

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 8 2022

FOR THE NINTH CIRCUIT

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

VIKTOR I. NATEKIN,

No. 21-35658

Petitioner-Appellant,

D.C. No. 3:21-cv-00030-JKS

v.

MEMORANDUM*

EARL HOUSER, Superintendent, Goose
Creek Correctional Center,

Respondent-Appellee.

Appeal from the United States District Court
for the District of Alaska
James K. Singleton, District Judge, Presiding

Submitted December 6, 2022**
Seattle, Washington

Before: McKEOWN, MILLER, and MENDOZA, Circuit Judges.

Viktor Natekin, an Alaska state prisoner, appeals the district court's denial of his habeas corpus petition brought under 28 U.S.C. § 2254. We have jurisdiction under 28 U.S.C. § 2253 and affirm the district court's denial of the petition.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

In his section 2254 petition, Natekin raised a single ineffective assistance of counsel claim. The district court denied relief because it found that Natekin's claim was procedurally defaulted for failure to exhaust state court remedies. We review the district court's denial of habeas relief de novo. *Demetrulias v. Davis*, 14 F.4th 898, 905 (9th Cir. 2021).

Before a state prisoner may assert a federal habeas claim, he must "exhaust[] the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). "A petitioner satisfies the exhaustion requirement by fully and fairly presenting each claim to the highest state court." *Scott v. Schriro*, 567 F.3d 573, 582 (9th Cir. 2009). In *O'Sullivan v. Boerckel*, the Supreme Court held that "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." 526 U.S. 838, 845 (1999). To meet the exhaustion requirement, state prisoners must "file petitions for discretionary review when that review is part of the ordinary appellate review procedure in the State." *Id.* at 847.

There is no dispute that Natekin did not present his ineffective assistance of counsel claim to the Alaska Supreme Court. Natekin seeks to skirt this deficiency by arguing that review of his claim was unavailable under Alaska Rule of Appellate Procedure 304 because ineffective assistance of counsel claims are not within the non-controlling "character of reasons" the court will consider for

discretionary review. This argument is long foreclosed by *O'Sullivan*. See 526 U.S. at 845–48. Natekin failed to file a petition in the Alaska Supreme Court for discretionary review of his ineffective assistance of counsel claim, thereby failing to exhaust his state court remedies and procedurally defaulting the claim. Accordingly, we affirm the district court's denial of Natekin's habeas petition without reaching the merits of Natekin's claim.

AFFIRMED.