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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JESSIE MATTHEW DIAZ,

Petitioner,

v.

TIMOTHY FILSON, et al.,

Respondents.

Case No. 3:17-cv-00570-HDM-CLB

ORDER

This is a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C § 2254 filed by a Nevada state prisoner. The surviving claim of petitioner Jessie Matthew Diaz's ("Diaz") petition is before the court for consideration on the merits. (ECF No. 5). Respondents have answered (ECF No. 18), and Diaz has filed a document that the court construes as a reply. (ECF No. 25).

Background

Diaz challenges his state court conviction, pursuant to a guilty plea, on three counts of burglary, for which he is serving three consecutive terms of 38 to 96 months. Pursuant to the plea agreement, Diaz pleaded guilty to the three counts, the State dismissed the other eleven charges, and the parties would be free to argue on sentence. (Exs. 4, 5, 7 (Tr. 4-10), 8 & 62 (Tr. 28-29)).¹

¹ The exhibits cited in this order, comprising the relevant state court record, are located at ECF Nos. 6-8.

1 During his plea canvass, Diaz stated that the only medication
2 he had taken in the past 24 hours was his "depression pills" and
3 that it did not affect his ability to understand the court. (Ex.
4 7 at 4)). Diaz acknowledged that he had spoken with his attorney
5 about the plea agreement, had signed, read and understood the
6 agreement, understood the elements of the offense, and understood
7 the deal was "1 to 10 on each and [the parties were] free to argue
8 on each." (*Id.* at 4-5, 8-9, 11). He understood that sentencing was
9 within the sole discretion of the court and that no one had
10 threatened or promised him anything to enter the plea. (*Id.* at
11 12).

12 When asked why he was pleading guilty, Diaz responded that he
13 just went down the wrong path. The court asked if he "walked into
14 a Jackson's gas station with a bad card." (*Id.*) Diaz responded,
15 "Yes. I was monkeying around with credit cards, you know." (*Id.*)
16 The court asked if he walked into the store with the intent to
17 commit fraud, and Diaz answered "yes." (*Id.* at 12-13).

18 Defense counsel represented there was no question in her mind
19 of Diaz's competency to enter a plea, assist counsel, or understand
20 the nature of the proceedings. (*Id.* at 11).

21 At sentencing, Diaz stated:

22 Well, I'm truly remorseful for the things I've done and,
23 like I said, I've changed my ways. And I've made some
24 mistakes and I'm ready to do my time for it. And I've
25 been talking to the Chaplain and I'm a Born Again
Christian. I've learned from this and I've changed and
I'm not going to do any more crimes or never get caught
with another credit card again in my life.

26 (Ex. 13 (Tr. 6)). The court then sentenced Diaz to 38 to 96 months
27 on each count, each count consecutive to the others. (*Id.* at 7-
28 8). Judgment of conviction was entered on May 2, 2013. (Ex. 14).

1 On June 10, 2013, Diaz, through counsel, filed a notice of
2 appeal. (Ex. 16). The appeal was dismissed as untimely. (Ex. 23).

3 On April 22, 2014, Diaz filed a state petition for
4 postconviction relief. (Ex. 28). Counsel was appointed and filed
5 a supplemental petition. (Exs. 36 & 43). The supplemental petition
6 asserted two claims: (1) ineffective assistance of counsel for
7 failing to perfect a timely appeal on Diaz's behalf; and (2)
8 ineffective assistance of counsel for failing to investigate Diaz'
9 mental health and intellectual issues, which resulted in the entry
10 of a plea that was not knowing, voluntary and intelligent. (Ex.
11 43). The state court dismissed the latter claim as conclusory and
12 conducted an evidentiary hearing on the claim that counsel failed
13 to perfect a timely appeal.

14 At the evidentiary hearing, the court noted, in relevant part,
15 that Diaz "clearly is struggling with some issues of psychiatric
16 nature, though not enough to raise an issue of competency." (Ex.
17 62 (Tr. 51)). The court went on to state that at the change of
18 plea hearing, neither he nor Diaz's attorney felt that Diaz was
19 unable to understand the nature of the proceedings. (*Id.* at 51-
20 52).

21 The trial court ultimately granted Diaz's claim that counsel
22 was ineffective for failing to file a timely appeal and authorized
23 Diaz to file a direct appeal. (Ex. 63). On direct appeal, the
24 Nevada Court of Appeals affirmed Diaz's judgment of conviction.
25 (Ex. 97). On appeal of the partial denial of Diaz's postconviction
26 petition, the Nevada Court of Appeals affirmed. (Ex. 100).

27 Diaz thereafter filed the instant federal habeas petition.
28

1 **Standard**

2 28 U.S.C. § 2254(d) provides the legal standards for this
3 Court's consideration of the merits of the petition in this case:

4 An application for a writ of habeas corpus on behalf of
5 a person in custody pursuant to the judgment of a State
6 court shall not be granted with respect to any claim
7 that was adjudicated on the merits in State court
8 proceedings unless the adjudication of the claim -

9 (1) resulted in a decision that was contrary to, or
10 involved an unreasonable application of, clearly
11 established Federal law, as determined by the
12 Supreme Court of the United States; or

13 (2) resulted in a decision that was based on an
14 unreasonable determination of the facts in light of
15 the evidence presented in the State court
16 proceeding.

17 AEDPA "modified a federal habeas court's role in reviewing
18 state prisoner applications in order to prevent federal habeas
19 'retrials' and to ensure that state-court convictions are given
20 effect to the extent possible under law." *Bell v. Cone*, 535 U.S.
21 685, 693-694 (2002). This court's ability to grant a writ is
22 limited to cases where "there is no possibility fairminded jurists
23 could disagree that the state court's decision conflicts with
24 [Supreme Court] precedents." *Harrington v. Richter*, 562 U.S. 86,
25 102 (2011). The Supreme Court has emphasized "that even a strong
26 case for relief does not mean the state court's contrary conclusion
27 was unreasonable." *Id.* (citing *Lockyer v. Andrade*, 538 U.S. 63, 75
28 (2003)); see also *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)
(describing the AEDPA standard as "a difficult to meet and highly
deferential standard for evaluating state-court rulings, which
demands that state-court decisions be given the benefit of the
doubt") (internal quotation marks and citations omitted.)

1 A state court decision is contrary to clearly established
2 Supreme Court precedent, within the meaning of 28 U.S.C. § 2254,
3 "if the state court applies a rule that contradicts the governing
4 law set forth in [the Supreme Court's] cases" or "if the state
5 court confronts a set of facts that are materially
6 indistinguishable from a decision of [the Supreme Court] and
7 nevertheless arrives at a result different from [the Supreme
8 Court's] precedent." *Andrade*, 538 U.S. 63 (quoting *Williams v.*
9 *Taylor*, 529 U.S. 362, 405-06 (2000), and citing *Bell*, 535 U.S. at
10 694).

11 A state court decision is an unreasonable application of
12 clearly established Supreme Court precedent, within the meaning of
13 28 U.S.C. § 2254(d), "if the state court identifies the correct
14 governing legal principle from [the Supreme Court's] decisions but
15 unreasonably applies that principle to the facts of the prisoner's
16 case." *Andrade*, 538 U.S. at 74 (quoting *Williams*, 529 U.S. at 413).
17 The "unreasonable application" clause requires the state court
18 decision to be more than incorrect or erroneous; the state court's
19 application of clearly established law must be objectively
20 unreasonable. *Id.* (quoting *Williams*, 529 U.S. at 409).

21 To the extent that the state court's factual findings are
22 challenged, the "unreasonable determination of fact" clause of §
23 2254(d)(2) controls on federal habeas review. *E.g.*, *Lambert v.*
24 *Blodgett*, 393 F.3d 943, 972 (9th Cir. 2004). This clause requires
25 that the federal courts "must be particularly deferential" to state
26 court factual determinations. *Id.* The governing standard is not
27 satisfied by a showing merely that the state court finding was

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1 "clearly erroneous." *Id.* at 973. Rather, AEDPA requires
2 substantially more deference:

3 [I]n concluding that a state-court finding is
4 unsupported by substantial evidence in the state-court
5 record, it is not enough that we would reverse in similar
6 circumstances if this were an appeal from a district
7 court decision. Rather, we must be convinced that an
8 appellate panel, applying the normal standards of
9 appellate review, could not reasonably conclude that the
10 finding is supported by the record.

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

13 Under 28 U.S.C. § 2254(e)(1), state court factual findings
14 are presumed to be correct unless rebutted by clear and convincing
15 evidence. The petitioner bears the burden of proving by a
16 preponderance of the evidence that he is entitled to habeas relief.
17 *Cullen*, 563 U.S. at 181. The state courts' decisions on the merits
18 are entitled to deference under AEDPA and may not be disturbed
19 unless they were ones "with which no fairminded jurist could
20 agree." *Davis v. Ayala*, - U.S. -, 135 S. Ct. 2187, 2208 (2015).

21 **Analysis**

22 Ground One, the sole surviving claim of the petition, asserts
23 ineffective assistance of trial counsel. Specifically, Diaz
24 asserts that counsel was ineffective for failing to obtain a mental
25 health evaluation to determine his state of mind at the time he
26 committed the offense and whether he was impaired or competent to
27 participate in formulating a defense. (ECF No. 1 at 3).

28 In addressing Diaz's claim, the Nevada Court of Appeals held:

Diaz did not identify any evidence counsel could have
uncovered through reasonably diligent investigation into
these issues. Accordingly, Diaz did not meet his burden
to demonstrate his counsel acted in an objectively

1 unreasonable manner or a reasonable probability he would
2 have refused to plead guilty and insisted on proceeding
to trial had counsel investigated Diaz' background,
education, and mental or emotional limitations.

3 Further, in the written plea agreement, Diaz asserted he
4 understood all matters contained within that agreement,
including the charges and possible sentences, and he
5 asserted his counsel had carefully explained the plea
6 agreement to him. Moreover, at the plea canvass, Diaz
7 informed the district court he had discussed the plea
agreement with his counsel, he understood the agreement,
and he then entered a guilty plea pursuant to the
agreement.

8 Under these circumstances, Diaz failed to demonstrate
9 his counsel induced him to accept a guilty plea agreement
10 he did not understand and Diaz did not demonstrate a
11 reasonable probability he would have refused to plead
12 guilty and would have insisted on proceeding to trial
13 had counsel made further efforts to explain the guilty
plea agreement. As Diaz' claim was not supported by
specific allegations that are not belied by the record
and because his claim would not have entitled him to
relief, the district court properly dismissed it without
considering it at the evidentiary hearing.

14 (Ex. 100 at 2-3).

15 The state courts' decision was not objectively unreasonable.

16 Ineffective assistance of counsel claims are governed by
17 *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*,
18 a petitioner must satisfy two prongs to obtain habeas relief—
19 deficient performance by counsel and prejudice. 466 U.S. at 687.
20 With respect to the performance prong, a petitioner must carry the
21 burden of demonstrating that his counsel's performance was so
22 deficient that it fell below an "objective standard of
23 reasonableness." *Id.* at 688. "'Judicial scrutiny of counsel's
24 performance must be highly deferential,' and 'a court must indulge
25 a strong presumption that counsel's conduct falls within the wide
26 range of reasonable professional assistance.'" *Knowles v.*
27 *Mirzayance*, 556 U.S. 111, 124 (2009) (citation omitted). In
28 assessing prejudice, the court "must ask if the defendant has met

1 the burden of showing that the decision reached would reasonably
2 likely have been different absent [counsel's] errors." *Strickland*,
3 466 U.S. at 696.

4 Diaz did not here or in state court present any evidence of
5 mental health issues that an evaluation would have uncovered, which
6 would have either rendered him incompetent or provided a defense
7 to the crimes with which he was charged. In fact, the record lacks
8 any indication that Diaz did not understand the plea he was
9 entering. Diaz repeatedly confirmed throughout the proceedings
10 that he understood the crimes he had committed, felt remorseful,
11 and did not intend to commit any more crimes. Further, Diaz has
12 not established that he would not have plead guilty if he had been
13 evaluated. Diaz received a substantial benefit from his decision
14 to plead: eleven of the fourteen charges against him were
15 dismissed. As such, Diaz has established neither deficient
16 performance nor prejudice, and the state courts' rejection of this
17 claim was neither contrary to, or an unreasonable application of,
18 clearly established federal law, nor an unreasonable determination
19 of the facts.

20 Diaz is not entitled to relief on Ground One of the petition.

21 **Certificate of Appealability**

22 In order to proceed with an appeal, Diaz must receive a
23 certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App.
24 P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951
25 (9th Cir. 2006); see also *United States v. Mikels*, 236 F.3d 550,
26 551-52 (9th Cir. 2001). Generally, a petitioner must make "a
27 substantial showing of the denial of a constitutional right" to
28 warrant a certificate of appealability. *Allen*, 435 F.3d at 951; 28

1 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84
2 (2000). "The petitioner must demonstrate that reasonable jurists
3 would find the district court's assessment of the constitutional
4 claims debatable or wrong." *Allen*, 435 F.3d at 951 (quoting *Slack*,
5 529 U.S. at 484). In order to meet this threshold inquiry, Diaz
6 has the burden of demonstrating that the issues are debatable among
7 jurists of reason; that a court could resolve the issues
8 differently; or that the questions are adequate to deserve
9 encouragement to proceed further. *Id.*

10 The court has considered the issues raised by Diaz, with
11 respect to whether they satisfy the standard for issuance of a
12 certificate of appealability and determines that none meet that
13 standard. Accordingly, Diaz will be denied a certificate of
14 appealability.

15 **Conclusion**

16 In accordance with the foregoing, IT IS THEREFORE ORDERED
17 that the petition for writ of habeas corpus relief (ECF No. 1) is
18 DENIED. This action is therefore DISMISSED WITH PREJUDICE.

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

21 The Clerk of Court shall enter final judgment accordingly and
22 close this case.

23 IT IS SO ORDERED.

24 DATED: This 20th day of July, 2020.

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27 _____
28 UNITED STATES DISTRICT JUDGE