

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 14 2019

FOR THE NINTH CIRCUIT

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

KRISTIN L. HARDY,

Petitioner-Appellant,

v.

KELLY SANTORO,

Respondent-Appellee.

No. 17-55243

D.C. No. 11-00948-GW (JEM)

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Argued and Submitted February 4, 2019
Pasadena, California

Before: GOULD and NGUYEN, Circuit Judges, and BENITEZ,** District Judge.

Kristin Hardy appeals the district court's denial of his petition for habeas corpus under 28 U.S.C. § 2254. We affirm.

Following a trial by jury, Hardy was sentenced to 25-years-to-life in prison under California's Three Strikes Law for convictions of aggravated assault and

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

** The Honorable Roger T. Benitez, Senior United States District Judge for the Southern District of California, sitting by designation.

inflicting corporal injury on a cohabitant. Hardy argues his counsel rendered ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984).

Specifically, Hardy claims that, if his attorney had discovered Hardy's second prior strike conviction and advised him of the resulting 25-years-to-life sentencing exposure, he would have accepted the prosecution's more lenient four-year plea offer.

To demonstrate ineffective assistance of counsel and warrant habeas relief, a petitioner must show both (1) his attorney's performance was deficient and (2) resulting legal prejudice. *See Strickland*, 466 U.S. at 687. On this record, Hardy has not shown the first prong—that his attorney's "representation 'fell below an objective standard of reasonableness'" as measured by "prevailing professional norms." *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (quoting *Strickland*, 466 U.S. at 688). The record reflects that Hardy's counsel requested Hardy's chart report from the District Attorney, who did not obtain the report until after Hardy rejected the four-year plea offer. Likewise, the California Department of Corrections did not mail Hardy's prison records until after Hardy rejected the plea offer. The record is devoid of evidence showing that, in Riverside County, Hardy's counsel would have had access to Hardy's rap sheet prior to advising Hardy to accept the four-year plea offer. Moreover, there is no evidence showing that Hardy's counsel knew of Hardy's second strike until after the four-year plea offer expired.

Thus, Hardy’s counsel’s performance did not fall below “an objective standard of reasonableness” where he relied upon the information known to him and the prosecution at the time of the preliminary hearing—that Hardy had a single strike—and repeatedly advised Hardy to accept the four-year plea offer, a favorable offer for a single strike offender. *See Strickland*, 466 U.S. at 688. Because a showing on both *Strickland* prongs is required for habeas relief, the district court correctly denied Hardy’s petition.

AFFIRMED.