

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Granval G. Hunter-Harrison, Jr. v. M. Atchley

Hunter-Harrison v. Atchley · No. 2:20-cv-0592-WBS-CKD P · Decided September 30, 2025

SUMMARY

The document contains findings and recommendations in a federal habeas corpus proceeding under 28 U.S.C. § 2254. The court recommends denying petitioner Granval Hunter-Harrison’s remaining ineffective-assistance-of-counsel claim, concluding that counsel reasonably advised him to accept an earlier plea offer and that the state court’s rejection of the claim was not unreasonable under Strickland and AEDPA standards. The document was issued by a United States magistrate judge and permits the parties to file objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 30, 2025
DOCKET	2:20-cv-0592-WBS-CKD P
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations on the remaining claim in a state prisoner’s first amended petition for a writ of habeas corpus under 28 U.S.C. § 2254.
STANDARD OF REVIEW	Under the Antiterrorism and Effective Death Penalty Act, relief is unavailable on a claim adjudicated on the merits in state court unless the state decision was contrary to, or involved an unreasonable application of, clearly established Supreme Court law, or was based on an unreasonable determination of the facts under 28 U.S.C. § 2254(d). State factual findings are presumed correct absent clear and convincing evidence under § 2254(e)(1). Ineffective-assistance claims are governed by Strickland v. Washington, and federal habeas review asks whether there is any reasonable argument that counsel satisfied Strickland’s deferential standard.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Granval G. Hunter-Harrison, Jr. v. M. Atchley

TOPICS

federal habeas corpus

post-conviction relief

ineffective assistance

plea bargaining

right to counsel

PRACTICE AREAS

federal habeas corpus

criminal procedure

constitutional law

post-conviction relief

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance during plea negotiations by misleading petitioner about the strength of the prosecution's case and the viability of a defense, causing petitioner to reject a more favorable plea offer.
2. Whether the California courts unreasonably applied *Strickland v. Washington* in rejecting petitioner's ineffective-assistance claim.

HOLDINGS

1. Petitioner failed to establish ineffective assistance of counsel because the record supported a reasonable conclusion that counsel advised him to accept the more favorable plea offer, and petitioner rejected that advice despite being aware of the evidence and the completed defense investigation.

KEY QUOTATIONS

"The determination to be made is not whether counsel acted reasonably but "whether there is any reasonable argument that counsel satisfied Strickland's deferential standard."" (Analysis, at 1-2)

"Petitioner's claim fails because the record reflects a reasonable argument that counsel satisfied Strickland's deferential standard." (Analysis, at 5-8)

"Petitioner's sole remaining claim in the first amended petition—claim two asserting effective assistance of counsel—is without merit." (Conclusion, at 1)

FACTUAL BACKGROUND

After a dispute over ownership of a motorbike, petitioner fired at least eight shots at a truck containing the motorbike while the victims were driving it away. Police recovered shell casings, found a bullet hole in the truck, and obtained surveillance video recording petitioner firing the gun. Petitioner rejected a plea offer of 20 years and 8 months and later pleaded no contest to two assault charges in exchange for a stipulated sentence of 27 years and 4 months. He claimed counsel misled him about the strength of the case, a possible self-defense theory, and further investigation concerning ownership of the motorbike.

PROCEDURAL HISTORY

Petitioner challenged his 2017 Sacramento County Superior Court judgment after pleading no contest to two assault charges and admitting firearm-use allegations and a strike allegation. The California Court of Appeal modified the judgment to conform to the plea and otherwise affirmed, and the California Supreme Court denied review. In federal court, claims one and two of the original petition were dismissed as state-law claims, the case

was stayed for exhaustion, and claims one and three through six of the first amended petition were later dismissed as untimely. The remaining ineffective-assistance claim alleged that counsel's advice caused petitioner to reject a more favorable plea offer. The magistrate judge recommended denying habeas relief.

DISPOSITION

other

REMAND INSTRUCTIONS

The findings and recommendations were to be submitted to the assigned district judge under 28 U.S.C. § 636(b) (1). The parties were given fourteen days to file objections.

CASES CITED

- People v. Harrison-Hunter, No. C084771, 2018 WL 1516640 (Cal. Ct. App. Mar. 28, 2018)
- People v. Wende, 25 Cal. 3d 436 (1979)
- Houston v. Lack, 487 U.S. 266 (1988)
- Rhines v. Weber, 544 U.S. 269 (2005)
- Wilson v. Corcoran, 562 U.S. 1 (2010)
- Estelle v. McGuire, 502 U.S. 62 (1991)
- Park v. California, 202 F.3d 1146 (9th Cir. 2000)
- Greene v. Fisher, 565 U.S. 34 (2011)
- Stanley v. Cullen, 633 F.3d 852 (9th Cir. 2011)
- Williams v. Taylor, 529 U.S. 362 (2000)
- Maxwell v. Roe, 606 F.3d 561 (9th Cir. 2010)
- Marshall v. Rodgers, 569 U.S. 58 (2013)
- Parker v. Matthews, 567 U.S. 37 (2012)
- Carey v. Musladin, 549 U.S. 70 (2006)
- Price v. Vincent, 538 U.S. 634 (2003)
- Lockyer v. Andrade, 538 U.S. 63 (2003)
- Chia v. Cambra, 360 F.3d 997 (9th Cir. 2004)
- Schriro v. Landrigan, 550 U.S. 465 (2007)
- Harrington v. Richter, 562 U.S. 86 (2011)
- Yarborough v. Alvarado, 541 U.S. 652 (2004)
- Hibbler v. Benedetti, 693 F.3d 1140 (9th Cir. 2012)
- Taylor v. Maddox, 366 F.3d 992 (9th Cir. 2004)
- Hurles v. Ryan, 752 F.3d 768 (9th Cir. 2014)
- Lambert v. Blodgett, 393 F.3d 943 (9th Cir. 2004)
- Perez v. Rosario, 459 F.3d 943 (9th Cir. 2006)

- Nunes v. Mueller, 350 F.3d 1045 (9th Cir. 2003)
- Delgadillo v. Woodford, 527 F.3d 919 (9th Cir. 2008)
- Frantz v. Hazey, 533 F.3d 724 (9th Cir. 2008) (en banc)
- Cullen v. Pinholster, 563 U.S. 170 (2011)
- Robinson v. Ignacio, 360 F.3d 1044 (9th Cir. 2004)
- Edwards v. Lamarque, 475 F.3d 1121 (9th Cir. 2007) (en banc)
- Barker v. Fleming, 423 F.3d 1085 (9th Cir. 2005)
- Johnson v. Williams, 568 U.S. 289 (2013)
- Reynoso v. Giurbino, 462 F.3d 1099 (9th Cir. 2006)
- Nulph v. Cook, 333 F.3d 1052 (9th Cir. 2003)
- People v. Marsden, 2 Cal. 3d 118 (1970)
- Burt v. Titlow, 571 U.S. 12 (2013)
- Wilson v. Sellers, 584 U.S. 122 (2018)
- Turner v. Duncan, 158 F.3d 449 (9th Cir. 1998)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

Atchley

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 GRANVAL G. HUNTER-HARRISON, No. 2:20-cv-0592-WBS-CKD P

JR., 12 Petitioner,

13 FINDINGS AND RECOMMENDATIONS

v. 14

M. ATCHLEY,

15 Respondent. 16

17 Petitioner Granval Hunter-Harrison, Jr., a state prisoner, proceeds pro se and in forma 18
 pauperis with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner challenges
 19 a 2017 judgment in the Sacramento County Superior Court convicting him of assault with a
 semi- 20 automatic firearm and being a felon in possession of a firearm. Presently at issue is
 petitioner's 21 claim two in his first amended federal petition asserting ineffective assistance of
 counsel. For the 22 reasons set forth below, the claim is without merit and petitioner's application
 for habeas corpus 23 relief should be denied.

24 BACKGROUND

25 The California Court of Appeal for the Third Appellate District provided the following 26

summary of facts and procedure:1 27 28 1 The facts set forth by the state court of appeal are presumed correct. 28 U.S.C. § 2254(e)(1). 1 After a dispute over ownership of a motorbike, defendant fired at least eight shots at a truck containing the motorbike and driven by 2 the victims. The police found eight shell casings in the area where defendant was seen standing. The police also found a bullet hole near 3 the tailgate on the truck. A neighbor's surveillance camera recorded defendant firing the gun. The People charged defendant with two 4 counts of assault with a semi-automatic firearm (Pen. Code, § 245, subd. (b))1 and being a felon in possession of a firearm (§ 29800, 5 subd. (a)(1)). The amended information included two allegations that defendant had used a semi-automatic firearm (§ 12022.5, subds. (a), 6 (d)) and further alleged that defendant was previously convicted of a strike offense (§ 667, subds. (b)-(i)) and served a term in prison (§ 7 667.5, subd. (b)). 8 Pursuant to a negotiated plea agreement, defendant pleaded no contest to both assault charges, counts one and two of the amended 9 information. He also admitted the two section 12022.5 allegations and the strike. In exchange for his plea, the People moved to dismiss 10 the remaining charges and allegations and the parties stipulated to a term of 27 years four months in state prison, which included the 11 upper term of 10 years in prison for the section 12022.5 allegation on count one, and a consecutive sentence of one-third the midterm 12 for that same allegation on count two. 13 At sentencing, the court imposed the stipulated sentence[.] 14 People v. Harrison-Hunter, No. C084771, 2018 WL 1516640, at *1 (Cal. Ct. App. Mar. 28, 2018) 15 (footnote omitted). 16 Petitioner timely appealed the judgment. The California Court of Appeal for the Third 17 Appellate District examined the entire record pursuant to People v. Wende, 25 Cal.3d 436 (1979) 18 and found no arguable error that would result in a more favorable disposition. See Harrison- 19 Hunter, 2018 WL 1516640, at *2. The state appellate court modified the judgment to conform to 20 the plea regarding dismissed counts and otherwise affirmed the judgment on March 28, 2018. Id. 21 The California Supreme Court denied review on September 16, 2020. (ECF No. 13-4.) 22 Petitioner filed three state habeas petitions in the Sacramento County Superior Court, one 23 habeas petition in the California Court of Appeal, and one habeas petition in the California 24 Supreme Court. (ECF Nos. 36-1, 36-4, 36-6, 36-8, 36-10.) These petitions were denied. (ECF 25 Nos. 36-2, 36-5, 36-7, 36-9, 36-11.)

26 Petitioner initiated the present federal action on March 10, 2020.2 (ECF No. 1.) By order 27 2 Filing dates are calculated using the prison mailbox rule where applicable. See Houston v. Lack, 28 487 U.S. 266 (1988). 1 filed on February 17, 2021, the court dismissed claims one and two of the original federal petition 2 because they raised only state law claims not cognizable in federal habeas. (See ECF No. 25.) The 3 same order granted petitioner a stay and abeyance pursuant to Rhines v. Weber, 544 U.S. 269 4 (2005) and administratively stayed this action pending further exhaustion of state court remedies. 5 (Id. at 2.) By order filed on July 28, 2022, the stay of this case was lifted. (ECF No. 32.) 6 Petitioner filed his first amended federal petition raising six claims for relief on August 1, 7 2022. (ECF No. 33.) Respondent filed a partial motion to dismiss

directed to claim 1 and claims 8 3-6 of the first amended federal petition. (ECF No. 35.) On September 26, 2023, the court granted 9 respondent's partial motion to dismiss and dismissed with prejudice those claims as barred by the 10 statute of limitations. (ECF No. 62 at 2.) On November 16, 2023, respondent filed a first amended 11 answer to claim 2 of the first amended federal petition. (ECF No. 68.) Petitioner filed a traverse. 12 (ECF No. 73.)

13 STANDARDS OF REVIEW APPLICABLE TO HABEAS CORPUS CLAIMS

14 An application for a writ of habeas corpus by a person in custody under a judgment of a 15 state court can be granted only for violations of the Constitution or laws of the United States. 28 16 U.S.C. § 2254(a). A federal writ is not available for alleged error in the interpretation or 17 application of state law. See *Wilson v. Corcoran*, 562 U.S. 1, 5 (2010); *Estelle v. McGuire*, 502 18 U.S. 62, 67-68 (1991); *Park v. California*, 202 F.3d 1146, 1149 (9th Cir. 2000).

19 Title 28 U.S.C. § 2254(d) sets forth the following standards for granting federal habeas 20 corpus relief: 21 An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted 22 with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim – 23

(1) resulted in a decision that was contrary to, or involved an 24 unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or 25

(2) resulted in a decision that was based on an unreasonable 26 determination of the facts in light of the evidence presented in the State court proceeding. 27 28

1 For purposes of applying § 2254(d)(1), “clearly established federal law” consists of 2 holdings of the United States Supreme Court at the time of the last reasoned state court decision. 3 *Greene v. Fisher*, 565 U.S. 34, 37 (2011); *Stanley v. Cullen*, 633 F.3d 852, 859 (9th Cir. 2011) 4 (citing *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000)). Circuit court precedent “‘may be 5 persuasive in determining what law is clearly established and whether a state court applied that 6 law unreasonably.’” *Stanley*, 633 F.3d at 859 (quoting *Maxwell v. Roe*, 606 F.3d 561, 567 (9th 7 Cir. 2010)). However, circuit precedent may not be “used to refine or sharpen a general principle 8 of Supreme Court jurisprudence into a specific legal rule that th[e] [Supreme] Court has not 9 announced.” *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) (citing *Parker v. Matthews*, 567 U.S. 37 10 (2012)). Nor may it be used to “determine whether a particular rule of law is so widely accepted 11 among the Federal Circuits that it would, if presented to th[e] [Supreme] Court, be accepted as 12 correct.” *Id.* at 1451. Further, where courts of appeals have diverged in their treatment of an issue, 13 it cannot be said that there is “clearly established Federal law” governing that issue. *Carey v. 14 Musladin*, 549 U.S. 70, 76-77 (2006). 15 A state court decision is “contrary to” clearly established federal law if it applies a rule 16 contradicting a holding of the Supreme Court or reaches a result different from Supreme Court 17 precedent on “materially indistinguishable” facts. *Price v. Vincent*, 538 U.S. 634, 640 (2003) 18 (quoting *Williams*, 529 U.S. at 405-06). “Under the ‘unreasonable application’ clause of § 19 2254(d)(1), a federal habeas

court may grant the writ if the state court identifies the correct 20 governing legal principle from th[e] [Supreme] Court’s decisions, but unreasonably applies that 21 principle to the facts of the prisoner’s case.” *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003) 22 (quoting *Williams*, 529 U.S. at 413); *Chia v. Cambra*, 360 F.3d 997, 1002 (9th Cir. 2004). “[A] 23 federal habeas court may not issue the writ simply because that court concludes in its independent 24 judgment that the relevant state-court decision applied clearly established federal law erroneously 25 or incorrectly. Rather, that application must also be unreasonable.” *Williams*, 529 U.S. at 411; see 26 also *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007); *Andrade*, 538 U.S. at 75 (“It is not enough 27 that a federal habeas court, in its independent review of the legal question, is left with a firm 28 conviction that the state court was erroneous.” (Internal citations and quotation marks omitted.)). 1 “A state court’s determination that a claim lacks merit precludes federal habeas relief so long as 2 ‘fairminded jurists could disagree’ on the correctness of the state court’s decision.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). 4 Accordingly, “[a]s a condition for obtaining habeas corpus from a federal court, a state prisoner 5 must show that the state court’s ruling on the claim being presented in federal court was so 6 lacking in justification that there was an error well understood and comprehended in existing law 7 beyond any possibility for fairminded disagreement.” *Richter*, 562 U.S. at 103. 8 There are two ways a petitioner may satisfy subsection (d)(2). *Hibbler v. Benedetti*, 693 9 F.3d 1140, 1146 (9th Cir. 2012). He may show the state court’s findings of fact “were not 10 supported by substantial evidence in the state court record” or he may “challenge the fact-finding 11 process itself on the ground it was deficient in some material way.” *Id.* (citing *Taylor v. Maddox*, 12 366 F.3d 992, 999-1001 (9th Cir. 2004)); see also *Hurles v. Ryan*, 752 F.3d 768, 790-91 (9th Cir. 13 2014) (If a state court makes factual findings without an opportunity for the petitioner to present 14 evidence, the fact-finding process may be deficient and the state court opinion may not be entitled 15 to deference.). Under the “substantial evidence” test, the court asks whether “an appellate panel, 16 applying the normal standards of appellate review,” could reasonably conclude that the finding is 17 supported by the record. *Hibbler*, 693 F.3d at 1146 (9th Cir. 2012). 18 The second test, whether the state court’s fact-finding process is insufficient, requires the 19 federal court to “be satisfied that any appellate court to whom the defect [in the state court’s fact- 20 finding process] is pointed out would be unreasonable in holding that the state court’s fact-finding 21 process was adequate.” *Hibbler*, 693 F.3d at 1146-47 (quoting *Lambert v. Blodgett*, 393 F.3d 943, 22 972 (9th Cir. 2004)). The state court’s failure to hold an evidentiary hearing does not 23 automatically render its fact-finding process unreasonable. *Id.* at 1147. Further, a state court may 24 make factual findings without an evidentiary hearing if “the record conclusively establishes a fact 25 or where petitioner’s factual allegations are entirely without credibility.” *Perez v. Rosario*, 459 26 F.3d 943, 951 (9th Cir. 2006) (citing *Nunes v. Mueller*, 350 F.3d 1045, 1055 (9th Cir. 2003)). 27 If a petitioner overcomes one of the hurdles posed by section 2254(d), this court reviews 28 the merits of the claim de novo. *Delgadillo v. Woodford*, 527 F.3d 919, 925 (9th Cir. 2008); see 1 also *Frantz*

v. Hazey, 533 F.3d 724, 735 (9th Cir. 2008) (en banc). For claims upon which a petitioner seeks to present evidence, the petitioner must meet the standards of 28 U.S.C. § 2254(e)(2) by showing that he has not “failed to develop the factual basis of [the] claim in State court proceedings” and by meeting the federal case law standards for the presentation of evidence in a federal habeas proceeding. See Cullen v. Pinholster, 563 U.S. 170, 186 (2011). This court looks to the last reasoned state court decision as the basis for the state court judgment. Stanley, 633 F.3d at 859; Robinson v. Ignacio, 360 F.3d 1044, 1055 (9th Cir. 2004). “[I]f the last reasoned state court decision adopts or substantially incorporates the reasoning from a previous state court decision, [this court] may consider both decisions to ‘fully ascertain the reasoning of the last decision.’” Edwards v. Lamarque, 475 F.3d 1121, 1126 (9th Cir. 2007) (en banc) (quoting Barker v. Fleming, 423 F.3d 1085, 1093 (9th Cir. 2005)). “When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.” Richter, 562 U.S. at 99. This presumption may be overcome by showing “there is reason to think some other explanation for the state court’s decision is more likely.” Id. at 99-100 (citing Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991)). Similarly, when a state court decision on a petitioner’s claims rejects some claims but does not expressly address a federal claim, a federal habeas court must presume, subject to rebuttal, that the federal claim was adjudicated on the merits. Johnson v. Williams, 568 U.S. 289, 293 (2013). When it is clear that a state court has not reached the merits of a petitioner’s claim, the deferential standard set forth in 28 U.S.C. § 2254(d) does not apply and a federal habeas court reviews the claim de novo. Stanley, 633 F.3d at 860; Reynoso v. Giurbino, 462 F.3d 1099, 1109 (9th Cir. 2006); Nulph v. Cook, 333 F.3d 1052, 1056 (9th Cir. 2003).

24 ANALYSIS

25 I. Petitioner’s Allegations 26 Petitioner claims his counsel for the plea rendered ineffective assistance by misleading him about the strength of the case and other matters, resulting in petitioner’s rejection of a plea deal for a lower term than the deal he eventually accepted. (ECF No. 33 at 8, 32-39.) More specifically, petitioner alleges he discussed with his trial counsel, Mr. Shapiro, the details of a prior attempted burglary conviction sustained in 2008 and whether it was a violent felony for sentence enhancement purposes. (Id. at 32-33.) Counsel stated if petitioner’s recollection and description were accurate, “it would give the defense great leverage [for] a negotiated plea deal between 5 and possibly no more than 14 years.” (Id. at 33.) However, counsel later informed petitioner the records did not support what petitioner had stated and that the prosecutor would only agree to 20 years. (Id. at 33-34.) 8 Petitioner also told counsel he had been robbed and assaulted with a firearm by Ricky Fowler Sr. just prior to the shooting, such that he felt he had a meritorious defense. (Id. at 34-36.) 10 Counsel agreed the circumstances petitioner related would be a meritorious defense and promised 11 to investigate by checking video footage and looking for a bill of sale signed by Ricky Fowler Sr. 12 that would show

petitioner had purchased the motorbike that was the subject of the dispute and 13 was the owner of the motorbike. (Id. at 36.) 14 On March 15, 2017, petitioner rejected a deal of 20 years and 8 months. (ECF No. 33 at 15 36.) Counsel informed petitioner he was still waiting to hear back from the investigator regarding 16 whether the signed bill of sale for the motorbike could be located. (Id.) Petitioner rejected the deal 17 because he hoped he would be able to prove that he had been robbed, threatened, and shot at with 18 a gun. (Id. at 36.) 19 On March 20, 2017, counsel informed petitioner the investigator could not locate the bill 20 of sale petitioner described and that petitioner had “zero defense[.]” (ECF No. 33 at 27.) Counsel 21 also provided the records to petitioner which reflected petitioner had pled no contest to using a 22 firearm during commission of the prior attempted burglary offense. (Id.) Had petitioner known 23 beforehand that counsel had “zero defense” for petitioner, his decision for the lower offer would 24 have been different. (Id. at 36.) Petitioner alleges counsel’s misleading advice caused him to 25 reject the more favorable plea deal. (Id.) 26

II. Additional Background 27

Petitioner pled no contest on March 21, 2017, in exchange for the stipulated sentence of 28 27 years and four months in prison. (ECF No. 67-2 at 131-33.) Prior to entry of the plea, 1 petitioner commented on the initial, more favorable plea offer, and the trial court held a hearing 2 under the procedure set forth in *People v. Marsden*, 2 Cal.3d 118 (1970). (Id. at 87-88.) During 3 the Marsden hearing, petitioner stated he received the prior offer at the preliminary hearing, 4 which was before he saw the video of the incident.³ (Id. at 93.) Petitioner testified he rejected the 5 deal because he thought he could impeach the victims at trial based on a statement the defense 6 investigator got from them, because he felt like he had a possible claim of self-defense based on 7 their statements, and because he had hoped that he could be convicted of a lesser charge of 8 discharging a firearm rather than assault with a firearm based on the angle he fired and where the 9 bullets struck the victim’s truck. (Id. at 90-93.) 10 Defense counsel testified petitioner was shown the video of the shooting prior to January 11 3, 2017. (ECF No. 67-2 at 99-100.) Defense counsel testified he and petitioner discussed the case 12 in January of 2017 and counsel explained that petitioner did not have a good case for self-defense 13 even if he had been threatened because of the evidence that he shot at the victims when they were 14 in their truck driving away. (Id. at 101-103, 107-08.) 15 Defense counsel testified he advised petitioner to take the 20 year 8 month offer on March 16 16, 2017. (ECF No. 67-2 at 105.) Counsel had received all discovery and all investigator reports 17 and told petitioner that going to trial was not a good idea. (Id. at 109.) Counsel did not advise 18 petitioner that any additional investigation was ongoing or would be helpful to his defense. (Id. at 19 108, 111-112.) Counsel never told petitioner they could succeed at trial. (Id. at 121.) 20 In further testimony, petitioner stated counsel had told him the investigator report might 21 get the district attorney to present a better offer. (ECF No. 67-2 at 123.) Petitioner felt counsel 22 should have told him sooner that he had no defense. (Id. at 122-23.) 23 The trial court found petitioner had rejected the plea deal on March 17, 2017, after being 24 informed that no additional investigative efforts were underway. (ECF No. 67-2 at 125.) The trial 25 court found that, at the time petitioner rejected the offer, he was aware of

the evidence against 26 him, aware that the defense investigation had been completed, and aware that counsel had advised 27 3 The preliminary hearing took place on November 1, 2016. The trial court noted the offer had 28 stayed open “until last week.” (ECF No. 67-2 at 93-94.) 1 him to take the plea. (Id. at 125-29.) The trial court found no ineffective assistance of counsel and 2 denied the Marsden motion. (Id. at 126.) 3 Petitioner raised his ineffective assistance of counsel claim in a state habeas petition filed 4 in the California Superior Court. (ECF No. 36-6 at 64-67.) The superior court rejected the claim, 5 noting petitioner had not attached the relevant pages of the reporter’s transcript to the petition and 6 finding the claim barred for that failure. (ECF 36-7 No. at 3.) Petitioner reraised his ineffective 7 assistance claim in a habeas petition filed in the California Court of Appeal, which summarily 8 denied the petition. (ECF No. 36-8, 36-9.) Petitioner also presented the ineffective assistance 9 claim to the California Supreme Court in a habeas petition filed with excerpts of transcripts 10 attached thereto. (ECF No. 36-10.) The California Supreme Court summarily denied the petition.⁴ 11 (ECF No. 36-11.) 12 III. Merits of the Claim 13 To prevail on his Sixth Amendment ineffective assistance of counsel claim, petitioner 14 must establish that counsel’s performance fell below an objective standard of reasonableness and 15 that he suffered prejudice from the deficient performance. *Strickland v. Washington*, 466 U.S. 16 668, 690 (1984); see also *Lafler v. Cooper*, 566 U.S. 156, 162 (2012) (the Sixth Amendment right 17 to the effective assistance of counsel extends to the plea-bargaining process, including the 18 decision whether to accept or reject a plea offer). Deficient performance requires a showing that 19 counsel’s performance was “outside the wide range of professionally competent assistance.” 20 *Strickland*, 466 U.S. 687 & 697. Prejudice is found where there is a reasonable probability that, 21 but for counsel’s unprofessional errors, the result of the proceeding would have been different. *Id.* 22 “Surmounting *Strickland*’s high bar is never an easy task,” and review under the AEDPA 23 is doubly deferential. *Richter*, 562 U.S. at 105. “[T]he pivotal question” for a federal court 24 conducting habeas corpus review under section 2254(d) “is whether the state court’s application 25 4 Because petitioner presented additional evidence to the California Supreme Court in the form of 26 transcripts which were not considered by the superior court, this court does not look through to 27 the reasoning of the superior court opinion. See *Wilson v. Sellers*, 584 U.S. 122, 132 (2018) (explaining the look through presumption may not apply when “the State’s highest court relied on 28 a different ground than the lower state court”). 1 of the *Strickland* standard was unreasonable,” which “is different from asking whether defense 2 counsel’s performance fell below *Strickland*’s standards.” *Richter*, 562 U.S. at 101. The 3 determination to be made is not whether counsel acted reasonably but “whether there is any 4 reasonable argument that counsel satisfied *Strickland*’s deferential standard.” *Id.* at 105. 5 Petitioner’s claim fails because the record reflects a reasonable argument that counsel 6 satisfied *Strickland*’s deferential standard. See *Richter*, 562 U.S. at 105. Reasonable jurists could 7 find counsel satisfied *Strickland*’s deferential standard in connection with the initial plea offer by 8 advising petitioner to accept the offer. Petitioner does not dispute that counsel advised him to 9 accept the initial plea deal and that he disregarded counsel’s advice.

10 In addition, absent clear and convincing evidence to the contrary, the trial court's factual 11 finding that petitioner was aware of the evidence against him and knew the defense investigation 12 was complete when he rejected the plea is binding on this court. See 28 U.S.C. § 2254(e)(1); Burt 13 v. Titlow, 571 U.S. 12, 18 (2013). Petitioner provides no evidence to cast doubt on the state 14 court's conclusion in this regard and seeks to rely on the allegations in the petition. But even if 15 this court could credit petitioner's allegation that counsel indicated they were still waiting for 16 information from the investigator, no ineffective assistance of counsel occurred under petitioner's 17 allegations because counsel advised petitioner to accept the plea. As counsel explained, petitioner 18 did not have a good case for self-defense because of the evidence that he shot at the victims when 19 they were in their truck driving away. (See ECF No. 67-2 at 107-08.) Proof that petitioner owned 20 the motorbike could not change that "the threat [to petitioner] dissipated once the people got in 21 their truck and drove away." (Id. at 108.) 22 Fundamentally, petitioner's complaints about counsel's performance are allegations that 23 he thinks counsel's performance could have been better or that counsel's advice could have been 24 more effectively delivered. For example, petitioner testified he thought counsel should have told 25 him he had no defense much sooner. But the trial court reasonably found based on trial counsel's 26 testimony that counsel did not do or say anything that would have caused a reasonable person to 27 believe they would get a better deal or have success at trial at the relevant time when petitioner 28 rejected the first offer. (ECF No. 67-2 at 126.) Counsel testified he met with petitioner multiple 1 | times in preparation for trial, provided the complaint and all discovery to petitioner, and went 2 || over the discovery in detail with petitioner prior to petitioner rejecting the plea deal at issue. (Id. 3 || at 96-97.) Petitioner's allegations imply that counsel's advice to take the deal might have been 4 || more effective if counsel had also stated then that petitioner had "zero defense" as counsel 5 || allegedly stated a few days later. Such a complaint fails to suggest any performance by counsel 6 || outside the wide range of professionally competent assistance. Defense counsel advised petitioner 7 || to take the plea offer and petitioner did not follow counsel's sound advice. Petitioner fails to 8 | demonstrate the state court unreasonably applied the Strickland standard to the facts of this case.

9 CONCLUSION

10 Petitioner's sole remaining claim in the first amended petition—claim two asserting 11 || effective assistance of counsel—is without merit. Accordingly, IT IS RECOMMENDED that 12 || petitioner's application for a writ of habeas corpus be denied. 13 These findings and recommendations will be submitted to the United States District Judge 14 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) 15 || days after being served with these findings and recommendations, any party may file written 16 || objections with the court and serve a copy on all parties. The document should be captioned 17 || "Objections to Magistrate Judge's Findings and Recommendations." In any objections, petitioner 18 || may address whether a certificate of appealability should issue in the event an appeal of the 19 || judgment in this case is filed. See Rule 11, Rules Governing § 2254 Cases (the district court must

20 || issue or deny a certificate of appealability when it enters a final order adverse to the applicant). 21 | Any reply to objections shall be served on all parties and filed with the court within seven (7) 22 || days after service of the objections. Failure to file objections within the specified time may waive 23 | the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 24 | 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). 25 | Dated: September 30, 2025 / ae / a ly. ae 27 « mamos0n. UNITED STATES MAGISTRATE JUDGE 28 1]