NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID BURNS, Petitioner - Appellant, v. JEREMY BEAN; ATTORNEY GENERAL OF THE STATE OF NEVADA, Respondents - Appellees.	No. 25-4932 D.C. No. 3:22-cv-00021-MMD-CLB MEMORANDUM[*]

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

Submitted October 20, 2026[**]
San Francisco, California

Before: S.R. THOMAS, KOH, and TUNG, Circuit Judges.

David Burns appeals the denial of his petition for habeas corpus. The district court granted him a certificate of appealability as to his claim that his counsel was ineffective for failing to move to strike the death penalty on the

[*] 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).

ground of his purported intellectual disability. We have jurisdiction to review the denial. *See* 28 U.S.C. §§ 1291, 2253. Because the state court reasonably determined that Burns's proposed motion would have no chance of success, we affirm the district court.

1. Federal courts reviewing petitions for habeas corpus from state prisoners alleging claims adjudicated on the merits in state court may grant the petition only if the state court decision was "contrary to, or involved an unreasonable application of, clearly established Federal law," 28 U.S.C. § 2254(d)(1), or if the decision was "based on an unreasonable determination of the facts." *Id*. § 2254(d)(2). Should either be met, we review the underlying claim *de novo*. *Marks v. Davis*, 106 F.4th 941, 950 (9th Cir. 2024).

The district court reviewed Burns's claim *de novo* because the Supreme Court of Nevada stated that the Nevada district court had considered Burns's IQ and adaptive functioning "following an evidentiary hearing," although the evidentiary hearing did not address those issues. This statement by the Supreme Court of Nevada does not establish that its decision was "based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(2); *see Marks*, 106 F.4th at 949 (requiring an unreasonable determination to go to a "material factual issue that is central to a petitioner's claim" (alteration adopted) (citation and internal quotation marks omitted)). The documentary record supported the Supreme Court of

Nevada's intellectual disability determination. So we review the state court's decision under the constraints of the Antiterrorism and Effective Death Penalty Act.

2. To prove ineffective assistance of counsel, a defendant "must show that counsel's representation fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688 (1984). Even if counsel's performance was deficient, a defendant must prove that this deficiency was "prejudicial," or that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694. We may reject the state court's decision only if "no fairminded jurist" could agree with its analysis. *Andrew v. White*, 604 U.S. 86, 92 (2025).

The Supreme Court of Nevada reasonably rejected Burns's ineffective-assistance claim for lack of prejudice. To prove oneself intellectually disabled, a defendant must prove both "significant limitations in intellectual functioning," and "significant limitations in adaptive functioning." *Ybarra v. State*, 247 P.3d 269, 274 (Nev. 2011). Here, Burns's experts assessed Burns as having both normal or average intellectual functioning *and* adaptive limitations. The state trial court considered Burns's IQ of 93 and his academic and behavioral difficulties and concluded that the evidence did not establish intellectual disability. The Supreme Court of Nevada expressly relied on the Nevada district court's determination in concluding that

Burns had not established prejudice from his counsel's failure to move to strike the death penalty based on Burns's intellectual disability. Burns has not shown that the Nevada Supreme Court's rejection of his claim was based on an unreasonable determination of the facts under § 2254(d)(2) and Burns is not entitled to habeas relief.

AFFIRMED.