NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN KINFORD, Petitioner-Appellant, v. BRIAN WILLIAMS, Warden; et al., Respondents-Appellees.	No. 22-16323 D.C. No. 3:12-cv-00489-MMD-CLB MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, Chief District Judge, Presiding

Submitted March 5, 2025**
Las Vegas, Nevada

Before: RAWLINSON, MILLER, and DESAI, Circuit Judges.

Steven Kinford pleaded guilty in Nevada state court to one count of lewdness with a child under the age of 14. He was sentenced to life imprisonment with the possibility of parole after 10 years. Upon withdrawing his direct appeal and unsuccessfully seeking state post-conviction relief, Kinford filed a petition for

* 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).

a writ of habeas corpus in federal court, in which he claimed that he received ineffective assistance from three successive attorneys. The district court denied his petition, determining that Kinford's claims were procedurally defaulted. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253(a). We review de novo the district court's denial of a petition for a writ of habeas corpus, including questions of procedural default. *Guillory v. Allen*, 38 F.4th 849, 854 (9th Cir. 2022). We affirm.

The doctrine of procedural default normally precludes federal courts from reaching the merits of claims barred by state procedural rules. *See Wainwright v. Sykes*, 433 U.S. 72, 84–85 (1977). But there is a narrow exception for ineffective-assistance-of-counsel claims that state law requires to be raised during initial-review collateral proceedings: A state "procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." *Martinez v. Ryan*, 566 U.S. 1, 17 (2012). To show "cause for the default and prejudice from a violation of federal law," a petitioner must demonstrate that post-conviction counsel was ineffective and that "the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit." *Id.* at 10, 14; *see Trevino v. Thaler*, 569 U.S. 413, 423 (2013).

Both post-conviction counsel's performance and the underlying claim are

evaluated under *Strickland v. Washington*, which provides that the petitioner "must show that counsel's representation fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. 668, 688, 694 (1984). The first *Strickland* prong is "highly deferential," as courts "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. In the context of a guilty plea, the second *Strickland* prong requires "a reasonable probability that, but for counsel's errors, [the petitioner] would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

1. Kinford's claim that attorneys Paul Yohey and Kenneth Ward rendered ineffective assistance by failing to investigate his case and advise him of possible defenses is insubstantial. Kinford argues that Yohey, who represented Kinford for the first six months, did not undertake any investigation into his case. Kinford also argues that Ward, who took over from Yohey and represented Kinford during the plea process, did not investigate the child victim's father, whom Kinford believes to be the sole perpetrator against the child.

Counsel has "a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. If counsel chooses not to investigate, then that "particular decision

. . . must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* Here, Yohey's decision not to investigate Kinford's case was reasonable, as Kinford was undergoing a competency evaluation at a psychiatric facility for most of Yohey's representation, and Yohey did not have an opportunity to advise Kinford before he was deemed competent and switched attorneys. Ward's representation of Kinford during the plea process was also reasonable. Ward's decision not to focus on the child's father was a "strategic choice[]" to forgo a weak defense, and Kinford submits no evidence that Ward's strategy was the result of inadequate investigation. *Id.* at 690–91. Furthermore, Kinford confirmed during his plea colloquy and in his plea agreement that he spoke with Ward about possible defenses.

2. Kinford's claim that attorney Jesse Kalter rendered ineffective assistance because of a conflict of interest is also insubstantial. Kalter had previously represented the child's father on charges arising from the same law-enforcement interview with the child that implicated Kinford. Kinford argues that Kalter had an actual conflict of interest due to his continuing duty of loyalty to the child's father.

A petitioner who "shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice [under *Strickland*] in order to obtain relief." *Cuyler v. Sullivan*, 446 U.S. 335, 349–50 (1980). But that exception is limited to the context of "multiple concurrent representation," *Mickens*

v. Taylor, 535 U.S. 162, 175 (2002), and the Supreme Court has not extended it to "cases involving interests of *former* clients," *Earp v. Ornoski*, 431 F.3d 1158, 1184 (9th Cir. 2005) (emphasis added). Kinford's claim fails because he cannot establish Kalter's multiple concurrent representation. And Kinford has not otherwise shown that the appointment of unconflicted counsel would have resulted in a reasonable probability of his going to trial.

AFFIRMED.