

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2026

FOR THE NINTH CIRCUIT

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

NATHAN J. MASON,

Petitioner - Appellant,

v.

JEFF MACOMBER,

Respondent - Appellee.

No. 25-4399

D.C. No.

2:22-cv-00661-JLS-BFM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Argued and Submitted June 23, 2026
Pasadena, California

Before: WARDLAW, OWENS, and DE ALBA, Circuit Judges.

Nathan J. Mason appeals from the district court's denial of his petition for writ of habeas corpus under 28 U.S.C. § 2254, challenging his state court conviction for (1) shooting at an inhabited dwelling; (2) assault with a semiautomatic firearm upon his neighbors, Willie Sutton and Shauntail Smith; (3) discharge of a firearm with gross negligence; and (4) criminal threats to Smith.

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

Mason argues that his trial counsel violated his Sixth Amendment right under *McCoy v. Louisiana*, 584 U.S. 414 (2018), by conceding guilt despite his professions of innocence. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we reverse in part, affirm in part, and remand with instructions.

We review a district court’s denial of a habeas petition de novo and a district court’s findings of facts for clear error. *Martinez v. Cate*, 903 F.3d 982, 991 (9th Cir. 2018) (citation omitted). Because the California Supreme Court denied Mason’s habeas petition on procedural grounds, we also review his *McCoy* claim de novo. *See Cone v. Bell*, 556 U.S. 449, 472 (2009) (“Because the [state] courts did not reach the merits of [petitioner’s] claim, federal habeas review is not subject to the deferential standard that applies under [the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”)].” (citation modified)); *Lewis v. Mayle*, 391 F.3d 989, 996 (9th Cir. 2004) (“De novo review, rather than AEDPA’s deferential standard, is applicable to a claim that the state court did not reach on the merits.” (citation omitted)).

1. Counsel’s trial strategy as to the criminal threats charge effectively conceded Mason’s guilt on this charge, in violation of his Sixth Amendment right under *McCoy*. “[A] defendant has the right to insist that counsel refrain from admitting guilt.” *McCoy*, 584 U.S. at 417. When counsel is “[p]resented with express statements of the client’s will to maintain innocence, . . . counsel may not

steer the ship the other way.” *Id.* at 424. The state asserts that “when counsel pursued a mental state defense to negate an element of the [criminal threats charge], she pursued Petitioner’s innocence,” but this formulation ignores the evidence in front of the jury prior to counsel’s closing argument, namely Mason’s testimony.

Here, as the sole defense witness, Mason admitted to drinking earlier in the day, but testified that he was “fine” and understood what was transpiring at the time of the altercation. Further, although he did not directly admit or deny making the alleged criminal threats to his neighbors, Mason also generally denied their version of events. Yet, notwithstanding Mason’s testimony, during her closing argument, counsel pursued a voluntary intoxication defense, challenging the specific intent element of the criminal threats charge but conceding the actus reus. This concession “relieved the prosecution of its burden” to prove a critical element at issue—the actus reus of the crime—because notwithstanding counsel’s attempted voluntary intoxication defense to invalidate the mens rea element, Mason’s own testimony provided evidence indicating that he had the capacity to form the requisite mens rea for the charged offense. *Christian v. Thomas*, 982 F.3d 1215, 1225 (9th Cir. 2020).

2. Similarly, in the course of pursuing a voluntary intoxication defense, Mason’s counsel implicitly conceded guilt to the negligent discharge count, in

violation of his Sixth Amendment right under *McCoy*. At trial, Mason testified that he discharged his firearm into the air in self-defense to scare off Sutton and Smith after they allegedly attacked him. Yet by arguing, in defense against the criminal threats counts, that “shooting in a reckless manner” provided circumstantial evidence that Mason had “no clue what’s going on” and was “drunk to the point where [he was] not in control of [his] actions,” counsel also necessarily conceded that Mason discharged his firearm negligently. Because a “violation of a defendant’s Sixth Amendment right to choose his or her defense is a structural error, [] the proper remedy is a new trial” as to the criminal threats and negligent discharge counts. *United States v. Read*, 918 F.3d 712, 721 (9th Cir. 2019).

3. Finally, because counsel attacked the sufficiency of the evidence as to the remaining counts, she did not concede Mason’s guilt as to these charged offenses. Specifically, counsel (1) argued that the prosecution had not successfully tied the bullet casings police found to the gun Mason possessed; (2) posited that these casings could have been there already as they were from a gun that was common in Los Angeles and Sutton testified that there were other shootings in his neighborhood; and (3) noted that DNA analysis was not conducted on a cigarette butt found near a casing. As such, because counsel did not “relieve[] the prosecution of its burden” by contesting the state’s evidence as to the counts of shooting at an inhabited dwelling and assault with a semiautomatic firearm, her

conduct as it relates to these charged offenses did not violate Mason's Sixth Amendment right under *McCoy*. *Christian*, 982 F.3d at 1225.

We, therefore, reverse the district court in part and remand with instructions to grant the habeas petition in part, unless the state within a reasonable time either grants a new trial or vacates Mason's sentence as to the criminal threats and negligent discharge counts. We affirm the district court's denial of the petition as to the remaining counts.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.