NOT FOR PUBLICATION

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL RAY FUQUA, Petitioner - Appellant, v. RYAN THORNELL, Director of the Arizona Department of Corrections, Rehabilitation, Respondent - Appellee.	No. 25-4323 D.C. No. 3:23-cv-08621-KML MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
Krissa M. Lanham, District Judge, Presiding

Submitted June 10, 2026[**]
San Francisco, California

Before: GOULD, NGUYEN, and VANDYKE, Circuit Judges.

Petitioner Michael Fuqua ("Fuqua") petitions this Court for a writ of *habeas corpus* based on two claims of Ineffective Assistance of Appellate Counsel ("IAAC"). We have jurisdiction under 28 U.S.C. §§ 1291 and 2253. The parties are

[*] 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).

familiar with the facts of this case, so we do not recount them here. We review the district court's denial of Fuqua's petition *de novo*, and we deny the petition. *Murray v. Schriro*, 745 F.3d 984, 996 (9th Cir. 2014).

We can only grant a petition for *habeas corpus* where the last reasoned state-court decision on the merits either made an unreasonable factual determination or "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1); *Robinson v. Ignacio*, 360 F.3d 1044, 1055 (9th Cir. 2004). This highly deferential standard is met only where no fairminded jurist could disagree that the state-court decision was inconsistent with Supreme Court precedent. *Cullen v. Pinholster*, 563 U.S. 170, 188 (2011). The parties agree that the Arizona PCR court decision is the last reasoned state-court decision relevant to our review. That decision, as relevant here, denied relief on Fuqua's two IAAC claims by determining that Fuqua's appellate counsel did not perform deficiently under *Strickland v. Washington*, 466 U.S. 668 (1984), by not bringing Fuqua's proffered claims.

Strickland and its progeny constitute the clearly established federal law most relevant to our analysis here. We can only determine that an IAAC claim has been established where "ignored issues are clearly stronger than those presented." *Smith v. Robbins*, 528 U.S. 259, 288 (2000) (citation omitted); *Davila v. Davis*, 582 U.S. 521, 533 (2017). So, we can only grant Fuqua's *habeas corpus* petition if we

determine that the Arizona PCR court was unreasonable in determining that the claims Fuqua's appellate counsel did not raise were not "clearly stronger" than those claims he did raise.

Arizona law on waiver and standards of review helps us assess the relative strength of Fuqua's unasserted claims. *See State v. Turner*, 488 P.3d 999, 1004 (Ariz. Ct. App. 2021) (preserved claims are reviewed for abuse of discretion while unpreserved claims are reviewed for fundamental error). We need not, however, address the parties' dispute over whether Fuqua waived his two claims in the state trial court because it would not be unreasonable to conclude that neither of Fuqua's claims would be "clearly stronger" than the claims he asserted on direct appeal even based on an abuse-of-discretion standard.

Our analysis begins with an assessment of Fuqua's claims on direct appeal, none of which were strong. Neither the uncertified reporter nor the judicial recusal claims on direct appeal had merit. Fuqua's Confrontation Clause claim on direct appeal was stronger, but suffered from some of the same defects as the claims he now asserts, namely that Fuqua does not adequately explain how further cross-examination of G.H. would have materially affected his credibility or the trial outcome.

It was not unreasonable for the Arizona PCR court to determine that Fuqua's complete defense claim based on prosecutorial interference was not "clearly

stronger" than the claims he asserted on direct appeal. The prosecutorial interference claim is weak because of a lack of causation between the prosecutor's comments and G.H.'s decision not to testify. As the district court noted, the precise contours of such a claim are not entirely clear, but the parties appear to agree that a prosecutorial interference claim requires at least that (1) some action by the prosecutor was causally connected to the witness' decision not to testify, and (2) the witness' testimony would have been "material and favorable" to the defense. *Soo Park v. Thompson*, 851 F.3d 910, 920–27 (9th Cir. 2017). Successful claims fall into two categories: (1) cases in which the State induces a witness not to testify at all, and (2) cases in which the State induces a witness to testify in a particular way. *Soo Park* is emblematic of the first category. There, a detective called a witness plausibly "intend[ing] to intimidate [the witness] by informing her that . . . her abuser[] was 'really upset' by her potential testimony." *Id.* at 920. *State v. Sanchez-Equihua*, 326 P.3d 321 (Ariz. Ct. App. 2014) and *State v. Fisher*, 859 P.2d 179 (Ariz. 1993) are emblematic of the second category. In those cases, witnesses' plea agreements either did not allow the witnesses to testify to exculpatory information about the defendant at trial or required that their testimony remain consistent with the testimony contained in their agreements. Fuqua's case does not fall into either category. G.H., who testified at the first trial, was predisposed not to testify again from the outset. It is possible that the prosecutor's comments reinforced G.H.'s decision not to testify,

but the record evidence does not support the inference that the prosecutor's comments transformed G.H. from a willing witness into an unwilling one.

Fuqua's Confrontation Clause claim is also weak. Neither Supreme Court nor Ninth Circuit precedent supports his theory, and he has not shown that any added impeachment value from the circumstances underlying the conviction is material when compared with the impeachment value of the conviction itself. Thus, it was not unreasonable for the Arizona PCR court to determine that this claim was not "clearly stronger" than the claims he asserted on direct appeal. The cases Fuqua cites for this proposition support that the fact of conviction—not the underlying circumstances of the conviction—is what carries impeachment value at trial. *See, e.g.*, *Davis v. Alaska*, 415 U.S. 308, 316 (1974); *State v. Hatch*, 239 P.3d 432, 434–35 (Ariz. Ct. App. 2010); *State v. Conroy*, 642 P.2d 873, 874 (Ariz. Ct. App. 1982). Fuqua does not cite to a case holding that a defendant being allowed to impeach a witness with a prior conviction but not inquire into the conviction's underlying circumstances constitutes a Confrontation Clause violation. A defendant must show that a "reasonable" trier of fact "might have received a significantly different impression of a [witness's] credibility had counsel been permitted to pursue his proposed line of cross-examination" to establish such a violation. *Sully v. Ayers*, 725 F.3d 1057, 1074 (9th Cir. 2013) (alteration in original) (citation omitted). Here, the trial court, as factfinder, knew that police had G.H. wear a wire to record Fuqua's

statements because they did not take G.H.'s story at face value. The trial court also knew, based on G.H.'s cooperation agreement, that it had reason to doubt G.H.'s asserted motive for testifying. And because Fuqua had thoroughly impeached G.H. at the first trial, any marginal additional impeachment based on the facts underlying G.H.'s prior convictions would not have given the trial court "a significantly different impression" of G.H.'s credibility. *Id.* (citation omitted).

Because the Arizona PCR court did not unreasonably apply *Strickland* and its progeny in determining that Fuqua's appellate counsel's performance was not deficient, Fuqua's petition for a writ of *habeas corpus* is **DENIED**.