

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 1 2026

FOR THE NINTH CIRCUIT

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

CHARLES EUBANKS,

Petitioner - Appellant,

v.

JEREMY BEAN; ATTORNEY GENERAL
OF THE STATE OF NEVADA,

Respondents - Appellees.

No. 25-973

D.C. No.

3:16-cv-00336-MMD-CSD

MEMORANDUM*

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

Argued and Submitted August 13, 2026
Reno, Nevada

Before: BADE, FORREST, and VANDYKE, Circuit Judges.

Petitioner-Appellant Charles Eubanks appeals the district court's denial of his petition for a writ of habeas corpus. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253 and affirm.

We review the district court's denial of a habeas petition de novo and underlying factual findings for clear error. *Patsalis v. Shinn*, 47 F.4th 1092, 1097

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

(9th Cir. 2022). Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), federal courts may not grant habeas corpus relief unless the state court decision is contrary to or an unreasonable application of “clearly established Federal law, as determined by the Supreme Court of the United States,” or “was based on an unreasonable determination of the facts.” 28 U.S.C. § 2254(d). The “highly deferential” AEDPA standard precludes “federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court’s decision.” *Harrington v. Richter*, 562 U.S. 86, 101, 105 (2011) (citation modified). The petitioner bears the burden. *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

To succeed on an ineffective assistance of counsel (“IAC”) claim, a petitioner must show (1) deficient performance—that his “counsel’s representation fell below an objective standard of reasonableness,” despite a “strong presumption” that counsel performed adequately—and (2) prejudice—“a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland v. Washington*, 466 U.S. 668, 688–89, 694 (1984).

1. The district court properly denied Eubanks’ IAC claim asserted in Ground 5(3), in which Eubanks argued that his trial counsel did not adequately advise him about the law. Eubanks musters no evidence supporting this claim aside from his own uncorroborated, belated assertions. And “without evidence that [counsel] gave incorrect advice ..., [Eubanks] cannot establish that his performance was deficient.”

Burt v. Titlow, 571 U.S. 12, 23 (2013) (citation omitted). Eubanks also offers no evidence that a more thorough explanation of the law would have changed his mind about rejecting the state’s plea offers and thus fails to show prejudice.

2. The district court properly denied Eubanks’ IAC claim asserted in Ground 5(7). Eubanks was not prejudiced by the trial court’s initial improper sentence because the second amended judgment corrected the mistake. Because Nevada state courts can correct a sentencing error “at any time,” Nev. Rev. Stat. § 176.555, Eubanks fails to explain why, even if appellate counsel had objected to the sentence, the Nevada Supreme Court would have ordered the trial court to conduct a new sentencing hearing just to make a straightforward correction.

3. The district court properly denied Eubanks’ IAC claim asserted in Ground 5(9), in which he argued that trial counsel failed to communicate plea offers and counteroffers. Eubanks did not raise this claim before the state court, so he must show that his procedural default should be excused under *Martinez v. Ryan*, 566 U.S. 1 (2012). This requires, among other things, showing that his claim was “substantial.” *Trevino v. Thaler*, 569 U.S. 413, 423 (2013) (quoting *Martinez*, 566 U.S. at 14).

Eubanks’ only evidence in support of Ground 5(9) is two letters from trial counsel which were not presented to the state court. Section 2254(e)(2) generally prohibits a federal court from considering new evidence that was not presented to a

state court. *Shinn v. Ramirez*, 596 U.S. 366, 382 (2022). “[A] prisoner fails to develop a claim for purposes of § 2254(e)(2) when ‘there is [a] lack of diligence ... attributable to the prisoner’” in developing the factual record for a specific claim. *Rodney v. Garrett*, 116 F.4th 947, 956 (9th Cir. 2024) (quoting *Williams v. Taylor*, 529 U.S. 420, 432 (2000)); see *Libberton v. Ryan*, 583 F.3d 1147, 1164–65 (9th Cir. 2009); *Bejarano v. Reubart*, 136 F.4th 873, 888 (9th Cir. 2025). The district court erred in considering evidence of Eubanks’ diligence generally rather than assessing his diligence in developing the factual basis for this specific claim. Eubanks was not diligent in developing the factual basis for this claim: he had the letters in his possession but did not present them to the state court. See *Rodney*, 116 F.4th at 954–55 (citing *Shinn*, 596 U.S. at 389). Without the letters, Eubanks’ IAC claim lacks evidentiary support and is not substantial under *Martinez*.¹

4. The district court properly rejected Eubanks’ *Brady* claims. To show a *Brady* violation, a petitioner must identify (1) favorable evidence (either exculpatory

¹ Even with the letters, Eubanks’ IAC claim is not substantial. In the first letter, Eubanks’ trial counsel informed Eubanks that he had not communicated Eubanks’ plea counteroffer to the District Attorney (“D.A.”) because it was far more lenient than what the D.A. had said he was willing to accept. Eubanks cites no legal authority that counsel’s performance was deficient and has not shown prejudice because he fails to show a “substantial” likelihood that the D.A. would change his mind in response to the counteroffer. *Harrington*, 562 U.S. at 112. The second letter does not indicate that trial counsel ever rejected a plea offer before consulting Eubanks.

or impeaching), (2) that was suppressed by the state (willfully or inadvertently), and (3) that was material (such that its suppression caused prejudice). *Banks v. Dretke*, 540 U.S. 668, 691 (2004). Prejudice may result if “the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Kyles v. Whitley*, 514 U.S. 419, 435 (1995).

As an initial matter, the district court did not err in granting a certificate of appealability (“COA”) for a cumulative *Brady* claim, even though Eubanks did not explicitly raise a cumulative *Brady* claim. Eubanks’ federal habeas petition raised a general cumulative error claim, which necessarily encompasses the cumulative effect of Eubanks’ *Brady* claims. Our case law allows district courts to grant COAs narrower than the claims a petitioner presents. *See, e.g., Creech v. Richardson*, 59 F.4th 372, 381–82 (9th Cir. 2023).

Eubanks’ *Brady* claims do not suffice to undermine confidence in the jury verdict. First, Eubanks asserts that the State did not disclose benefits that Jarvis and Kaufman received in exchange for testifying. Eubanks offers no evidence that Kaufman received undisclosed benefits from the State. And even if Jarvis received undisclosed benefits, that evidence is not material: trial counsel already thoroughly impeached Jarvis by pointing out his multiple felony convictions. Moreover, Jarvis’s testimony that Eubanks confessed to murdering the victim was corroborated by Dowling, Maxwell, Vich, Karisma Garcia, Jackson, Rubio, and Kaufman.

Second, Eubanks argues that the State withheld evidence that Karisma Garcia, Jackson, Jarvis, and Victoria Garcia served as confidential informants in unrelated cases. Eubanks does not explain why that evidence, if true, impacts these witnesses' credibility. Even if such evidence were relevant, those four witnesses were cross-examined about committing multiple felonies, testifying pursuant to deals, and lying to police officers.

Third, Eubanks asserts that the State failed to disclose that several codefendants or witnesses were represented by the same attorneys, speculating that the attorneys acted as “conduits of information between witnesses.” Eubanks identifies no evidence supporting his speculation, and the witnesses involved—Victoria Garcia, Jarvis, Karisma Garcia and Dowling—were thoroughly impeached.²

Finally, Eubanks asserts that codefendants and witnesses had opportunities to communicate with each other before trial and speculates that they may have coordinated their testimony. Trial counsel elicited substantial testimony about pretrial communication: Victoria Garcia testified that she had a chance to “visit with” all her codefendants, and that she and codefendant Rubio communicated with other codefendants while being transported. Jackson mentioned that he was able to

² Dowling acknowledged that he had been convicted of multiple felonies and was testifying pursuant to a deal.

talk to codefendant Maxwell in prison. Additional evidence of pretrial communication would not have added meaningful impeachment value.³

Each witness mentioned in Eubanks' *Brady* claims was significantly impeached, and their testimony was corroborated by numerous other witnesses. Eubanks fails to show that any withheld evidence could "reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles*, 514 U.S. at 435.

PETITION DENIED.

³ Maxwell and Rubio were also significantly impeached at trial. They both admitted to being convicted felons, to testifying in exchange for a deal, and to lying to police officers.