

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUANITA CELIA GARCIA,

No. 17-55618

Petitioner-Appellant,

D.C. No.

v.

2:13-cv-06864-JFW-FFM

DEBORAH K. JOHNSON,

MEMORANDUM*

Respondent-Appellee.

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted August 9, 2018
Pasadena, California

Before: CALLAHAN and NGUYEN, Circuit Judges, and EZRA, District Judge**

Juanita Garcia was convicted of murdering her longtime boyfriend, David Zweig. Because the jury found that Garcia killed Zweig for financial gain, she was sentenced to life without parole. Garcia appeals from the district court's denial of her habeas petition, in which she alleged ineffective assistance of counsel. We

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.¹

We review de novo a district court’s denial of a habeas petition. *Murray v. Schriro*, 882 F.3d 778, 801 (9th Cir. 2018). Our review is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2254. Under AEDPA, habeas relief cannot be granted “unless the state court decision: ‘(1) was contrary to clearly established federal law as determined by the Supreme Court, (2) involved an unreasonable application of such law, or (3) . . . was based on an unreasonable determination of the facts in light of the record before the state court.’” *Murray*, 882 F.3d at 801 (quoting *Fairbank v. Ayers*, 650 F.3d 1243, 1251 (9th Cir. 2011), as amended).

To establish a claim for ineffective assistance of counsel, a petitioner must show (1) constitutionally deficient performance by counsel (2) that prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Garcia argues her trial counsel provided constitutionally deficient representation because, she alleges, he contacted the administrator of Zweig’s trust to make payments to Garcia. At trial, the prosecution offered evidence of the attorney’s contact with the trust administrator in support of its theory of Garcia’s financial motive. Garcia argues that her trial counsel thus had an impermissible conflict of interest that prejudiced

¹ Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

her defense.²

Garcia fails to meet her burden under *Strickland*'s prejudice prong and AEDPA. Although the California Court of Appeal's decision indisputably recites *Strickland*'s prejudice standard correctly, Garcia argues the Court of Appeal misapplied the standard because in two instances in its decision it did not use the precise "reasonable probability" terminology. Despite any such imprecision, we are satisfied that the state court applied the correct standard, especially in light of AEDPA's requirement that we give state courts the benefit of the doubt. See *Woodford v. Visciotti*, 537 U.S. 19, 23–24 (2002) (reversing court of appeals' grant of habeas petition where state court used imprecise language in applying *Strickland* prejudice prong); *Mann v. Ryan*, 828 F.3d 1143, 1158 (9th Cir. 2016) (en banc) ("Under AEDPA, because we can read the decision to comport with clearly established federal law, we must do so.").

Garcia's primary argument that she meets *Strickland*'s prejudice prong is that the evidence of her attorney contacting the trust administrator was the "linchpin" of the prosecution's financial motive theory. Garcia's argument ignores the state court's conclusion that "[e]ven if the jury did not hear evidence of

² Garcia concedes that the alleged conflict of interest does not excuse her from satisfying *Strickland*'s prejudice requirement. See *Mickens v. Taylor*, 535 U.S. 162, 166 (2002) (holding that prejudice is presumed "where assistance of counsel has been denied entirely or during a critical stage of the proceeding").

[counsel's] contact with the trust attorney, there was ample evidence to support a finding of financial motive.” The Court of Appeal stated:

[Garcia] knew that Zweig had created a trust. In fact, she told the trust attorney that he had misspelled Zweig's name in the trust documents. She admitted she knew he was leaving most of his assets to her. Audio recordings from the surveillance system also show that in early October, [Garcia] demanded Zweig pay her \$15,000 to move out and when he only offered her \$5,000 to leave immediately, she threatened to “take [him] down.” [Garcia] also contacted the trust attorney both before and after Zweig died regarding paying his medical and funeral expenses.

A fairminded jurist could have concluded that, in light of the other evidence of Garcia's financial motive, Garcia failed to show a reasonable probability that, but for the asserted conflict, the result of the proceeding would have been different. The California Court of Appeal's conclusion that Garcia failed to show prejudice under *Strickland* was not contrary to clearly established federal law, did not involve an unreasonable application of such law, and was not based on an unreasonable determination of the facts.

AFFIRMED.