims of ineffective
25 assistance of appellate counsel. *See Davila v. Davis*, 137 S. Ct. 2058, 2062-66 (2017)
26 (holding that *Martinez* does not apply to claims of ineffective assistance of direct appeal
27 counsel). Williams does not make any argument that he can overcome the procedural

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1 default of Grounds 5 and 9. The Court will, therefore, grant Respondents' motion to
2 dismiss with respect to Grounds 5 and 9, and dismiss those claims as procedurally
3 defaulted.

4 **E. Ground 7**

5 In Ground 7, Williams claims that he was denied effective assistance of trial
6 counsel, in violation of his federal constitutional rights, because his trial counsel failed to
7 present sufficient mitigating evidence at his sentencing. (See Amended Petition for Writ
8 of Habeas Corpus (ECF No. 39) at 15-15a.)

9 Williams made no such claim in state court. (See Petition for Writ of Habeas
10 Corpus (Post-Conviction), Respondents' Exh. 61 (ECF No. 17).) Ground 7 is, therefore,
11 unexhausted in state court, or, here again, technically exhausted but subject to the
12 anticipatory procedural default doctrine. Because Ground 7 is a claim of ineffective
13 assistance of trial counsel, Williams might be able to overcome the anticipatory
14 procedural default by showing ineffective assistance of his state habeas counsel. This
15 issue, though, is entwined with the question of the merits of the claim, such that it cannot
16 be properly addressed at this time, but will be better addressed after Respondents file an
17 answer. The Court will deny Respondents' motion to dismiss with respect to Ground 7,
18 without prejudice to Respondents arguing, in their answer, that Ground 7 is procedurally
19 defaulted.

20 **F. Ground 8**

21 In Ground 8, Williams claims that his federal constitutional rights were violated
22 because his guilty plea was not knowing, intelligent, and voluntary, as he did not
23 understand the plea agreement, and was misled about the strength of the State's case.
24 (See Amended Petition for Writ of Habeas Corpus (ECF No. 39) at 17-17a.)

25 In his state habeas action, Williams claimed that he was misled with respect to the
26 strength of the State's case. (See Petition for Writ of Habeas Corpus (Post-Conviction),
27 Respondents' Exh. 61 at 6 (ECF No. 17 at 7).) That part of Ground 8 is exhausted.

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1 On the other hand, in his state habeas action, Williams did not claim that his plea
2 was not knowing, intelligent, and voluntary, because he did not understand the plea
3 agreement. (*See id.*) That part of Ground 8 is unexhausted, or, rather, technically
4 exhausted but subject to the anticipatory procedural default doctrine. As this is not a claim
5 of ineffective assistance of trial counsel, *Martinez* does not apply. *See Davila*, 137 S. Ct.
6 at 2062-66. Williams does not make any argument that he can overcome the procedural
7 default of this part of Ground 8. The Court will, therefore, grant Respondents' motion to
8 dismiss with respect to the claim in Ground 8 that Williams's guilty plea was not knowing,
9 intelligent, and voluntary, because he did not understand the plea agreement; that part of
10 Ground 8 will be dismissed as procedurally defaulted.

11 **G. Cognizability of State-Law Claim in Ground 3**

12 In Ground 3, Williams claims that his federal and state constitutional rights were
13 violated because the statute under which he was sentenced, and his sentence, violate
14 the constitutional prohibition of cruel and unusual punishment. (*See Amended Petition for*
15 *Writ of Habeas Corpus (ECF No. 39) at 7-7i.*)

16 Claims based on state law are not cognizable in a federal habeas corpus action.
17 *See 28 U.S.C. § 2254(a); Estelle v. McGuire*, 502 U.S. 62, 67 (1991) ("We have stated
18 many times that 'federal habeas corpus relief does not lie for errors of state law.'). The
19 Court will grant Respondents' motion to dismiss with respect to Ground 3, to the extent
20 Ground 3 is based on violation of Williams's rights under the Nevada constitution.

21 **H. Williams's Motion for Stay**

22 As is discussed above, the Court determines that certain of Williams's claims have
23 not been presented in state court, but, if presented in state court now, would be
24 procedurally barred; those claims, therefore, are technically exhausted, but subject to the
25 procedurally default doctrine. None of Williams's claims are treated as unexhausted.

26 Under these circumstances, a stay is not warranted. Williams's return to state court
27 would be fruitless, and a waste of judicial resources, and time, in that his claims would be
28 procedurally barred in state court.

1 Therefore, the motion for stay will be denied.

2 **IV. CONCLUSION**

3 It is therefore ordered that Respondents' Motion to Dismiss (ECF No. 51) is
4 granted in part and denied in part. The following claims in Petitioner's amended habeas
5 petition are dismissed: Ground 3, to the extent based on violation of Petitioner's rights
6 under the Nevada constitution; Ground 5; the claim in Ground 8 that Petitioner's guilty
7 plea was not knowing, intelligent, and voluntary, because he did not understand the plea
8 agreement; and Ground 9. In all other respects, the motion to dismiss is denied.

9 It is further ordered that Petitioner's Motion for Stay and Abeyance (ECF No. 52)
10 is denied.

11 It is further ordered that Respondents will have ninety (90) days from the entry of
12 this Order to file an answer, responding to the remaining claims in the amended habeas
13 petition: Ground 1; Ground 2; Ground 3, to the extent based on violation of Petitioner's
14 federal constitutional rights; Ground 4; Ground 6; Ground 7; and the claim in Ground 8
15 that Petitioner's guilty plea was not knowing, intelligent, and voluntary because he was
16 misled about the strength of the State's case. Petitioner will, thereafter, have ninety (90)
17 days to file a reply to Respondents' answer. In view of the amount of time this case has
18 been pending, the Court will not look favorably upon any motion to extend this briefing
19 schedule.

20 It is further ordered that, pursuant to Federal Rule of Civil Procedure 25(d), the
21 Clerk of the Court is instructed to substitute Isidro Baca for Brian Williams, Sr., on the
22 docket for this case, as the respondent warden.

23 DATED THIS 17th day of July 2018.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE