

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Relmon H. Davis III v. W.J. Sullivan

No. 1:20-cv-01270-KES-HBK (HC) (E.D. Cal. May 19, 2025) · No. 1:20-cv-01270-KES-HBK (HC) · Decided
May 19, 2025

SUMMARY

The document contains findings and recommendations in a federal habeas corpus action under 28 U.S.C. § 2254. The magistrate judge recommends denying Relmon H. Davis III’s petition challenging his California conviction for possessing a weapon in prison and declining to issue a certificate of appealability. The analysis addresses, among other matters, denial of a continuance, evidentiary rulings, exhaustion, and applicable habeas standards.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 19, 2025
DOCKET	1:20-cv-01270-KES-HBK (HC)
DISPOSITION	writ_denied
PROCEDURAL POSTURE	A state prisoner petitioned for a writ of habeas corpus under 28 U.S.C. § 2254. The magistrate judge issued findings and recommendations that the petition be denied and that a certificate of appealability not issue.
STANDARD OF REVIEW	The court applied de novo review because the record did not contain clear substantive state-court decisions on the federal claims and it was unclear whether all claims were exhausted. It also applied the Brecht substantial-and-injurious-effect standard to alleged constitutional errors. The court explained that AEDPA deference would otherwise apply to claims adjudicated on the merits under 28 U.S.C. § 2254(d).
PRECEDENTIAL VALUE	unpublished_nonprecedential
PARTIES	Relmon H. Davis, III v. W.J. Sullivan

TOPICS

federal habeas corpus

post-conviction relief

due process

ineffective assistance

criminal procedure

PRACTICE AREAS

federal habeas corpus

criminal procedure

constitutional law

post-conviction relief

sentencing

QUESTIONS PRESENTED

1. Whether denial of Davis's request for a continuance after he elected to represent himself violated due process.
2. Whether the trial court's exclusion of Davis's proposed evidence concerning prior convictions, prison disciplinary records, and related documents violated due process or rendered the trial fundamentally unfair.
3. Whether the trial judge's evidentiary rulings demonstrated judicial bias or vindictiveness.
4. Whether the failure to identify the inmate who reported the weapon violated the Sixth Amendment Confrontation Clause.
5. Whether the trial court violated a constitutional right by denying Davis's motions without providing explanations.
6. Whether the prosecution's peremptory challenge of a Black female prospective juror violated *Batson v. Kentucky*.
7. Whether Davis was denied the Sixth Amendment right to a public trial.
8. Whether appointed counsel rendered ineffective assistance by failing to investigate Davis's prior convictions and prison-prior history.
9. Whether alleged errors involving evidence of prior convictions and prison-term enhancements warranted federal habeas relief.

HOLDINGS

1. The denial of Davis's request for a continuance did not violate due process because the request was within the trial court's discretion, Davis repeatedly confirmed he was prepared to proceed, and the requested evidence was not relevant to the charged offense. Any error also did not have a substantial and injurious effect on the verdict.
2. Davis was not entitled to habeas relief based on the admission or exclusion of evidence concerning his prior convictions, prison disciplinary records, or related documents because the evidence was irrelevant, inadmissible, or insufficient to establish a constitutional violation, and any alleged error was harmless under *Brecht*.
3. Davis failed to establish that the trial court's evidentiary rulings resulted from judicial bias or rendered the trial fundamentally unfair.
4. Davis did not establish a Confrontation Clause violation because he identified no testimonial statement by the unidentified inmate that was admitted at trial.

5. Davis could not obtain habeas relief on his Batson claim because he did not make a timely objection to the prosecution's peremptory challenge at trial.
6. Davis failed to establish ineffective assistance because he did not show deficient performance or prejudice from counsel's failure to investigate his prior convictions and prison-prior history.

KEY QUOTATIONS

“A state court’s determination that a claim lacks merit precludes federal habeas relief so long as fair-minded jurists could disagree on the correctness of the state court’s decision.” (at 3)

“There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process.” (at 5)

“when “evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief.”” (at 9)

“Claims alleging that counsel was constitutionally ineffective require the Court to engage in the two-step analysis set forth in Strickland v. Washington, 466 U.S. 668 (1984).” (at 18)

FACTUAL BACKGROUND

Correctional officers searched Davis's cell at Corcoran State Prison after receiving information from other inmates that he possessed a weapon. They found a seven-and-a-half-inch weapon made from razor blades attached to wood and copper wire in a box on the cell's top bunk; Davis had been the sole occupant of the cell for approximately two weeks. A jury convicted Davis of possessing a weapon in a penal institution, and the court later found prior serious felony convictions and prior prison terms, resulting in a sentence of twenty-seven years to life.

PROCEDURAL HISTORY

Davis was convicted by a jury in the Kings County Superior Court of possessing a weapon while confined in a penal institution and received an indeterminate sentence of twenty-seven years to life based on prior convictions and prison-term enhancements. The California Fifth District Court of Appeal affirmed, and the California Supreme Court summarily denied review. Davis filed multiple state habeas petitions, which were denied, and then filed this federal § 2254 petition. The magistrate judge recommended denying all claims and declining to issue a certificate of appealability.

DISPOSITION

writ_denied

CASES CITED

- Schiro v. Landrigan, 550 U.S. 465, 474 (2007)
- Cullen v. Pinholster, 563 U.S. 170 (2011)
- Kernan v. Hinojosa, 136 S. Ct. 1603, 1604 (2016)

- Sexton v. Beaudreaux, 138 S. Ct. 2555, 2558 (2018)
- White v. Woodall, 572 U.S. 415, 419 (2014)
- Mitchell v. Esparza, 540 U.S. 12, 16 (2003)
- Brown v. Payton, 544 U.S. 133, 134 (2005)
- Williams v. Taylor, 529 U.S. 362, 407 (2000)
- Harrington v. Richter, 562 U.S. 86, 98-103 (2011)
- Burt v. Titlow, 571 U.S. 12, 18 (2013)
- Wood v. Allen, 558 U.S. 290, 293 (2010)
- Brown v. Davenport, 596 U.S. 118, 134, 138 (2022)
- Fry v. Pliler, 551 U.S. 112, 121 (2007)
- Wilson v. Sellers, 138 S. Ct. 1188, 1192, 1196 (2018)
- Berghuis v. Thompson, 560 U.S. 370, 390 (2010)
- Ungar v. Sarafite, 376 U.S. 575, 589 (1964)
- Morris v. Slappy, 461 U.S. 1, 11 (1983)
- Michaels v. Davis, 51 F.4th 904, 943-44 (9th Cir. 2022)
- Ibarra v. Ryan, 312 F. App'x 42, 44 (9th Cir. 2009)
- Estelle v. McGuire, 502 U.S. 62, 67-68, 72 (1991)
- Walden v. Shinn, 990 F.3d 1183, 1205 (9th Cir. 2021)
- Andrew v. White, 145 S. Ct. 75, 78 (2025)
- Payne v. Tennessee, 501 U.S. 808, 825 (1991)
- Nevada v. Jackson, 569 U.S. 505, 509 (2013)
- Bradford v. Paramo, 100 F.4th 1088, 1099, 1103 (9th Cir. 2024)
- Lackawanna County District Attorney v. Coss, 532 U.S. 394, 402 (2001)
- Marks v. Davis, 106 F.4th 941, 988 (9th Cir. 2024)
- Brown v. Madden, 858 F. App'x 242, 243 (9th Cir. 2021)
- Duckett v. Godinez, 67 F.3d 734, 740 (9th Cir. 1995)
- United States v. Latu, 46 F.4th 1175, 1180 (9th Cir. 2022)
- Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir. 1995)
- Batson v. Kentucky, 476 U.S. 79, 89 (1986)
- Haney v. Adams, 641 F.3d 1168, 1169, 1173 (9th Cir. 2011)
- Strickland v. Washington, 466 U.S. 668, 687-90, 694, 697 (1984)
- Williams v. Taylor, 529 U.S. 362, 391, 393 n.17 (2000)
- Yarborough v. Gentry, 540 U.S. 1, 8 (2003)
- Kimmelman v. Morrison, 477 U.S. 365, 386 (1986)
- Lockhart v. Fretwell, 506 U.S. 364, 372 (1993)
- Hendricks v. Calderon, 70 F.3d 1032, 1040 (9th Cir. 1995)
- Eggleston v. United States, 798 F.2d 374, 376 (9th Cir. 1986)

- People v. Delgado, 43 Cal. 4th 1059, 1065 (2008)
- Miller-El v. Cockrell, 537 U.S. 322, 327, 335-36 (2003)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)
- United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

(HC) Relmon H. Davis III v. Sullivan

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 RELMON H. DAVIS, III, Case No. 1:20-cv-01270-KES-HBK (HC) 12 Petitioner,

FINDINGS AND RECOMMENDATIONS TO

DENY PETITION FOR WRIT OF HABEAS

13 v. CORPUS AND DECLINE TO ISSUE

CERTIFICATE OF APPEALABILITY 1

14 W.J. SULLIVAN,

FOURTEEN-DAY OBJECTION PERIOD

15 Respondent. 16

17

18 I. STATUS

19 Petitioner Relmon H. Davis, III (“Petitioner” or “Davis”), a state prisoner, is proceeding 20 pro
se on his Petition for Writ of Habeas Corpus filed under 28 U. S.C. § 2254 on September 8, 21
2020. (Doc. No. 1, “Petition”). Petitioner challenges his conviction following a jury trial for one
22 count of being an inmate in possession of a weapon in violation of Penal Code § 4502(a) with
23 additional findings that he had two prior strike convictions and served two prior prison terms
for 24 felony convictions. (Case No. 15CMS-7004). (Doc. No. 17-14 at 2; see Doc. No. 17-1 at
159, 25 Doc. No. 17-2 at 66-69).² The Kings County Superior Court sentenced Petitioner to an 26
1 This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule
302 (E.D. Cal. 2022). 27 2 All citations to the pleadings and record are to the page number as it
appears on the Case Management 28 and Electronic Case Filing (“CM/ECF”) system. 1
indeterminate term of twenty-seven (27) years to life.³ (Doc. No. 17-14 at 2; see Doc. No. 17-2 at
2 117-18). The Fifth Appellate District Court affirmed Petitioner’s conviction on appeal. (Case 3
No. F075017). (Doc. No. 17-14 at 2). On June 12, 2019, the California Supreme Court 4
summarily denied review. (Case No. S255539). (Doc. No. 17-15 at 1). 5 Petitioner filed multiple
petitions for writ of habeas corpus in the state courts during the 6 pendency of his criminal
proceedings and after his conviction and appeal. (See generally, Doc.

7 Nos. 17-16 through 17-22). However, the state courts denied relief (Doc. Nos. 17-16 at 1; 17-17
8 at 1; 17-18 at 1; 17-19 at 1-2; 17-20 at 1-2; 17-21 at 1; 17-22 at 1). 9 The Petition pending before
the Court contains the following (restated)⁴ grounds for relief: 10 (1) Petitioner was denied due
process and equal protection when he was denied additional time and not granted funds to prepare
a defense after 11 requesting to represent himself at trial. 12 (2) The trial judge displayed judicial
bias by improperly excluding Petitioner's evidence related to his prior convictions and prison
priors. 13

(3) The prosecution offered "false" evidence to establish Petitioner's prior convictions.

14

(4) Petitioner was not informed of the name of the inmate who reported the weapon, in
15 violation of Petitioner's right to confrontation. 16 (5) The trial court denied Petitioner's
motions without review and without explanation. 17 (6) The prosecution improperly used a
peremptory challenge to exclude a black, female prospective juror. 18

(7) Petitioner was denied the right to an open and public trial when the courtroom was
19 closed on October 12 and 13, 2016. 20 (8) Petitioner received ineffective assistance of counsel
when his appointed pretrial counsel refused to review documents presented by Petitioner and
investigate the 21 alleged prior offenses. 22 (9) The false evidence related to the prior offenses was
improperly admitted as character evidence and to show offense count. 23

(10) One of the prison priors was unsupported because the record of the underlying case
24 was incomplete. 25 26 3 The sentence was based on the term of 25 years to life for the inmate
in possession of a weapon conviction, plus two consecutive one-year terms for the prior prison
term enhancements. 27 4 The Petition is far from clear in setting forth the grounds for relief. The
undersigned has made every 28 effort to ascertain the claims based on the limited information
provided. 1 (Doc. No. 1 at 6-20). 2 Respondent filed an Answer (Doc. No. 18), arguing Petitioner
was not entitled to relief on 3 any of his grounds, and lodged the state court record in support
(Doc. 17, 17-1 through 17-22). 4 Petitioner filed a traverse. (Doc. 19). This matter is deemed
submitted on the record before the 5 Court. After careful review of the record and applicable law,
the undersigned recommends the 6 district court deny the Petition and decline to issue a certificate
of appealability.

7 II. GOVERNING LEGAL PRINCIPLES

8 A. Evidentiary Hearing 9 In deciding whether to grant an evidentiary hearing, a federal court
must consider whether 10 such a hearing could enable an applicant to prove the petition's factual
allegations, which, if true, 11 would entitle the applicant to federal habeas relief." *Schriro v.*
Landrigan, 550 U.S. 465, 474 12 (2007). "It follows that if the record refutes the applicant's
factual allegations or otherwise 13 precludes habeas relief, a district court is not required to hold
an evidentiary hearing." *Id.* Here, 14 Petitioner did not request an e videntiary hearing, and this
Court independently finds that the 15 pertinent facts of this case are fully developed in the record
before the Court. Thus, no 16 evidentiary hearing is required. *Cullen v. Pinholster*, 563 U.S. 170

(2011). 17 B. ADEPA General Principles 18 A federal court's statutory authority to issue habeas corpus relief for persons in state 19 custody is set forth in 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death 20 Penalty Act of 1996 (AEDPA). AEDPA requires a state prisoner seeking federal habeas relief to 21 first "exhaus[t] the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). If 22 the state courts do not adjudicate the prisoner's federal claim "on the merits," a de novo standard 23 of review applies in the federal habeas proceeding; if the state courts do adjudicate the claim on 24 the merits, then AEDPA mandates a deferential, rather than de novo, review. *Kernan v. Hinojosa*, 25 136 S. Ct. 1603, 1604 (2016). This deferential standard, set forth in § 2254(d), permits relief on a 26 claim adjudicated on the merits, but only if the adjudication: 27 (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as 28 determined by the Supreme Court of the United States; or 1 (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the 2 State court proceeding. 3 28 U.S.C. § 2254(d). This standard is both mandatory and intentionally difficult to satisfy. 4 *Sexton v. Beaudreaux*, 138 S. Ct. 2555, 2558 (2018); *White v. Woodall*, 572 U.S. 415, 419 (2014). 5 "Clearly established federal law" consists of the governing legal principles in the 6 decisions of the United States Supreme Court when the state court issued its decision. *White*, 572 7 U.S. at 419. Habeas relief is appropriate only if the state court decision was "contrary to, or an 8 unreasonable application of," that federal law. 28 U.S.C. § 2254(d)(1). A decision is "contrary 9 to" clearly established federal law if the state court either: (1) applied a rule that contradicts the 10 governing law set forth by Supreme Court case law; or (2) reached a different result from the 11 Supreme Court when faced with materially indistinguishable facts. *Mitchell v. Esparza*, 540 U.S. 12 12, 16 (2003). 13 A state court decision involves an "unreasonable application" of the Supreme Court's 14 precedents if the state court c orrectly identifies the governing legal principle, but applies it to the 15 facts of the petitioner's case in an objectively unreasonable manner, *Brown v. Payton*, 544 U.S. 16 133, 134 (2005), or "if the state court either unreasonably extends a legal principle from 17 [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to 18 extend that principle to a new context where it should apply." *Williams v. Taylor*, 529 U.S. 362, 19 407, (2000). "A state court's determination that a claim lacks merit precludes federal habeas 20 relief so long as fair-minded jurists could disagree on the correctness of the state court's 21 decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011). The petitioner must show that the 22 state court decision "was so lacking in justification that there was an error well understood and 23 comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103. 24 When reviewing a claim under § 2254(d), any "determination of a factual issue made by a 25 State court shall be presumed to be correct[.]" and the petitioner bears "the burden of rebutting 26 the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); *Burt 27 v. Titlow*, 571 U.S. 12, 18 (2013) ("[A] state-court factual determination is not unreasonable 28 1 merely because the federal habeas court would have reached a different conclusion in the first 2

instance.”) (quoting *Wood v. Allen*, 558 U.S. 290, 293 (2010)). 3 Even if a petitioner meets AEDPA’s “difficult” standard, he must still show that any 4 constitutional error had a “substantial and injurious effect or influence” on the verdict. *Brecht v. 5 Abrahamson*, 507 U.S. 619, 637 (1993). As the Supreme Court explained, while the passage of 6 AEDPA “announced certain new conditions to [habeas] relief,” it didn’t eliminate *Brecht*’s actual- 7 prejudice requirement. *Brown v. Davenport*, 596 U.S. 118, 134 (2022). In other words, a habeas 8 petitioner must satisfy *Brecht*, even if AEDPA applies. See *id.* at 138 (“[O]ur equitable 9 precedents remain applicable ‘whether or not’ AEDPA applies.”) (citing *Fry v. Pliler*, 551 U.S. 10 112, 121 (2007)). In short, a “federal court must deny relief to a state habeas petitioner who fails 11 to satisfy either [*Brecht*] or AEDPA. But to grant relief, a court must find that the petition has 12 cleared both tests.” *Id.* at 134. 13 As discussed *supra*, for the deferential § 2254(d) standard to apply there must have been 14 an “adjudication on the merit s” in state court. An adjudication on the merits does not require that 15 there be an opinion from the state court explaining the state court’s reasoning. *Richter*, 562 U.S. 16 at 98. “When a federal claim has been presented to a state court and the state court has denied 17 relief, it may be presumed that the state court adjudicated the claim on the merits in the absence 18 of any indication or state-law procedural principles to the contrary.” *Id.* at 99. “The presumption 19 may be overcome when there is reason to think some other explanation for the state court’s 20 decision is more likely.” *Id.* at 99-100. This presumption applies whether the state court fails to 21 discuss all the claims or discusses some claims but not others. *Johnson v. Williams*, 568 U.S. 22 289, 293, 298-301 (2013). 23 While such a decision is an “adjudication on the merits,” the federal habeas court must 24 still determine the state court’s reasons for its decision in order to apply the deferential standard. 25 When the relevant state-court decision on the merits is not accompanied by its reasons, 26 the federal court should “look through” the unexplained decision to the last related state-court decision that does provide a relevant 27 rationale. It should then presume that the unexplained decision adopted the same reasoning. But the State may rebut the 28 presumption by showing that the unexplained affirmance relied or 1 most likely did rely on different grounds than the lower state court’s decision, such as alternative grounds for affirmance that were 2 briefed or argued to the state supreme court or obvious in the record it reviewed. 3 4 *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018). The federal court “looks through” the silent state 5 court decision “for a specific and narrow purpose—to identify the grounds for the higher court’s 6 decision, as AEDPA directs us to do.” *Id.* at 1196. 7 When . . . there is no reasoned state-court decision on the merits, the federal court “must determine what arguments or theories . . . 8 could have supported the state court’s decision; and then it must ask whether it is possible fairminded jurists could disagree that those 9 arguments or theories are inconsistent with the holding in a prior decision of this Court.” *Richter*, 562 U.S. at 102. If such 10 disagreement is possible, then the petitioner’s claim must be denied. *Ibid.* 11 12 *Sexton*, 138 S. Ct. at 2558.

13 III. RELEVANT FACTUAL BACKGROUND

14 The Court adopts the pertinent facts of the underlying offenses, as summarized by the 15

California Fifth District Court of Appeal. A presumption of correctness applies to these facts.

16 See 28 U.S.C. § 2254(e)(1); *Crittenden v. Chappell*, 804 F.3d 998, 1010-11 (9th Cir. 2015).

17 Relevant Facts 18 On September 3, 2014, appellant was an inmate at Corcoran State Prison. Correctional officers received information from other 19 inmates that appellant was suspected of possessing a weapon in his cell. The correctional officers approached appellant's cell, 20 instructed him to exit, and performed a search. 21 The officers came upon a small box on the cell's top bunk and looked inside. The box contained a seven-and-a-half-inch-long 22 weapon. The weapon consisted of multiple razor blades attached to a piece of wood by copper wire, with a handle wrapped in cloth. 23 The correctional officer took possession of the weapon and logged it into evidence. At trial, the correctional officer explained the 24 weapon was commonly referred to as a tomahawk and was intended for slicing, rather than stabbing, a victim. The weapon itself and 25 pictures of it were admitted into evidence. Further, prior to the incident, appellant had been the sole occupant of the cell for 26 approximately two weeks. 27 (Doc. No. 17-14 at 2). 28 ///

1 IV. ANALYSIS

2 A. Standard of Review 3 As an initial matter, the undersigned must determine the appropriate standard of review 4 for Petitioner's claims. Petitioner represents that each of his claims were presented to the state 5 courts and are therefore exhausted, citing his multiple state habeas petitions. (Doc. 1 at 6-21). 6 Respondent makes a general statement that "[c]laims barred for lack of fair presentation in state 7 court, are barred here," but only vaguely asserts that a single claim—"that the prosecution knew 8 prior convictions were false"—was not presented to the California Supreme Court such that it is 9 unexhausted. (Doc. 18 at 2, 10). (Doc. 18 at 2). For the majority of Petitioner's claims, 10 Respondent wholly fails to identify the relevant state court decision the Court should look to in 11 conducting its federal habeas analysis. (See *id.* at 5-10). Unsurprising considering Respondent's 12 failure to adequately address the issues, Petitioner's traverse does not address (1) the controlling 13 state court opinion for each claim or (2) exhaustion. (See Doc. 19). 14 Here, the only claim P etitioner raised on direct appeal was that "the trial court erred by 15 informing the jury of his prior criminal acts, thereby denying him a right to an impartial jury." 16 (See Doc. No. 17-14 at 2). He does not raise a similar ground in the Petition, such that the state 17 appellate court's detailed decision does not provide guidance on Petitioner's current claims. 18 Rather, the grounds raised in the Petition were brought before the state courts in Petitioner's 19 various habeas filings. (See Doc. Nos. 17-20 through 17-22). Because both the Fifth District and 20 the California Supreme Court summarily denied review on Petitioner's subsequent state habeas 21 petitions raising the same issues (see Doc. Nos. 17-21 at 1, 17-22 at 1), the trial court's ruling is 22 the only decision providing any explanation for the denial of habeas relief. (See Doc. No. 17-20 23 at 1-2). The trial court denied relief because Petitioner failed to set forth specific facts to support 24 his ineffective assistance claim; Petitioner's claims about the admission and use of his prior 25 convictions were denied on the merits on direct appeal; and Petitioner failed to "set forth reasons 26 constituting a sufficient excuse for his failure to raise [his remaining claims] on direct

appeal.” 27 (Id. at 2). It is unclear from the language of the order whether the court denied the claims as 28 factually deficient, procedurally barred, or meritless, or some combination of these reasons. 1 Because there is no clear substantive decision from the state courts on Petitioner’s claims 2 and because it is unclear whether all of Petitioner’s claims are exhausted, the undersigned applies 3 de novo review. Such is appropriate as “[c]ourts can ... deny writs of habeas corpus under § 2254 4 by engaging in de novo review when it is unclear whether AEDPA deference applies, because a 5 habeas petitioner will not be entitled to a writ of habeas corpus if his or her claim is rejected on de 6 novo review.” *Berghuis v. Thompkins*, 560 U.S. 370, 390 (2010). Similarly, even an unexhausted 7 claim can be denied when it is meritless. See 28 U.S.C. § 2254(b)(2). As discussed below, each 8 of Petitioner’s claims are meritless even under de novo review such that he is not entitled to 9 federal habeas relief. 10 B. Ground One – Denial of Continuance 11 In his first ground, Petitioner alleges that after being allowed to represent himself at trial, 12 he was “not given the time to prepare a defense or the funds to self represent.” (Doc. No. 1 at 6). 13 1. Background 14 On September 9, 2016 , at a trial confirmation hearing, Petitioner informed the trial court 15 that he wished to represent himself at trial. (Doc. 17-5 at 100). Petitioner indicated his decision 16 had “nothing to do with [counsel’s] effectiveness, it has to do with the direction of the tactic” 17 because he would be able to best bring out the issues he wished to present. (Id. at 101-02). The 18 court informed Petitioner that trial was scheduled for the following Monday and asked if 19 Petitioner would be able to proceed as scheduled and Petitioner indicated he would. (Id. at 104- 20 05). While advising Petitioner of his rights, the court again asked if Petitioner understood that the 21 court would not grant a continuance and the case would proceed to trial on Monday, and 22 Petitioner answered in the affirmative. (Id. at 107). After finding Petitioner mentally capable of 23 representing himself, the court again asked Petitioner if he was “ready for trial on Monday,” and 24 Petitioner again responded affirmatively. (Id. at 110). 25 During subsequent discussion, Petitioner’s now-relieved counsel, Melina Benninghoff, 26 informed the court that Petitioner was claiming he gave her a copy of “two 115’s”⁵ and Petitioner 27 5 This appears to be a reference to a disciplinary form used by the California Department of Corrections to 28 report rules violations. See 15 Cal. Code Regs. § 3313. 1 explained that the 115’s he had were “blacked out, and ... recopied or rewritten copy of a later 2 date” and he would like the originals to present as evidence. (Id. at 113). After Benninghoff 3 indicated she did not have a copy of the referenced documents, Petitioner asked “[i]f this would 4 validate a continuance of about two days, maybe a day, maybe until next Friday” because he 5 needed the copy. (Id. at 115). The court responded that the 115 was not significant but Petitioner 6 could “certainly file a motion to continue,” and gave the Petitioner a chance to explain the 7 significance of the 115. (Id.). Petitioner indicated the “115 would show the officer’s actual 8 intent, or ... non authorization” because he did not comply with the proper procedures in 9 completing and filing the form. (Id. at 115-17). The court explained the only portion of the 115 10 that would be relevant at trial would be the narrative explaining where the weapon was found and 11 the issues of “who

prepared the 115, who filed the 115, who certified the 115, and who filed it for 12 a DA referral” were not relevant because the issue was whether there was a weapon in 13 Petitioner’s cell and whether he had knowledge of it. (Id. at 118-19). Thus, the court declined to 14 grant a continuance. Trial commenced the following Monday, September 12, 2016. (See id. at 15 127). 16

2. Analysis 17 Petitioner alleges the denial of a continuance violated his right to due process because it 18 left him without a defense. (Doc. No. 1 at 7). 19 The denial of a request for a continuance may, under unusual circumstances, result in a denial of due process. See *Ungar v. 20 Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964). But “[t]he matter of continuance is traditionally within the 21 discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to 22 offer evidence or is compelled to defend without counsel.” Id.; see also *Morris*, 461 U.S. at 11, 103 S.Ct. 1610. For that reason, 23 “[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer 24 must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the 25 request is denied.” *Ungar*, 376 U.S. at 589, 84 S.Ct. 841. 26 *Michaels v. Davis*, 51 F.4th 904, 943-44 (9th Cir. 2022). 27

Here, there is no indication that the denial of the continuance amounted to a violation of 28 due process. Petitioner did not request to represent himself until four days before trial and the 1 trial court confirmed three separate times that Petitioner understood trial would go forward as 2 scheduled. Further, when Petitioner asked for a continuance, the trial court allowed him an 3 opportunity to explain why a continuance was now necessary despite Petitioner’s earlier 4 assurances he would be ready to proceed. The court only denied the continuance after Petitioner 5 explained the request was to obtain the 115s because such were not relevant to Petitioner’s case. 6 Further, even if the denial did violate Petitioner’s right to due process, he “is unable to 7 show that the lack of a continuance had a substantial and injurious effect or influence in 8 determining the jury’s verdict” as required by *Brecht*. *Ibarra v. Ryan*, 312 F. App’x 42, 44 (9th 9 Cir. 2009) (quotation marks omitted). Petitioner sought the continuance to obtain evidence 10 related to the proper procedures for reporting inmate rules violations but, as the trial court 11 explained, such was not relevant to the issues faced by the jury—whether Petitioner knowingly 12 possessed the weapon. Thus, the denial of the continuous did not have a substantial effect or 13 influence on the verdict. 14 Based on the foregoing, Petitioner has not carried his burden of proving the denial of a 15 continuance amounted to a due process violation or that any error had a substantial and injurious 16 effect of influence on the verdict such that ground one fails. The undersigned recommends that 17 ground one be denied. 18 C. Grounds Three, Nine, and Ten – Evidentiary Issues 19 Although less than clear, Petitioner appears to challenge the admission and/or exclusion of 20 certain evidence in grounds three, nine, and ten. Petitioner alleges the prosecution offered 21 evidence of a December 7, 2005 information that was false and he was not allowed to present 22 evidence from his previous cases to support his argument; the evidence related to his prior 23 convictions was improperly used to convict because “the priors were false;”

and the record 24 relating to the priors was incomplete. (Doc. No. 1 at 9, 18-20). 25 1. Background
26 Despite initially refusing to bifurcate the trial based on a mistaken belief that Petitioner 27 6
Because Petitioner's grounds overlap and build upon each other, the undersigned addresses some
28 grounds out of order for clarity and to avoid repetition. 1 intended to testify, the trial court
ultimately bifurcated the trial to address Petitioner's guilt on the 2 underlying charge before
addressing the sentencing enhancement based on his prior convictions. 3 (Doc. 17-6 at 97). After
the prosecution's case, Petitioner indicated he intended to call a witness 4 to testify regarding the
"referral as sent into the DA," but the court explained that the contents of 5 the 115 and DA
referral would be hearsay. (Id. at 98-99). Further, the court explained "the paper 6 procedure that
occurs and then is referred to the District Attorney's office is not relevant, and it is 7 not
admissible" for the purposes of trial. (Id. at 100). The court explained that if Petitioner had 8 "an
issue with that procedure, that might be taken up with a 602." (Id.). The court also denied 9
Petitioner's request to call one of his former counsels to testify regarding whether it was 10
established at the preliminary hearing that Petitioner had possession of the weapon "[o]r if there 11
was some sort of malicious prosecution." (Id. at 100-01). Petitioner did not present any other 12
evidence during the guilt phase of the trial. (Id. at 108). 13 While the jury was deliberating, the
court held an identity hearing outside the presence of 14 the jury, during which the pro secution
offered Exhibit 5, pursuant to California Penal Code § 15 969b,7 containing certified copies of (1)
Petitioner's CDC movement log; (2) abstracts of 16 judgments reflecting Petitioner's convictions
and sentences in Case Nos. GA063048-01, 17 GA066813-01, and 08CF1095; and (4) Petitioner's
fingerprints, photo, and identifying 18 information. (Doc. No. 17-6 at 175; Doc. No. 17-3 at 9-37).
The court admitted Exhibit 5 19 without objection from Petitioner. (Doc. No. 17-6 at 176). 20
Davis then attempted to offer Exhibits 6, 7, and 8 as evidence. (Doc. No. 17-6 at 179, 21 184).
Exhibit 6 was a minute order from Case Number 07CF3535, indicating the case was 22 dismissed
at the prosecution's request with the intention that it would be refiled. (Doc. No. 17-1 23 at 166-
67). Exhibit 7 was a case summary from the same previous case. (Id. at 168-73). Exhibit 24 8 was
a minute order from Petitioner's arraignment in the refiled case, Case Number 08CF1095. 25 (Id.
at 174-176). The court found the documents were not relevant and lacked the proper 26 27 7
California Penal Code § 969b provides that certified copies of "the records of any state
penitentiary, reformatory, county jail, city jail, or federal penitentiary" may be introduced as
evidence to support that a 28 defendant has previously been convicted of and served a prison term
for commission of a crime. 1 foundation because they were not certified copies, there was no
testimony establishing their 2 authenticity, and they had nothing to do with identity. (Doc. No. 17-
6 at 185). Petitioner 3 indicated he could prove the documents were authentic and certified if
allowed to "get the rest of 4 the copies," but the court denied his request. (Id. at 186). 5 Petitioner
also sought to offer Exhibit 9, which the trial court described as including 17 6 pages consisting of
"a motion entitled motion for priors, or for prior hearing pursuant to CCP
7 Section 1025;" an incomplete rap sheet; and two abstracts duplicative of those in the 969b

packet

8 submitted by the prosecution. (Doc. 17-6 at 201; Doc. 17-7 at 9; Doc. No. 17-1 at 177-218). The 9 court sustained the prosecution's objections, concluding that most of the documents were 10 inadmissible hearsay, the motion was irrelevant, and the documents were likely to confuse 11 and mislead the jury. (Doc. 17-7 at 9). Petitioner then offered Exhibit 10, containing handwritten 12 pages of questions relating to the priors and miscellaneous documents from Petitioner's 13 previous cases. (Id. at 17-7 at 9-10; Doc. No. 17-1 at 219-277; Doc. No. 17-2 at 2-64). The 14 court denied admission based on the same ruling as to Exhibit 9. (Doc. No. 17-7 at 10). 15 Ultimately, Exhibit 5 was the only additional evidence offered at the bifurcated portion of the 16 trial. (See Doc. No. 17-6 at 193; Doc. No. 17-7 at 14).

17 2. Analysis 18 Generally, federal habeas relief is not warranted based only on alleged errors in state law, 19 including errors in interpreting and applying the state evidentiary rules. *Estelle v. McGuire*, 502 U.S. 62, 67-68, 72 (1991); see *Walden v. Shinn*, 990 F.3d 1183, 1205 (9th Cir. 2021) ("we cannot 21 grant federal habeas relief founded on an alleged non-constitutional state evidentiary error"). 22 However, when "evidence is introduced that is so unduly prejudicial that it renders the trial 23 fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a 24 mechanism for relief." *Andrew v. White*, 145 S.Ct. 75, 78 (2025) (quoting *Payne v. Tennessee*, 501 U.S. 808, 825 (1991)). To obtain relief on an evidentiary ruling, the petitioner must show 26 that the error was of a constitutional dimension and that it was not harmless. *Brecht v. 27 Abrahamson*, 507 U.S. 619 (1993). This requires the error to have had "'a substantial and 28 injurious effect' on the verdict." Id. at 623. 1 Additionally, "[t]he Constitution guarantees criminal defendants a meaningful opportunity 2 to present a complete defense," but the United States Supreme Court has "also recognized that 3 state and federal rulemakers have broad latitude under the Constitution to establish rules 4 excluding evidence from criminal trials." *Nevada v. Jackson*, 569 U.S. 505, 509 (2013) 5 (quotation marks and citations omitted). Thus, "a trial court may, consistent with the 6 Constitution, exclude defense evidence through the proper application of evidentiary rules that 7 serve a valid purpose in a given case, including when proposed evidence is only marginally 8 relevant or poses an undue risk of harassment, prejudice, or confusion of the issues." *Bradford v. 9 Paramo*, 100 F.4th 1088, 1099 (9th Cir. 2024). Even if the exclusion of evidence amounted to 10 constitutional error, Petitioner is not entitled to relief unless he meets the "substantial and 11 injurious effect" standard set out in *Brecht*. Id. at 1103. Thus, for either Petitioner's challenge to 12 the admission of the prosecution's evidence or his challenge to the exclusion of his own evidence, 13 Petitioner must show the decision had a substantial and injurious effect on the verdict. 14 Here, even if the Court were to assume, without deciding, that the trial court erred in its 15 evidentiary rulings, Petitioner cannot satisfy *Brecht*. As to the guilt portion of the trial, Petitioner 16 was charged with violating California Penal Code § 4502(a), which prohibits possession of a 17 sharp instrument by anyone "at or confined in any penal institution." As the trial court ruled in 18 rejecting Petitioner's attempt to offer evidence related to the 115 and DA referral, whether the 19

proper procedures were followed in reporting the weapon was simply irrelevant to whether 20
Petitioner was in possession of a sharp instrument. To the extent Petitioner attempts to argue in 21
his Petition that his underlying convictions were not valid such that he was not “legally 22
confined,” California Penal Code § 4504(a) provides that a person is deemed confined in a state 23
prison so long as they are confined “by order made pursuant to law ... regardless of the validity 24
of the order directing the confinement, until a judgment of a competent court setting aside the 25
order becomes final.” Accordingly, evidence related to the validity of his other convictions was 26
not relevant to whether he violated § 4502(a). 27 Turning to the enhancement portion of the trial,
the issue before the jury was whether 28 Petitioner had previously been convicted of serious or
violent crimes within the meaning of 1 California Penal Code §§ 1170.12(a) through (d) and
667(b) through (i) and whether he had 2 served previous prison terms within the meaning of Penal
Code § 667.5(b). Petitioner’s prior 3 convictions for oral copulation by force or injury and assault
with a deadly weapon in Case No. 4 08CF1095 are both considered serious felonies under
California Penal Code § 1192.7(c)(5) and 5 (31), rendering them serious felonies for the purpose
of Penal Code § 667. See Cal. Penal Code § 6 667(d) (defining “a prior conviction of a serious or
violent felony” as, of relevance, “an offense 7 defined in subdivision (c) of Section 1192.7 as a
serious felony”). Similarly, at the time of 8 Petitioner’s conviction and sentencing in 2016, Penal
Code § 667.5(b) applied a sentencing 9 enhancement of one-year “for each prior separate prison
term or county jail term imposed” for a 10 felony conviction. Petitioner’s convictions in Case
Numbers GA063048 and GA066813 were 11 both felony convictions for which prison terms were
imposed. (Doc. No. 17-3 at 14-16). There is 12 no indication the exhibits Petitioner sought to
admit—which in no way establish that the 13 underlying convictions had been overturned or were
facially invalid—would have had any impact 14 on the jury’s enhancement8 fi ndings. 15 Thus,
Petitioner has not carried his burden of proving that any errors in the trial court’s 16 evidentiary
rulings had a substantial and injurious effect of influence on the verdict. Accordingly, 17 the
undersigned recommends that grounds three, nine, and ten be denied. 18 D. Ground Two – Judicial
Bias 19 In his second ground, Petitioner asserts the trial court’s refusal to allow him to present 20
evidence related to his prior convictions was the result of judicial bias and vindictiveness. (Doc.
21 No. 1 at 8).

22 There is no dispute that “[d]ue process guarantees a criminal defendant the right to a fair 23 and
impartial judge.” Marks v. Davis, 106 F.4th 941, 988 (9th Cir. 2024). However, “[i]n 24
determining whether there was a denial of due process, the courts do not look only to whether the
25 8 To the extent Petitioner is attempting to attack the sentencing enhancement by asking this
Court to review his previous convictions, such is not proper on federal habeas review. Lackawanna
Cnty. Dist. 26 Attys. v. Cross, 532 U.S. 394, 402 (2001) (holding “that once a state conviction is
no longer open to direct 27 or collateral attack in its own right because the defendant failed to
pursue those remedies while they were available (or because the defendant did so unsuccessfully),
the conviction may be regarded as conclusively 28 valid”). 1 trial court committed misconduct, but

to whether the court's actions rendered the trial so fundamentally unfair as to violate federal due process under the United States Constitution." 3 *Brown v. Madden*, 858 F. App'x 242, 243 (9th Cir. 2021) (quoting *Duckett v. Godinez*, 67 F.3d 473, 474 (9th Cir. 1995)). 5 Here, there is nothing to indicate the trial judge's ruling was in any way based on judicial bias. Further, as discussed above with respect to the evidentiary rulings, Petitioner cannot show 7 that the exclusion of evidence impacted the jury's verdict because the evidence was irrelevant to 8 the issues before the jury. Thus, even if the judge acted improperly in excluding the evidence, 9 such did not render the trial fundamentally unfair. Accordingly, ground two is meritless and the 10 undersigned recommends that ground two be denied. 11 E. Ground Four – Confrontation Clause 12 In his fourth ground, Petitioner alleges that the failure to identify the inmate who alerted 13 officers to the weapon in Petitioner's cell violated his right to confront the witnesses against him. 14 (Doc. No. 1 at 11). 15 The Sixth Amendment grants a criminal defendant the right "to be confronted with the 16 witnesses against him." U.S. Const. amend. VI. Thus, "a witness's testimony against a defendant 17 is inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant 18 had a prior opportunity for cross-examination." *United States v. Latu*, 46 F.4th 1175, 1180 (9th

19 Cir. 2022) (alterations omitted). "But only statements whose primary purpose was testimonial 20 trigger the constitutional requirement. Testimonial statements resemble a solemn declaration or 21 affirmation made for the purpose of establishing or proving some fact." *Id.* (cleaned up). 22 Here, Petitioner does not identify any statements by the unidentified inmate that were 23 admitted at trial let alone establish that any statements were testimonial. See *Jones v. Gomez*, 66 24 F.3d 199, 204-05 (9th Cir. 1995) (conclusory allegations made with no reference to the record or 25 any document does not merit habeas relief). Further, the Court's review of the record reveals 26 references to Officer Huewe receiving information that Petitioner had a weapon and Huewe's 27 testimony that he "received information that there was a weapon in the cell" from "other inmates 28 1 that reside in the building" who reported Petitioner "had the weapon at release for chow." Doc.

2 No. 17-6 at 26, 41, 45, 48, 55-56). However, no statements from any inmate were admitted.

3 Because Petitioner wholly failed to identify any testimonial statements that were 4 improperly admitted, he has not established a violation of his confrontation rights. Thus, ground 5 four is without merit and the undersigned recommends that ground four be denied. 6 F. Ground Five – Denial of Motions 7 In his fifth ground, Petitioner alleges he was denied "the right to have motions presented 8 heard and decided." (Doc. No. 1 at 13). Petitioner alleges "[m]otions presented to the court of 9 Johnsons letter castro motion to introduce additional jury instruction[,] a motion to exclude 10 evidence and judicial notice motion to review and weigh CDC rules application and compliance 11 were denied before they were heard [and] no explanation [was] given on or off the record." (*Id.*). 12 For background, on the first day of trial, Petitioner indicated to the court that he had 13 "some motions." (Doc. 17-5 at 132). He indicated he had a motion to

dismiss the priors and a 14 “Castro motion” to dismiss the jury instruction and give his own jury instruction. (Id. at 133). 15 The court indicated that any motion related to the jury instructions was premature and asked 16 Petitioner for his objection to priors. (Id. at 133-34). Petitioner responded: “Basically these priors 17 are not priors. The information will be prejudicial. It has no current basis with the charge.” (Id. at 18 134). Petitioner also indicated he wanted “to put in a motion for Johnson’s letter. Basically to 19 introduce exculpatory or mitigating evidence, otherwise mitigating evidence,” to which the court 20 responded, “I have no idea what you’re talking about, sir.” (Id. at 135). In further discussion, 21 Petitioner clarified that his argument was that the priors were not valid convictions, and he could 22 prove such if given the opportunity to present evidence in a bifurcated trial. (Id. at 136). In 23 ruling on the motions, the court explained that while Petitioner alleged the priors were not valid 24 convictions, “the underlying circumstances of the offenses [were] not relevant, only the fact that 25 [he was] convicted.” (Id. at 138). The court also denied Petitioner’s motion to exclude any 26 witness who did not have “direct visual confirmation of a find of possession,” his motion to 27 exclude any correctional officer who did not have an official obligation to be at the trial, and his 28 motion to exclude the weapon and photographs of the weapon. (Id. at 139-43). 1 Despite challenging the trial court’s failure to explain the denial of his motions, Petitioner 2 fails to cite any Supreme Court precedent establishing a right to such explanation. Further, even 3 if the failure to provide an explanation on the record amounted to a constitutional violation— 4 which, again, Petitioner fails to establish— Petitioner presents no argument as to how an 5 explanation of the trial court’s ruling would have altered the jury’s verdict. Thus, Petitioner has 6 not shown that any error had a “substantial and injurious effect or influence” on the verdict. 7 *Brecht*, 507 U.S. at 637. Based on this failure, Petitioner has not shown that habeas relief is 8 warranted and the undersigned recommends that ground five be denied. 9 G. Ground Six – Batson Challenge 10 In his sixth ground, Petitioner alleges the prosecution’s use of a peremptory challenge to 11 strike “[a] black female prospective juror” who “expressed similar ideals and understandings as 12 other jurors who were not excluded” violated *Batson v. Kentucky*, 476 U.S. 79 (1986). (Doc. 1 at 13 14). However, Petitioner wholly fails to identify the specific juror he is referring to or other facts 14 to support that the prosecution’s use of a peremptory challenge was improper. 15 In *Batson*, “the Supreme Court held that ‘the Equal Protection Clause forbids the 16 prosecutor to challenge potential jurors solely on account of their race or on the assumption that 17 black jurors as a group will be unable impartially to consider the State’s case against a black 18 defendant.’” *Haney v. Adams*, 641 F.3d 1168, 1169 (9th Cir. 2011) (quoting *Batson*, 476 U.S. at 19 89). However, “a petitioner may not raise a *Batson* claim in his habeas petition if the petitioner 20 failed to object to the prosecution’s use of peremptory challenges at trial.” *Id.* Here, Petitioner 21 failed to object to any of the prosecution’s peremptory challenges on any grounds. (See Doc. No. 22 17-8 at 119-21, 166-70, 207-10, 218). Because “a timely objection to the prosecutor’s use of 23 peremptory challenges is a prerequisite to a *Batson* challenge,” Petitioner is not entitled to federal 24 habeas relief. *Haney*,

641 F.3d at 1173. 25 Accordingly, the undersigned recommends ground six be denied. 26 H. Ground Seven – Public Trial 27 In ground seven, Petitioner alleges he was denied his right to a public trial when “[t]rial 28 was held in a closed courtroom 10.12.16 and 10.13.16 and there after verdict” and reopened at 1 bifurcation. (Doc. No. 1 at 15). As with many of his claims, Petitioner fails to support his 2 argument with citations to the record or any substantive argument. 3 The Sixth Amendment provides, in relevant part, that “[i]n all criminal prosecutions, the 4 accused shall enjoy the right to a speedy and public trial.” Here, however, there is no factual 5 support for Petitioner’s assertion that he was denied a public trial. As an initial matter, although 6 Petitioner references October 12 and 13, 2016 in his Petition, review of the transcript reveals no 7 proceedings occurred on those dates. (See Doc. 17-7 at 43 (jury trial concluded on September 14, 8 2016); id. at 50 (initial sentencing hearing on October 18, 2016)). The Court presumes Petitioner 9 intended to reference September 12 and 13, 2016, given trial was in progress on those dates. 10 Nothing in the transcript indicates that the courtroom was closed at any time on either of those 11 dates. (See Doc. No. 17-5 at 125-155; Doc. No. 17-6). As Respondent indicates in his answer, 12 certain proceedings—specifically voir dire and opening statements—were transcribed separately, 13 but there is no indication the courtroom was closed during these proceedings. (See Doc. Nos. 17- 14 8, 17-9). 15 Because the court remained open throughout the proceedings, Petitioner was not denied 16 his right to a public trial. The undersigned recommends that ground seven be denied. 17 I. Ground Eight – Ineffective Assistance of Counsel 18 In ground eight, Petitioner alleges he received ineffective assistance of counsel prior to 19 trial because both of his appointed counsel failed to investigate the case or prison prior history. 20 (Doc. No. 1 at 17). 21 Claims alleging that counsel was constitutionally ineffective require the Court to 22 engage in the two-step analysis set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). 23 Under the first prong of that test, the petitioner must prove that his attorney’s representation 24 fell below an objective standard of reasonableness. Id. at 687-88. To demonstrate deficient 25 performance, the petitioner must show his counsel “made errors so serious that counsel was 26 not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 27 687; *Williams v. Taylor*, 529 U.S. 362, 391 (2000). In reviewing trial counsel’s performance, 28 however, “counsel is strongly presumed to have rendered adequate assistance and made all 1 significant decisions in the exercise of reasonable professional judgment.” *Strickland*, 466 2 U.S. at 690; *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003). Only if counsel’s acts and 3 omissions, examined within the context of all the circumstances, were outside the “wide 4 range” of professionally competent assistance, will petitioner meet this initial burden. 5 *Kimmelman v. Morrison*, 477 U.S. 365, 386 (1986); *Strickland*, 466 U.S. at 689-90. 6 Under the second part of *Strickland*’s two-prong test, the petitioner must show that he 7 was prejudiced by counsel’s conduct. 466 U.S. at 694. Prejudice is found where there is a 8 reasonable probability that, but for his counsel’s errors, the result would have been different. 9 Id. The errors must not merely undermine confidence in the outcome of the trial but must 10 result in a proceeding that was fundamentally unfair. *Williams*, 529 U.S. at 393

n.17; 11 *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993). The petitioner must prove both prongs: 12 deficient performance and prejudice. A court need not, however, determine whether 13 counsel's performance was deficient before determining whether the petitioner suffered 14 prejudice as the result of the alleged deficiencies. *Strickland*, 466 U.S. at 697 ("If it is easier 15 to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we 16 expect will often be so, that course should be followed."). 17 It is well-established that defense counsel has a "duty to make reasonable investigations or 18 to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 19 U.S. at 691. However, "the duty to investigate and prepare a defense is not limitless." *Hendricks 20 v. Calderon*, 70 F.3d 1032, 1040 (9th Cir. 1995). A court must "conduct an objective review of 21 the attorney's performance, measured for 'reasonableness under prevailing professional norms.'" 22 *Wiggins v. Smith*, 539 U.S. 510, 523 (2003) (quoting *Strickland*, 466 U.S. at 668). This includes 23 a "context-dependent consideration of the challenged conduct as seen 'from counsel's perspective 24 at the time.'" *Id.* Furthermore, "ineffective assistance claims based on a duty to investigate must 25 be considered in light of the strength of the government's case." *Eggleston v. United States*, 798 26 F.2d 374, 376 (9th Cir. 1986). 27 Based on the other grounds raised in the Petition, it appears Petitioner is arguing his 28 appointed counsel should have investigated and challenged the underlying facts and validity of 1 his prior convictions supporting the sentencing enhancement. The California Supreme Court has 2 recognized that where "the mere fact that a prior conviction occurred under a specified statute 3 does not prove the serious felony allegation, otherwise admissible evidence from the entire record 4 of the conviction may be examined to resolve the issue." *People v. Delgado*, 43 Cal. 4th 1059, 5 1065 (2008). However, as already discussed in relation to Petitioner's evidentiary challenges, 6 such a situation was not presented here because Petitioner's prior convictions for oral copulation 7 by force or injury and assault with a deadly weapon both fall within the statutory definition of a 8 serious felony under California Penal Code § 667(d). Thus, the facts underlying Petitioner's prior 9 convictions were irrelevant in this case and there is no support for Petitioner's argument that 10 counsel was ineffective for failing to investigate his prior convictions. 11 Further, Petitioner cannot show that he was prejudiced by any alleged errors in counsels' 12 failure to investigate. The prosecution submitted certified copies of Petitioner's previous 13 convictions, which were sufficient to support the sentencing enhancement. There is nothing 14 before the Court to suggest th at had counsel investigated the prior convictions further, the result 15 of Petitioner's trial would have been different as required to show prejudice. *Strickland*, 466 U.S. 16 at 694. 17 Based on the foregoing, Petitioner has not carried his burden of proving deficient 18 performance or prejudice, and his claim for ineffective assistance of counsel necessarily fails. 19 The undersigned recommends that ground eight be denied.

20 V. CERTIFICATE OF APPEALABIILTY

21 A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district 22 court's denial of a petition; he may appeal only in limited circumstances. See 28 U.S.C. § 2253; 23 *Miller-*

El v. Cockrell, 537 U.S. 322, 335-36 (2003). Rule 11 Governing § 2254 Cases requires a district court to issue or deny a certificate of appealability when entering a final order adverse to a petitioner. See also Ninth Circuit Rule 22-1(a); United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997). A certificate of appealability will not issue unless a petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This standard requires the petitioner to show that “jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-El, 537 U.S. at 327; accord Slack v. McDaniel, 529 U.S. 473, 484 (2000). Because Petitioner has not made a substantial showing of the denial of a constitutional right, the undersigned recommends that the court decline to issue a certificate of appealability. Accordingly, it is RECOMMENDED: 1. Petitioner be DENIED all relief on his Petition for Writ of Habeas Corpus (Doc. No. 1); and 2. Petitioner be denied a certificate of appealability.

10 NOTICE TO PARTIES

11 These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with a copy of these Findings and Recommendations, a party may file written objections with the Court. /d.; Local Rule 304(b). The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen (15) pages. The Court will not consider exhibits attached to the Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party’s failure to file any objections within the specified time may result in the waiver of certain rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014).

*3 | Dated: _ May 19, 2025 Mihaw. Wh. foareh fackte

24 HELENA M. BARCH-KUCHTA

35 UNITED STATES MAGISTRATE JUDGE

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