

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Edwards v. Villalpando

No. 24-CV-1502 JLS (SBC) (S.D. Cal. Mar. 19, 2025) · No. 24-CV-1502 JLS (SBC) · Decided March 20, 2025

OPINION

Edwards v. Villalpando

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 JORDAN S. EDWARDS, Case No.: 24-CV-1502 JLS (SBC)

12 Petitioner,

ORDER DENYING PETITION

13 v. FOR WRIT OF HABEAS

CORPUS PURSUANT TO

14 ANNA E. VILLALPANDO, Commanding

28 U.S.C. § 2241

Officer of Naval Consolidated Brig Miramar, 15 Respondent. 16 (ECF No. 1) 17 18 Presently before the Court is Petitioner Jordan S. Edwards’s Petition for a Writ of 19 Habeas Corpus Pursuant to 28 U.S.C. § 2241 (“Pet.,” ECF No. 1). Also before the Court 20 is Respondent United States of America’s Opposition (“Opp’n,” ECF No. 11) and 21 Petitioner’s Traverse (“Traverse,” ECF No. 12). The Court finds this matter appropriately 22 decided on the papers without oral argument pursuant to Civil Local Rule 7.1(d)(1). 23 Having carefully considered the Parties’ filings and the law, the Court DENIES the 24 Petition for the reasons that follow.

25 BACKGROUND

26 Petitioner is a former officer in the United States Air Force who had obtained the 27 rank of Captain. Pet. ¶ 5. He is presently confined at the Naval Consolidated Brig in 28 Miramar, California, where he was ordered to serve a 42-month sentence resulting from 1 two convictions in a general court-martial related to a sexual assault perpetrated against his 2 then-wife, SL. Id.; United States v. Edwards, No. ACM 40349, 2023 WL 8543590, 3 at *1-2 (A.F. Ct. Crim. App. Dec. 11, 2023). 4 As described by the appellate court in Petitioner’s direct appeal of his convictions, 5 Petitioner and SL met online in June 2017. Edwards, 2023 WL 8543590, at *1. Although 6 the couple “quickly established an ‘intimate friendship,’” the relationship was a 7 “tumultuous” one that featured multiple breakups and reconciliations over the course of 8 the next

several years. Id. Eventually, in February 2019, SL co-located with Petitioner at 9 Petitioner's home in Ohio where Petitioner worked. Id. at *2. There, SL stayed home to 10 care for the four children Petitioner and SL were raising from previous relationships. Id. 11 at *2. The couple "engag[ed] in consensual sexual intercourse . . . at least two to three 12 times every day," but there were evenings when SL felt too tired to engage in sexual 13 intercourse. Id. On those evenings, of which there were several over the next few months, 14 SL went to sleep only to wake up to find Petitioner "penetrating her vagina with his penis." 15 Id. 16 Despite SL's pleas that she did not wish to have sex in certain instances, Petitioner 17 "continued to initiate vaginal sex while SL slept on multiple occasions, commencing one 18 week after the initial sleep penetration." Id. SL reports that Petitioner would occasionally 19 become enraged with her indifference towards engaging in nightly sexual intercourse, so 20 she began pretending that she was asleep rather than telling him to stop out of fear of 21 inciting Petitioner's rage. Id. After two months of this behavior, SL moved back to 22 California, though the couple "continued to talk every day and visited each other in Ohio 23 or California." Id. 24 Later in 2019, the couple moved back in together and they ultimately married on

25 December 9, 2019. Id. Then, when Petitioner was reassigned to the Los Angeles area, the 26 couple moved in with Petitioner's aunt who lived nearby. Id. Back to living together again, 27 Petitioner reverted to his old ways and recommenced his sexual penetration upon SL while 28 SL slept. Id. As before, "SL pretended to still be sleeping and [Petitioner] continued to 1 penetrate her until he ejaculated." Id. This pattern recurred multiple times over the next 2 three months. 3 At wit's end, SL filed for a restraining order on March 5, 2021, Pet. ¶ 19, and 4 Petitioner was charged with multiple specifications under the Uniform Code of Military 5 Justice ("UCMJ"), Opp'n at 2. Petitioner was convicted at a general court-martial of two 6 specifications of sexual assault upon a person who was asleep, in violation of Article 120, 7 UCMJ, 10 U.S.C. § 920, and one specification of conduct unbecoming an officer and a 8 gentleman, in violation of Article 133 UCMJ, 10 U.S.C. § 933. Edwards, 9 2023 WL 8543590, at *1. Consequently, Petitioner was sentenced to a dismissal, 10 confinement for 42 months, and a reprimand. Id. His sentence was entered on July 12, 11 2022. Id. 12 Petitioner appealed his convictions and sentence to the Air Force Court of Criminal 13 Appeals ("AFCCA"), but the court affirmed the findings and sentence on December 11, 14 2023. See id. at *9. In affirming the trial court, the AFCCA considered and rejected four 15 arguments: (1) that the military judge admitted improper evidence of uncharged acts under 16 Military Rule of Evidence ("MRE") 404(b), (2) that the sexual assault convictions were 17 legally and factually insufficient, (3) that Petitioner was deprived of his constitutional right 18 to a unanimous verdict, and (4) that Petitioner's sentence was inappropriately severe. See 19 id. at *1. Petitioner sought review of the AFCCA decision by the United States Court of 20 Appeals for the Armed Forces ("CAAF"), but that court denied review on March 28, 2024. 21 United States v. Edwards, 84 M.J. 342 (2024). After his time to request reconsideration 22 had run, Petitioner moved the CAAF for leave to file a petition for reconsideration out of 23 time on

the basis that his appellate counsel was ineffective, see Opp'n at 4, but the CAAF 24 denied the Motion on July 16, 2024, see Ex. 6, Opp'n. 25 On August 23, 2024, Petitioner filed the instant Petition. The Petition advances four 26 claims: (1) that the AFCCA did not fully and fairly consider Petitioner's claim that he was 27 entitled to a unanimous jury verdict, (2) that the evidence was not legally and factually 28 sufficient to support Petitioner's convictions for sexual assault, (3) that the AFCCA did not 1 fully and fairly consider Petitioner's claim that the military judge abused his discretion in 2 admitting improper evidence under MRE 404(b), and (4) that Petitioner's counsel 3 exhibited ineffective assistance both at trial and on appeal. See generally Pet. Petitioner 4 requests this Court issue a writ of habeas corpus ordering the reversal of Petitioner's 5 convictions in their entirety, including the immediate release of Petitioner from custody 6 and the restoration of all pay, rank, benefits, entitlements, and privileges that have been 7 denied as a result of the convictions. Pet. Prayer for Relief. 8 On August 27, 2024, the Court ordered Respondent to show cause why the Petition 9 should not be granted. See ECF No. 4. Respondent timely filed its Opposition on 10 January 3, 2025, see Opp'n, and Petitioner filed his Traverse on February 3, 2025, see 11 Traverse.

12 LEGAL STANDARD

13 "Federal district courts have jurisdiction to review habeas corpus petitions that 14 challenge military convictions." *Bessmertnyy v. Kirk*, No. 3:21-cv-779-L-KSC, 15 2022 WL 255425, at *1 (S.D. Cal. Jan. 27, 2022) (first citing 28 U.S.C. § 2241; and then 16 citing *Burns v. Wilson*, 346 U.S. 137, 139 (1953)). But federal district courts "do not sit to 17 supervise the military courts; rather our review is limited. Habeas corpus is available only 18 to guard against the military courts exceeding their jurisdiction and to vindicate 19 constitutional rights." *Broussard v. Patton*, 466 F.2d 816, 818 (9th Cir. 1972) (internal 20 citations omitted). This supervisory role over military courts is even more limited than that 21 over state courts out of respect for the military's need to "enforce a respect for discipline 22 that would be wholly intolerable in civilian life." *Davis v. Marsh*, 876 F.2d 1446, 1449 23 (9th Cir. 1989) (first citing *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986); and then 24 citing *Schlesinger v. Councilman*, 420 U.S. 738, 757–58 (1975)). 25 Thus, in considering a habeas corpus petition that challenges a military conviction, 26 the court may only "inquir[e] as to whether the military have given fair consideration to 27 each of the petitioner's claims. But once it has been concluded by the civil courts that the 28 military had jurisdiction and dealt fully and fairly with all such claims, it is not open to 1 such courts to grant the writ simply to re-evaluate the evidence." *Sunday v. Madigan*, 2 301 F.2d 871, 873 (9th Cir. 1962) (citing *Burns*, 346 U.S. at 142). "De novo review is only 3 warranted where 'the military courts manifestly refuse to consider' a petitioner's claims." 4 *Threats v. Howard*, No. CV-21-00333-TUC-JAS(BGM), 2023 WL 8112601, at *3 5 (D. Ariz. Mar. 24, 2023) (quoting *Burns*, 346 U.S. at 142).

6 ANALYSIS

7 Respondent’s argument is simple: The military courts need only give full and fair 8 consideration to the claims, and that low threshold is met here. Opp’n at 7–8. Petitioner 9 disagrees. In reliance on a plethora of out-of-circuit authority, Petitioner initially suggests 10 in his Petition that the Court should scrutinize the merits of his claims with an inquiry much 11 closer to de novo review. See Pet. at 8. In so doing, he describes the standard of review as 12 a two-step analysis requiring the Court to “(1) review[] the military court’s thoroughness 13 in examining the relevant claims, where thoroughness is contested; and (2) closely look[] 14 at the merits of the claim, albeit with some degree of deference more than under a de novo 15 standard.” Id. Petitioner appears to backtrack in his Traverse, however, by conceding that 16 “this Court is bound by the Ninth Circuit’s case law regarding ‘full and fair consideration.’”

17 Traverse at 2. Nevertheless, Petitioner still advances the argument in his Traverse that the 18 military courts failed to give full and fair consideration to at least some of his claims, thus 19 entitling him to relief.¹ The Court will consider each claim in turn. 20 I. Entitlement to a Unanimous Jury Verdict 21 Petitioner’s first argument—that Petitioner was entitled to a unanimous jury verdict 22 at his court-martial—was first presented to the AFCCA on direct appeal. There, the court 23 summarily dismissed Petitioner’s claim, stating it had “carefully considered [the issue] and 24 find[s] it does not require discussion or relief.” Edwards, 2023 WL 8543590, at *1. In 25 26 1 Petitioner apparently concedes that multiple of his claims may be legally deficient, particularly his claim 27 asserting the right to a unanimous jury trial. See Traverse at 2 n.1. But because Petitioner’s briefing is generally murky as to which specific claims he concedes, the Court will proceed to analyze all four claims 28 1 reaching that conclusion, the court cited to *United States v. Matias*, 25 M.J. 356, 361 2 (C.M.A. 1987), and accompanied the conclusion with a footnote citing the CAAF’s prior 3 opinion in *United States v. Anderson*, 83 M.J. 291, 302 (C.A.A.F. 2023). 4 Petitioner now comes to this Court essentially asking to re-litigate *Anderson*. See

5 Pet. at 10. As background, “the UCMJ expressly authorizes a court-martial to convict a 6 servicemember subject to a general or special court-martial of a criminal offense ‘by the 7 concurrence of at least three-fourths of the members present when the vote is taken.’” 8 *Anderson*, 83 M.J. at 294 (quoting Article 52(a)(3), UCMJ, 10 U.S.C. § 852(a)(3)). This 9 procedural rule from the UCMJ reflects this nation’s longstanding tradition of permitting 10 nonunanimous verdicts within the military justice system. Id. That longstanding tradition, 11 however, was called into question when the Supreme Court decided *Ramos v. Louisiana*, 12 which held that “the Sixth Amendment’s unanimity requirement applies to state and federal 13 criminal trials equally.” 590 U.S. 83, 93 (2020). 14 Whether the Supreme Court’s incorporation of the right to a unanimous jury against 15 the states in *Ramos* should similarly be extended to military courts was the question 16 presented in *Anderson*, but there, the military’s highest court answered in the negative. The 17 *Anderson* court recognized that “*Ramos* held that the Sixth Amendment right to a jury 18 trial . . . requires unanimous verdicts to convict defendants of serious offenses,” but it 19

declined to extend that right to the military justice system. 83 M.J. at 297–98. Despite 20 rigorous examination of the language in Ramos, the CAAF recognized “that at no time 21 during the entire history of the American military justice system has impartiality been 22 understood to require unanimous verdicts.” Id. at 297. Accordingly, in view of Ramos, 23 the military courts have concluded, after careful consideration, that servicemembers do not 24 enjoy the right to a unanimous jury verdict. The Supreme Court denied certiorari in 25 Anderson, and thus declined to disturb that understanding. 144 S. Ct. 1003 (2024) 26 (denying certiorari). 27 Petitioner now argues the “CAAF’s decision [in Anderson] is incorrect,” see Pet. 28 at 10, but that argument has no place in this habeas corpus petition. Here, the Court’s role 1 is to serve “the limited function . . . to determine whether the military have given fair 2 consideration to” Petitioner’s claim, and it is clear that they have.² See Burns, 346 U.S. 3 at 144 (citing *Whelchel v. McDonald*, 340 U.S. 122 (1950)). Though dealt with only 4 briefly on direct appeal, Petitioner’s precise argument has already been thoroughly briefed, 5 argued, and analyzed by the CAAF in prior cases, and the AFCCA was not obligated to 6 rinse-and-repeat its reasoning when presented with an identical issue by Petitioner. See 7 *Andreozzi v. Tracy*, No. CV-16-00562-PHX-DGC (BSB), 2016 WL 8670166, at *3 8 (D. Ariz. July 8, 2016) (“If an issue was ‘briefed and argued’ before a military court and 9 disposed of, ‘even summarily,’ the federal habeas court should find that the claim was 10 given full and fair consideration.” (first quoting *Watson v. McCotter*, 782 F.2d 143, 145 11 (10th Cir. 1986); and then quoting *Lips v. Commandant, U.S. Disciplinary Barracks*, 12 997 F.2d 808, 812 n.2 (10th Cir. 1993))). It was enough for the AFCCA to refer Petitioner 13 to the military courts’ prior decisions as justification for denying his argument anew. 14 Indeed, this Court, just months ago, rejected a nearly identical argument from a 15 different habeas corpus petitioner who challenged the nonunanimous jury verdict in his 16 17 18 2 The Court recognizes that, in some instances, district courts in this circuit have opted for de novo review of constitutional claims on collateral attack “because the consequences of [a court-martial conviction] are 19 serious and may cause ‘lasting, serious harm in civilian life.’” See *Lewis v. United States*, 2019 WL 5320691, at *2 (S.D. Cal. Oct. 21, 2019) (quoting *Hatheway v. Sec’y of Army*, 641 F.2d 1376, 20 1380 (9th Cir. 1981)). But other district courts have also acknowledged that the Hatheway court 21 “explicitly restricted its holding to the narrow proposition that . . . Burns permits review by district courts in non-habeas cases limited to the overall constitutionality of a military provision.” See, e.g., *Gurry v. 22 Butera-Ortiz*, No. C 11-00964 RS, 2012 WL 3276983, at *2 (N.D. Cal. Aug. 9, 2012) (emphasis added). 23 To the extent that some courts have reviewed facial constitutional claims de novo, this Court does not find those decisions persuasive, particularly “in light of the Supreme Court’s repeated admonitions that we 24 accord even more deference to military court determinations than to those of state courts.” *Davis*, 876 F.2d 25 at 1449. It would be a peculiar result indeed if the Court were to collaterally review a court-martial conviction de novo when state court convictions are not so heavily scrutinized. See *Clements v. Madden*, 26 112 F.4th 792, 799 (9th Cir. 2024) (“Accordingly, we defer to the judgment of the state court when reviewing

claims that were adjudicated on the merits, unless the state court's decision was (1) 'contrary 27 to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,' or (2) it was 'based on an unreasonable determination of the facts in 28 1 own court-martial. *Emas v. Roman*, No. 23-cv-2194-BTM-DDL, 2024 WL 4573755, at *2 2 (S.D. Cal. Oct. 24, 2024) ("The record reflects that the issue whether Petitioner was entitled 3 to a unanimous court-martial verdict was extensively briefed and argued on appeal, and the 4 AFCCA's citation to its earlier opinion in *Anderson* demonstrates the court considered 5 Petitioner's claim on the merits and rejected it. As such, the AFCCA 'fully and fairly 6 consider[ed] the claim,' and habeas relief is unwarranted." (quoting *Johnson v. Rodriguez*, 7 No. 22-55782, 2024 WL 3102799, at *1 (9th Cir. June 24, 2024) (unpublished opinion))).3

8 In the instant action, Petitioner relies on no adjudicative facts peculiar to his case that 9 dictate a different conclusion. As in *Emas*, the military courts in Petitioner's case fully and 10 fairly considered his argument that he was entitled to a unanimous jury verdict. 11 II. Legal and Factual Sufficiency of the Evidence 12 Petitioner next raises the argument that the evidence presented at his court-martial 13 trial was not legally or factually sufficient to support his convictions. In support of this 14 argument, Petitioner questions SL's credibility as a trial witness and argues that her 15 testimony "was not 'sufficiently credible' to support Petitioner's convictions." Pet. at 17. 16 Petitioner argues this Court should review factual and legal sufficiency de novo due to its 17 obligation "to independently evaluate the court-martial's factual record." Id. at 16 (citing 18 *Loveday v. Davis*, 697 F.2d 135, 138 (6th Cir. 1983)). 19 The Court has no such obligation. Petitioner cites primarily to appellate decisions 20 from military courts to support the proposition that de novo review is in order, but this 21 Court's standard of review, as established above, is entirely distinct from that of the 22 military courts. See, e.g., *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002) 23 ("Article 66(c) requires the [Air Force] Court[] of Criminal Appeals to conduct a de novo 24 review of legal and factual sufficiency of the case." (citing *United States v. Cole*, 25 26 27 3 The *Emas* decision was a report and recommendation by Magistrate Judge David Leshner that has yet to be adopted by the presiding District Judge Ted Moskowitz. Nevertheless, the petitioner there was given 28 1 31 M.J. 270, 272 (C.M.A. 1990))). In contrast to the de novo review afforded 2 servicemembers on direct appeal of court-martial convictions, it is not for "civil courts 3 simply to repeat that process—to re-examine and reweigh each item of evidence." 4 *Erickson v. Von Blanckensee*, No. 19-16165, 2021 WL 5399871, at *1 (9th Cir. Nov. 18, 5 2021) (unpublished opinion) (quoting *Broussard*, 466 F.2d at 818). And Petitioner's 6 reliance on *Loveday* is entirely inapposite as the petitioner in that case was challenging a 7 conviction in the Criminal Court for Green County, Tennessee under 28 U.S.C. § 2254 that 8 required a less deferential standard of review than permitted here. See *Davis*, 876 F.2d 9 at 1449 ("Federal courts accordingly play a supervisory role even more limited than they 10 play with respect to state courts."). 11 In light of the applicable standard of review in this particular habeas challenge, the 12 Court comfortably concludes that the military courts have given full and fair

consideration 13 to Petitioner’s legal and factual sufficiency claim. On direct appeal, the AFCCA properly 14 reviewed Petitioner’s claim de novo, assessing the sufficiency of SL’s trial testimony under 15 the appropriate standard. *Edwards*, 2023 WL 8543590, at *6–8. The court’s assessment 16 included an evaluation of swaths of testimony taken wholesale from the trial transcript in 17 which SL described in detail how Petitioner had penetrated her while she was asleep. See 18 *id.* at *7. That evaluation yielded the conclusion that “[t]he totality of SL’s testimony 19 makes clear that, aside from the first incident, on occasions when SL awoke from her sleep 20 to [Petitioner] penetrating her, she pretended to be asleep.” *Id.* at *8. The court also 21 considered Petitioner’s argument that SL was not a credible witness, yet it rejected that 22 argument as well. *Id.* (“Evidence of SL’s credibility, including inconsistent statements and 23 allegations of motives to fabricate, were presented at trial. . . . Viewing all the evidence 24 offered at trial, the members rationally and reasonably found the essential elements of the 25 offenses beyond a reasonable doubt.”). Accordingly, irrespective of the correctness of the 26 / / / 27 / / / 28 / / / 1 AFCCA’s conclusion, it is clear the court gave full and fair consideration to the claim. 2 See *Donoho v. Kirk*, No. 23-55600, 2024 WL 2952535, at *1 (9th Cir. June 12, 2024) 3 (unpublished opinion) (rejecting the petitioner’s argument that the district court must 4 consider whether the AFCCA reached its decisions “thoroughly and correctly”). 5 III. Improper Admission of Evidence Under MRE 404(b) 6 The third basis upon which Petitioner seeks to have his court-martial vacated relates 7 to the military judge’s admission of evidence of Petitioner’s “controlling behaviors” under 8 MRE 404(b). Petitioner argues that the prosecution improperly introduced evidence at trial 9 of “coercive control and intimate partner violence” to support the factual determination 10 that Petitioner had penetrated SL while she was sleeping. Such evidence, says Petitioner, 11 is not logically relevant to whether SL was, in fact, asleep during certain instances of 12 penetration. Pet. at 19–20. Petitioner claims the admission of this evidence was mistaken 13 under MRE 404(b) and that its admission resulted in an erroneous jury instruction, errors 14 deserving of abuse of discretion and de novo review, respectively. *Id.* at 18 (first citing 15 *United States v. Hyppolite*, 79 M.J. 161, 164 (C.A.A.F. 2020); and then citing *United States v. Guardado*, 77 M.J. 90, 93 (C.A.A.F. 2017)). 17 Again, Petitioner asks for a standard of review much less deferential than that 18 permitted by precedent. The appellate decisions from military courts explicating their own 19 standard of review on direct appeal have no relevance to how this Court should evaluate 20 21 22 4 In his *Traverse*, Petitioner cites to *United States v. Mendoza*, No. 23-0210, 2024 WL 4487558 (C.A.A.F. Oct. 7, 2024), as a more recent case undermining the legal and factual sufficiency of his convictions, see 23 *Traverse* at 5–7, but *Mendoza* is only relevant insofar as the merits of Petitioner’s claim are concerned.

As discussed above, the Court need not reach the merits under the “full and fair consideration” standard 24 of review. 25 5 The Court is skeptical that Petitioner’s MRE 404(b) argument is even within the Court’s jurisdiction on 26 collateral habeas attack at all, as the “full and fair

consideration” standard of review crafted by Burns and its progeny “is limited to issues concerning constitutional fairness and does not include interpretation of 27 military procedural rules.” *Rich v. Stackley*, No. 3:17-cv-01298-GPC-JMA, 2018 WL 1791887, at *3 (S.D. Cal. Apr. 16, 2018) (citing *Burns*, 346 U.S. at 139). But because Respondent does not raise that 28 1 Petitioner’s claims on collateral attack in a habeas corpus challenge. *Threats*, 2023 WL 8112601, at *3 (“De novo review is only warranted where ‘the military courts 3 manifestly refused to consider’ a petitioner’s claims.” (citing *Burns*, 346 U.S. at 142)). The 4 lone inquiry before the Court is whether the military courts have given full and fair 5 consideration to Petitioner’s claim. *Broussard*, 466 F.2d at 818 (“But once it has been 6 concluded by the civil courts that the military had jurisdiction and dealt fully and fairly 7 with all such claims, it is not open to such courts to grant the writ simply to re-evaluate the 8 evidence.” (quoting *Sunday*, 301 F.2d at 873)). As above, the answer is clearly yes. 9 On direct appeal, the AFCCA considered and rejected an identical argument to the 10 one here. The court reviewed the specific evidence Petitioner challenged as improperly 11 admitted acts of alleged “coercive control,” reviewed the alleged improper jury 12 instructions, recited the relevant rule of evidence and standard of review, and 13 comprehensively rejected Petitioner’s argument. See *Edwards*, 2023 WL 8543590, 14 at *2-6. In rejecting Petitioner’s claim, the court noted that he was “generally correct that, 15 under the facts of this case, the evidence of coercive control and intimate partner violence 16 did not directly relate to the factual determination that SL was asleep at the times 17 [Petitioner] penetrated her vagina,” but it went on to explain that SL’s testimony 18 concerning alleged “coercive control” was relevant to SL’s credibility as a witness. *Id.* 19 at *6. SL’s credibility was essential to the trial because “the reason why SL did not 20 immediately report [the penetrations] became particularly relevant,” so the AFCCA 21 concluded that the evidence of “coercive control” was “properly considered . . . on . . . the 22 sexual assaults upon a sleeping person” specifications. *Id.* With that reasoned analysis, 23 the court concluded that “the military judge did not err in either his admission or nor [sic] 24 his instructions on the Mil. R. Evid. 404(b) evidence.” *Id.* As above, irrespective of the 25 correctness of the AFCCA’s conclusion, it is clear the court gave full and fair consideration 26 / / / 27 / / / 28 / / / 1 to the claim. See *Donoho*, 2024 WL 2952535, at *1 (rejecting the petitioner’s argument 2 that the district court must consider whether the AFCCA reached its decisions “thoroughly 3 and correctly”). 4 IV. Ineffective Assistance of Counsel 5 Petitioner’s final claim for relief is twofold. He first argues, under *Strickland v. 6 Washington*, 466 U.S. 668 (1984), that his trial counsel was ineffective for failing to 7 request hospitalization records related to SL’s purported hospitalization for a suicide 8 attempt, which could have been used to “counter[] the Government’s MRE 404(b) 9 evidence.” *Pet.* at 21–22. In his Petition, besides setting the table with a formulaic legal 10 standard for ineffective assistance of counsel claims, Petitioner does not develop this 11 argument beyond the aforementioned conclusory assertion. Nor does Petitioner devote any 12 of his Traverse to rebutting Respondent’s argument that the military courts fully and fairly 13 considered the claim. See generally *Traverse*. Plaintiff’s

second argument, just as 14 perfunctory as his first, is that his appellate counsel failed to raise the issue on appeal. Pet. 15 at 22. 16 Neither argument has merit, but a bit more procedural history is necessary to better 17 understand the ineffective assistance of counsel claims. As discussed above, key to the 18 prosecution's evidence at trial that Petitioner penetrated SL while SL was asleep was the 19 testimony of SL herself. SL's testimony included extended colloquy with trial counsel 20 about the multiple times she woke up from a state of being asleep to find Petitioner in the 21 act of penetration. See, e.g., Edwards, 2023 WL 8543590, at *7. Critically, SL had 22 declined to report these instances of penetration to her Family Advocacy Treatment 23 Manager, who had been appointed to provide SL with support services when she notified 24 25 26 6 In his Traverse, Petitioner cites to *Andrew v. White*, 145 S. Ct. 75 (2025), as a more recent case undermining the validity of his convictions as tainted by allegedly improper MRE 404(b) evidence, see 27 Traverse at 3–5, but *Andrew* is only relevant insofar as the merits of Petitioner's claim are concerned. As

discussed above, the Court need not reach the merits under the “full and fair consideration” standard of 28 1 Petitioner's military command about her domestic troubles. See *id.* at *6. Trial defense 2 counsel put SL's credibility further in issue when SL was cross-examined “on the fact that 3 though she said that [the penetration] was happening, she did not report it to Family 4 Advocacy.” *Id.* In response, the prosecution introduced “coercive control and intimate 5 partner violence” evidence to explain “the reason why SL did not immediately report” the 6 abuse. See *id.* The Court understands this evidence of “coercive control” to constitute 7 what Petitioner describes as “the Government's MRE 404(b) evidence.” Pet. at 21–22. 8 Petitioner now argues that his trial counsel should have sought additional evidence 9 with which to further impeach SL's credibility and that his trial counsel's failure to do so 10 amounts to ineffective assistance of counsel. Specifically, Petitioner suggests that SL was 11 hospitalized at some point in her past for attempting suicide and that his trial counsel failed 12 to exercise reasonable judgment by not requesting SL's medical records, which “would 13 have countered the Government's MRE 404(b) evidence.” Pet. at 21–22. Petitioner relies 14 on the CAAF's 2022 decision in *United States v. Mellette*, 82 M.J. 374 (C.A.A.F. 2022), 15 as establishing the rule that “mental health records that do not contain 16 psychotherapist-patient privilege communications are discoverable,” thus clearing the way 17 for a discovery request related to SL's hospitalization. Pet. at 21. 18 Petitioner failed to raise his ineffective assistance of trial counsel argument with the 19 AFCCA on direct appeal, where he was represented by military appellate defense counsel 20 Major Heather M. Bruha and civilian appellate defense counsel Joshua R. Traeger.⁷ 21 Instead, Petitioner raised the same arguments the Court rejected above as well as an 22 argument that his sentence was inappropriately severe. Edwards, 2023 WL 8543590, 23 at *1. Subsequently, when Petitioner sought further review by the CAAF after the AFCCA 24 affirmed his convictions, he again failed to raise the argument in his petition for a grant of 25 26 27 7 The AFCCA opinion lists as appellate defense counsel Major Heather M. Caine, but the Court interprets this to be the same

individual as the one later referred to as Major Heather Bruha. See Edwards, 28 1 review. See ECF No. 11-2. Military appellate defense counsel Major Bruha, who had 2 represented Petitioner before the AFCCA, continued to represent Petitioner as he sought 3 CAAF review. See id. It was not until fifty-six days after the CAAF rejected Petitioner's 4 grant of review on March 28, 2024, that Petitioner raised his ineffective assistance of 5 counsel claims for the first time in seeking reconsideration, this time without counsel, of 6 the CAAF's denial of his petition for a grant of review.⁸ See ECF No. 11-5 at 22. 7 Recognizing that his Petition for Reconsideration was untimely, Petitioner 8 contemporaneously filed a Motion for Leave to File Out-of-Time Petition for 9 Reconsideration and to File Pro Se. ECF No. 11-5 at 17–18. In his request to file 10 out-of-time, Petitioner argued that good cause existed to grant the request because he was 11 “no longer represented by his former civilian appellate defense counsel, Mr. Joshua 12 Traeger, or military appellate defense counsel, Maj Heather Bruha.” Id. at 17. The United 13 States opposed Petitioner's Petition for Reconsideration because the Petition was untimely 14 and without good cause. See ECF No. 11-5 at 22–24. Without explaining its reasoning, 15 the CAAF denied both the Petition for Reconsideration and Motion for Leave to File 16 Out-of-Time on July 16, 2024. ECF No. 11-6 at 2. 17 Bearing in mind this procedural backdrop, the Court must remain cognizant of “the 18 limited function of the civil courts to determine whether the military have given fair 19 consideration to each of the[] claims.” Burns, 346 U.S. at 145. Once again, Petitioner 20 urges the Court to review his claims de novo, Pet. at 20 (citing *United States v. Akbar*, 21 74 M.J. 364, 379 (C.A.A.F. 2015)), but contrary to that suggestion, the Court need only 22 ensure the military courts gave full and fair consideration to his claims, see, e.g., *Erickson* 23 v. *Startle*, No. CV-16-00513-TUC-JGZ, 2019 WL 1921596, at *3 (D. Ariz. Apr. 30, 2019) 24 (applying the “full and fair consideration” standard of review from Burns in considering a 25 26 27 8 Petitioner's Petition for Reconsideration with the CAAF is not dated, see ECF No. 11-5 at 14–15, but the Court assumes as accurate the representation in Respondent's Opposition to the Petition that the 28 1 habeas corpus petition from a court-martial conviction). Despite a light record before the 2 Court, the military courts have met their burden. 3 A. Ineffective Assistance of Trial Counsel 4 As an initial matter, Petitioner waived his ineffective assistance of trial counsel claim 5 by failing to timely raise it in the military courts. See *Threats*, 2023 WL 8112601, at *4 6 (“If a petitioner failed to present a claim to the military courts, it is waived.” (first citing 7 *Davis*, 876 F.2d at 1448; and then citing *Watson*, 782 F.2d at 145)). Petitioner does not 8 dispute that he did not raise the claim until he filed his Petition for Reconsideration with 9 the CAAF seven weeks after that court denied his petition for a grant of review. 10 Petitioner's delay, therefore, resulted in a straightforward violation of Rule 31(a) of the 11 Rules of Practice and Procedure for the United States Court of Appeals for the Armed 12 Forces, which requires petitions for reconsideration to “be filed no later than fourteen days 13 after the date of any order, decision, or opinion by the Court.” 14 “Although the military justice system provides an adequate mechanism for 15 redressing claims of constitutional error at a court-martial, in this case including a second 16 set of

appointed attorneys to examine the record for any errors overlooked by trial counsel,” 17
Petitioner did not timely raise his ineffective assistance of trial counsel claim in the military 18
courts and has not shown, let alone argued, good cause in this Court for his failure to do 19 so.
See Davis, 876 F.2d at 1450. Petitioner did attempt to raise the argument when he filed 20 his
overdue Petition for Reconsideration, but the CAAF considered and rejected his good 21 cause
argument as it related to filing past the deadline, and the Court’s role on collateral 22 review is not
to question the CAAF’s decision to enforce a procedural timing rule. See id. 23 at 1449
(explaining that the rationale for deferring to military courts’ procedural rules, such 24 as the
waiver doctrine, includes “respect due a parallel and independent system of justice, 25 the
desirability of resolving claims without the need for duplicative litigation, and the 26 benefits of
having constitutional decisions made in the first instance by a judge with the 27 opportunity to
view counsel, witnesses and jury”). Accordingly, because Petitioner’s claim 28 of ineffective
assistance of trial counsel was not properly presented to the military courts, 1 the claim is waived.
See *Tillery v. Shartle*, No. CIV 16-204-TUC-CKJ (LAB), 2 2017 WL 4337343, at *5 (D. Ariz.
Sept. 29, 2017) (“[The petitioner] has waived those 3 claims that he failed to present to the
military courts.” (citing Davis, 876 F.2d 4 at 1448-50)); see also *Rios v. Lansing*, 186 F. Supp. 2d
1178, 1181–82 (D. Kan. 2002) 5 (“[The petitioner] could have raised this issue before the CAAF .
. . . when his case was first 6 being considered on appeal. He did not do so, and the failure to raise
the issue before the 7 military courts bars presentation of the issue here.”). 8 Even if the Court
were to consider Petitioner’s ineffective assistance of trial counsel 9 claim on the merits, however,
the claim would still fail. See *Lewis v. United States*,
10 No. 3:18-cv-00911-L-KSC, 2019 WL 5320691, at *10 (S.D. Cal. Oct. 21, 2019) (noting
11 that “ineffective assistance of counsel can constitute cause for overcoming a procedural 12
default”). To prevail on an ineffective assistance of counsel claim, a defendant must show 13 that
counsel’s performance was deficient, and that this deficient performance prejudiced 14 the
defendant. *Strickland*, 466 U.S. at 687; *United States v. Jeronimo*, 398 F.3d 1149, 15 1155 (9th
Cir. 2005). As to the first prong, defense counsel’s conduct is presumed to be 16 reasonable.
Strickland, 466 U.S. at 689. And as to the second prong, a defendant “must 17 show that there is a
reasonable probability that, but for counsel’s unprofessional errors, the 18 result of the proceeding
would have been different.” *Rodney v. Garrett*, 116 F.4th 947, 19 954 (9th Cir. 2024) (quoting
Strickland, 466 U.S. at 496). 20 Here, Petitioner cannot establish that his trial “counsel’s
representation fell below 21 an objective standard of reasonableness.” *Strickland*, 466 U.S. at 688.
SL was 22 exhaustively cross-examined at trial about her experiences waking up in the middle of
the 23 night to find herself being penetrated by Petitioner, see *Edwards*, 2023 WL 8543590, at *3,
24 as trial defense counsel probed SL about her failure to report the unwanted penetrations to 25
the Family Advocacy Project, see id. Petitioner suggests in his Petition that evidence 26 related to
SL’s purported hospitalization due to a suicide attempt “would have countered 27 the
Government’s MRE 404(b) evidence” that the prosecution used to bolster SL’s 28 credibility, but

that suggestion is mere conjecture. Introducing evidence of SL's 1 hospitalization was far from exculpatory, and trial defense counsel "could have at best 2 challenged [SL's] credibility and at worst further eroded Petitioner's credibility" by 3 illuminating the possibility that his actions may have been the direct cause of SL's suicidal 4 ideation. *James v. Cate*, No. 11cv1910-IEG (NLS), 2012 WL 4061794, at *19 (S.D. Cal.

5 July 9, 2012). "Surmounting Strickland's high bar is never an easy task," and "[e]ven 6 under de novo review, the standard for judging counsel's representation is a most 7 deferential one." *Harrington v. Richter*, 562 U.S. 86, 105 (2011) (quoting *Padilla v. 8 Kentucky*, 559 U.S. 356, 371 (2010)). Because Petitioner has failed "to establish that his 9 [trial] counsel's actions fell below 'an objective standard of reasonableness,'" the Court 10 rejects the contention that Petitioner's conviction was tainted by ineffective assistance of 11 counsel even under a de novo standard of review. See *United States v. Akintonde*,

12 No. 22CV1883-JLS, 2023 WL 2777452, at *1 (S.D. Cal. Apr. 4, 2023).

13 B. Ineffective Assistance of Appellate Counsel 14 Similarly, Petitioner's ineffective assistance of appellate counsel claim likewise fails 15 on the merits. See *Lewis*, 2019 WL 5320691, at *10 (noting that "ineffective assistance of 16 counsel can constitute cause for overcoming a procedural default"). Though Petitioner 17 correctly notes that the Supreme Court has recognized a limited right to counsel in a 18 criminal defendant's first appeal as of right, it has also held that "the attorney need not 19 advance every argument, regardless of merit, urged by the appellant." *Evitts v. Lucey*, 20 469 U.S. 387, 394 (1985) (emphasis in original) (citing *Jones v. Barnes*, 463 U.S. 745 21 (1983)); see also *Featherstone v. Estelle*, 948 F.2d 1497, 1507 (9th Cir. 1991) ("Where 22 "trial counsel's performance, although not error-free, did not fall below the Strickland 23 standard[,] . . . petitioner was not prejudiced by appellate counsel's decision not to raise 24 issues that had no merit."). 25 Here, it is unclear in what precise fashion Petitioner claims his appellate counsel 26 erred. Petitioner argues his "attorneys were ineffective for failing to raise . . . on appeal 27 the discoverability and admissibility of mental health information under *Mellette*," but the 28 record does not show that these issues were ever broached at the trial level. Pet. at 22. The 1 Court thus understands Petitioner's claim to encapsulate his appellate counsel's failure in 2 ||not raising the ineffective assistance of trial counsel claim. But the Court rejected 3 || Petitioner's ineffective assistance of trial claim above, and "[a] failure to raise untenable 4 ||issues on appeal does not fall below the Strickland standard." Thus, the Court concludes 5 || that Petitioner's appellate counsel did not render ineffective assistance on appeal. *Turner 6 || v. Calderon*, 281 F.3d 851, 872 (9th Cir. 2002) (citing *Featherstone*, 948 F.2d at 1507); 7 also *Luevano vy. Martel*, No. 09cv145 WQH (RBB), 2010 WL 3034693, at *3 8 ||(S.D. Cal. July 29, 2010) ("Because this Court denies Petitioner's first claim of ineffective 9 || assistance of trial counsel, Petitioner's claim against appellate counsel for failure to raise 10 ineffective assistance of trial counsel on appeal must also be denied."").

11 CONCLUSION

12 In light of the foregoing, the Court DENIES the Petition (ECF No. 1). The Court 13 || need not
issue a certificate of appealability in this case. See *Udom v. U.S. Immigr., Customs* 14 || *Enf't*, No.
11-CV-2699-IEG NLS, 2012 WL 380135, at *4 (S.D. Cal. Feb. 6, 2012) (noting 15 certificate of
appealability is required for order denying § 2241 petition (citing *Forde v.* 16 || *U.S. Parole*
Comm'n, 114 F.3d 878, 879 (9th Cir. 1997))). As this concludes the litigation 17 ||in this matter,
the Court DIRECTS the Clerk of the Court to close the file. 18 IT IS SO ORDERED. 19 ||Dated:
March 19, 2025 . tt 20 pee Janis L. Sammartino 7] United States District Judge 22 23 24 25 26 27
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