

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 26 2023

FOR THE NINTH CIRCUIT

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

MARCUS SHARIF McNEAL,

No. 22-15178

Petitioner-Appellant,

D.C. No. 2:16-cv-01618-JAD-EJY

v.

MEMORANDUM*

BRIAN E. WILLIAMS; ATTORNEY
GENERAL FOR THE STATE OF
NEVADA,

Respondents-Appellees.

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted January 18, 2023**

Before: GRABER, PAEZ, and NGUYEN, Circuit Judges.

Marcus Sharif McNeal appeals pro se from the district court's order denying his motion to dismiss counsel and proceed pro se in his 28 U.S.C. § 2254 habeas corpus proceedings. Reviewing for abuse of discretion, *see LaGrand v. Stewart*,

* 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).

133 F.3d 1253, 1269 (9th Cir. 1998), we affirm.

McNeal contends that the district court should have relieved counsel because his disagreement with counsel's decisions as to which claims to raise in his § 2254 petition created a conflict of interest. We are not persuaded. As the district court explained, it is counsel's responsibility to exercise her professional judgment to determine which claims have the greatest chance of success. *See Jones v. Barnes*, 463 U.S. 745, 751-52 (1983) (counsel is vested with the authority to determine which are the strongest issues to raise and which should be "winnow[ed] out"). Moreover, McNeal does not have a constitutional right to represent himself in these § 2254 proceedings, and we agree with the district court that the interests of justice are best served by having counsel represent him this complex matter.¹ *See Martinez v. Court of Appeal of California, 4th Appellate Dist.*, 528 U.S. 152, 163-64 (2000).

AFFIRMED.

¹ To the extent McNeal seeks to argue that the district court erred in its April 6, 2021, order denying his motion to appoint substitute counsel, we do not consider those arguments because McNeal did not file a notice of appeal from that order.