

NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 24-13844  
Non-Argument Calendar

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ORLANDO HERNANDEZ,

*Petitioner-Appellant,*

*versus*

FLORIDA DEPARTMENT OF CORRECTIONS,

Secretary Florida Department of Corrections,

*Respondent-Appellee.*

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Appeal from the United States District Court  
for the Southern District of Florida  
D.C. Docket No. 1:22-cv-23691-DPG

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Before JORDAN, LUCK, and KIDD, Circuit Judges.

PER CURIAM:

Orlando Hernandez is a Florida prisoner serving a forty-year sentence for attempted premeditated murder, aggravated battery

with a deadly weapon, and aggravated assault. He appeals the district court's denial of his 28 U.S.C. section 2254 habeas petition. The district court issued a certificate of appealability on three related issues concerning ineffective assistance of his trial counsel that Hernandez raised for the first time in his habeas petition. The first issue is whether a prisoner's failure to raise a claim in state court constitutes a per se lack of diligence in developing the claim under 28 U.S.C. section 2254(e)(2). The second is whether Hernandez's generic request for an evidentiary hearing on an issue unrelated to the claim on appeal here was enough to show he was diligent in state court. And the third is whether the existing state court record was enough to show Hernandez was entitled to relief. We answer no to the second and third questions. Because the answers to those two questions are dispositive, we affirm the district court's denial of Hernandez's habeas petition.

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### *State court proceedings*

In 2014, the state charged Hernandez with eight offenses, including attempted premeditated murder, aggravated battery with a deadly weapon, and aggravated assault. Before jury selection, the judge asked if there had been any discussion about resolving the case. The state said it had made a plea offer of 12 years' imprisonment.<sup>1</sup> Hernandez said that he had previously told the state that

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<sup>1</sup> The state court transcript describes Florida's offer as a "guidelines and 10 year min/man offer." We assume that the petition's description that this was an offer of "twelve years in prison, with a ten-year mandatory [minimum]," was

he would plead guilty if his sentence was three or four years' imprisonment, but the state said it would never accept an offer like that. While he was considering whether to accept the state's plea offer, Hernandez's counsel advised him that if he were convicted at trial, he faced a mandatory minimum sentence of twenty years' imprisonment. Hernandez decided to proceed to trial.

At trial, the state presented evidence that three men had gone into a body shop to pick up some speakers. As one of the men was returning to his car, Hernandez's codefendant approached the man holding a gun and told him, "[g]et ready, you're going to die." Hernandez then approached the man and forced him into the car while pointing a gun at his head. Hernandez pulled the trigger three times, but the gun misfired. A struggle broke out and Hernandez hit the man in the mouth with the gun and pulled the trigger for a fourth time. This time, the gun fired, but didn't hit the man and Hernandez began to flee toward another car while continuing to fire. Hernandez and his codefendant entered that car and drove away.

Just after, the two other men the victim had traveled with exited the body shop, returned to the car, and drove off in pursuit of Hernandez and his codefendant. The men followed the fleeing car, called the police, and told the police the fleeing car's license plate number. The police then arrested Hernandez and his codefendant, and the men were able to identify them. In addition to

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accurate. But whether the offer was for 10 or 12 years does not affect our analysis of the issue.

this eyewitness testimony, the state was able to show the jury surveillance footage of the incident. Hernandez’s closing argument did not deny that the attack happened but instead argued that the men had misidentified him as the attacker.

The jury convicted Hernandez of attempted premeditated murder, aggravated battery with a deadly weapon, and aggravated assault. He was sentenced to forty years’ imprisonment, with a “stacked” thirty-three-year mandatory minimum—twenty years for the attempted murder, plus ten years for the aggravated battery, plus three for the aggravated assault, running consecutively.<sup>2</sup>

He appealed, raising *Brady v. Maryland*, 373 U.S. 83 (1963), and other discovery issues, and the state appellate court affirmed. *Hernandez v. State*, 229 So. 3d 1236 (Fla. Dist. Ct. App. 2016). He filed a post-conviction motion in state court under Florida Rule of Criminal Procedure 3.850, again raising the *Brady* issue and seeking an evidentiary hearing “that would tend to establish a prejudicial *Brady* violation.” The motion never argued that Hernandez’s trial

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<sup>2</sup> At the time he was sentenced, Florida required a defendant in Hernandez’s position to be sentenced to consecutive “stacked” mandatory minimums. See *Hernandez v. State*, 278 So. 3d 345, 346 (Fla. Dist. Ct. App. 2019). But before briefing in his direct appeal, the Florida Supreme Court “abrogated any compulsory requirement to impose consecutive minimum mandatory sentences, under these circumstances.” *Id.*; see *Williams v. State*, 186 So. 3d 989, 993 (Fla. 2016). So, while Hernandez was later resentenced to 40 years’ imprisonment with a 20-year mandatory minimum—the exact mandatory minimum his counsel informed him of—the correct mandatory minimum at the time he was considering pleading guilty was actually 33 years’ imprisonment.

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counsel was ineffective for failing to advise him of the correct mandatory minimum sentence. The trial court denied both the request for an evidentiary hearing and the motion, and that decision was affirmed on appeal.

*Federal habeas petition*

Hernandez then brought a habeas petition under 28 U.S.C. section 2254 in the District Court for the Southern District of Florida, raising five issues, only one of which is relevant to this appeal. Hernandez alleged that his trial counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984), because trial counsel failed to apprise him of the correct mandatory minimum sentence. But for his counsel's error, Hernandez argued, he would have accepted the state's favorable plea offer. Hernandez acknowledged that because he was raising this claim for the first time in his federal habeas petition, normally it would be procedurally barred. But, Hernandez argued, the exception in *Martinez v. Ryan*, 566 U.S. 1 (2012), should apply. That exception is available so long as a state effectively requires a trial-level ineffective assistance of counsel claim to be raised for the first time in a collateral proceeding. *Trevino v. Thaler*, 569 U.S. 413, 428 (2013). Under the *Martinez* exception, a claim is not procedurally barred when brought for the first time in a federal habeas petition if post-conviction counsel was constitutionally ineffective by not raising a substantial trial-level ineffective assistance of counsel claim.

Hernandez contended that his post-conviction counsel had also been constitutionally ineffective for failing to raise his trial

counsel's ineffectiveness. According to Hernandez, his post-conviction counsel "knew that [he] was informed" of the wrong mandatory minimum sentence, "knew [he] had the desire to resolve his case," and knew that he "would have accepted the plea" if he had been told the actual mandatory minimum sentence. He argued that, although "[t]he pertinent facts of this case are not fully developed in the record," he was not at fault for this because he had sought an evidentiary hearing in his state post-conviction motion raising the *Brady* issue, and that "[t]he record also does not refute or undermine" his allegations. So, he argued that he was entitled to an evidentiary hearing in federal court.

The district court denied the claim. The district court first found that the *Martinez* exception applied. Hernandez, the district court explained, had adequately alleged that his post-conviction counsel was inadequate for failing to raise an ineffective assistance of counsel claim in his state post-conviction motion. And Hernandez's claim was substantial because advising a defendant about the advantages and disadvantages of a plea agreement is one of counsel's critical obligations. In addition, there was at least some evidence in the record that supported the contention that Hernandez had been misadvised.

Nevertheless, the district court found that the evidence was insufficient to conclude that Hernandez was entitled to relief on the merits. The record contained no testimony from Hernandez's counsel about what he had advised Hernandez with respect to the plea bargain. And while Hernandez's petition alleged that he

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would have accepted the plea offer, Hernandez had not testified to that fact.

The district court next ruled that Hernandez was not entitled to an evidentiary hearing to develop his claim. Even though Hernandez had met the bar to excuse his procedural default under *Martinez*, this did not demonstrate that he was entitled to an evidentiary hearing. To be entitled to an evidentiary hearing, the district court explained, a petitioner who has failed to develop the factual basis for his claim must be able to satisfy 28 U.S.C. section 2254(e)(2). And under section 2254(e)(2), a claim must either rely on a “new rule of constitutional law” that applies retroactively or “a factual predicate that could not have been previously discovered through the exercise of due diligence.” *Id.* § 2254(e)(2)(A)(i)–(ii). No new constitutional law applied, so Hernandez had to have shown he was diligent. Hernandez could not do that, the district court explained, because the Supreme Court in *Shinn v. Ramirez*, 596 U.S. 366 (2022), had held that “a state prisoner is responsible for counsel’s negligent failure to develop the state postconviction record.” *Id.* at 383. Since Hernandez had never requested an evidentiary hearing on his ineffective-assistance of counsel claim in state court, and since his post-conviction counsel’s negligence was charged to him, the district court denied the ineffective-assistance-of-counsel claim on the merits.

### STANDARD OF REVIEW

Our review of a habeas petition is limited to the issues specified in the certificate of appealability. *See Ferguson v. Comm’r, Ala.*

*Dep't of Corr.*, 69 F.4th 1243, 1259 n.12 (11th Cir. 2023). “We review de novo issues of law presented in a certificate of appealability.” *Hamilton v. Sec’y, Fla. Dep’t of Corr.*, 793 F.3d 1261, 1264 (11th Cir. 2015) (citation modified). We review for clear error the district court’s factual findings. *Ward v. Hall*, 592 F.3d 1144, 1155, 1160 (11th Cir. 2010).

“An ineffective assistance of counsel claim is a mixed question of law and fact subject to de novo review.” *Carey v. Dep’t of Corr.*, 57 F.4th 985, 989 (11th Cir. 2023) (citation modified). “We review de novo the determination of a district court that a habeas petitioner is procedurally barred from raising a claim in federal court.” *Id.* (citation modified). We review for abuse of discretion a district court’s denial of an evidentiary hearing. *Chavez v. Sec’y Fla. Dep’t of Corr.*, 647 F.3d 1057, 1060 (11th Cir. 2011).

## DISCUSSION

The district court issued a certificate of appealability on three issues related to Hernandez’s ineffective assistance of trial counsel claim:

1. Whether a prisoner’s (or his attorney’s) failure to raise a claim in state court *per se* constitutes a lack of diligence in developing the factual basis of that claim under § 2254(e)(2)? *Shinn* held that even if a defaulted claim satisfies *Martinez*, § 2254(e)(2) typically bars an evidentiary hearing on the claim because a prisoner is “at fault” for his attorney’s negligent failure to develop its factual basis in state court. 596 U.S. at 384. But *Shinn* left open whether a prisoner might be able



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to demonstrate diligence in developing the factual basis of a claim he failed to raise in state court.

2. If the failure to raise a claim in state court does not *per se* bar a claim of diligence, is [Hernandez]’s allegation that he “requested an evidentiary hearing in the state court” sufficient to show diligence?

3. Assuming [Hernandez] has not shown diligence and cannot obtain an evidentiary hearing, is the existing state-court record sufficient to grant relief on [his] first ground?

Our discussion will proceed in two parts. First, we’ll address whether Hernandez has satisfied the requirements on the *Martinez* exception, and second, we’ll consider the questions that the district court posed in its certificate of appealability.

*Procedural bar*

As an initial matter, we agree with the district court that Hernandez’s ineffective assistance of counsel claim was not procedurally barred under *Martinez*. See 566 U.S. at 17. Section 2254 “requires state prisoners to ‘exhaus[t] the remedies available in the courts of the [s]tate’ before seeking federal habeas relief.” *Shinn*, 596 U.S. at 377 (quoting 28 U.S.C. § 2254(b)(1)(A)). Normally, a prisoner accomplishes this by raising the issue in state court. *Id.* at 378. Under the doctrine of procedural default, however, “federal courts generally decline to hear any federal claim that was not pre-

sented to the state courts ‘consistent with [the State’s] own procedural rules.’” *Id.* (quoting *Edwards v. Carpenter*, 529 U.S. 446, 453 (2000)).

Hernandez never raised his ineffective assistance of counsel claim in state court, so habeas review would normally be barred. But the Supreme Court in *Martinez* recognized an exception where “a 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.” 566 U.S. at 17. This “‘narrow exception’ applies if the [s]tate’s judicial system effectively forecloses direct review of trial-ineffective-assistance claims.” *Shinn*, 596 U.S. at 380 (quoting *Trevino*, 569 U.S. at 428). Florida generally requires that an ineffective-assistance-of-counsel claim be brought on collateral review. *See Sullivan v. Sec’y, Fla. Dep’t of Corr.*, 837 F.3d 1195, 1199 (11th Cir. 2016); *Claudio-Martinez v. State*, 324 So. 3d 45, 47 n.1 (Fla. Dist. Ct. App. 2021).

The district court found, and the state does not dispute on appeal, that Hernandez’s ineffective-assistance-of-counsel claim satisfied *Martinez*’s narrow exception. Under *Martinez*, procedural default can be excused when it is “caused by post-conviction counsel’s unconstitutionally ineffective assistance . . . and the procedurally defaulted claim has at least ‘some merit.’” *Sullivan*, 837 F.3d at 1201 (quoting *Martinez*, 566 U.S. at 14). Like the district court, we agree that Hernandez adequately alleged that his post-conviction

counsel was constitutionally ineffective for not raising his trial-level ineffective assistance of counsel claim.

Whether a claim has “some merit” is evaluated under the same standard that governs certificates of appealability—whether reasonable jurists could debate the merits of the claim. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The *Martinez* exception borrows the substantive standard set forth in *Strickland* to determine when post-conviction counsel has been ineffective. *Martinez*, 566 U.S. at 14. So, in order to determine whether Hernandez’s claim has “some merit,” we need to look to the substance of his claim. “Under the *Strickland* test, for a convicted defendant to show that he received constitutionally ineffective assistance of counsel, he must show that (1) his attorney’s performance was deficient, and (2) the deficient performance prejudiced the defense.” *Pooler v. Sec’y, Fla. Dep’t of Corr.*, 702 F.3d 1252, 1269 (11th Cir. 2012) (citation modified).

The first prong—whether an attorney’s performance was deficient—is judged under an objective standard, namely “whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.* (quoting *Strickland*, 466 U.S. at 690). Under *Strickland*, a “critical obligation of counsel is to advise the client of ‘the advantages and disadvantages of a plea agreement.’” *Padilla v. Kentucky*, 559 U.S. 356, 370 (2010) (quoting *Libretti v. United States*, 516 U.S. 29, 50–51 (1995)). And counsel’s conduct is deficient when he

fails to “communicate [the defendant’s] potential total sentence.” *Carmichael v. United States*, 966 F.3d 1250, 1258 (11th Cir. 2020).

As to *Strickland*’s second prong, “[i]n the plea-negotiation context, the prejudice requirement focuses on whether counsel’s unconstitutionally ineffective performance adversely affected the outcome of the plea process.” *Id.* at 1258–59 (11th Cir. 2020) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). To show counsel’s conduct affected the outcome, a petition must show a reasonable probability that (1) “the defendant would have accepted the plea”; (2) “the prosecution would not have withdrawn it”; (3) “the court would have accepted its terms”; and (4) the sentence in the accepted plea was less severe than the sentence the defendant ultimately received. *Id.* at 1259 (citing *Lafler v. Cooper*, 566 U.S. 156, 164 (2012)); *see also Alcorn v. State*, 121 So. 3d 419, 430 (Fla. 2013).

Here, Hernandez alleged that his trial counsel told him that he faced a mandatory minimum of 20 years’ imprisonment. However, at the time of the plea offer, Florida required that the mandatory minimums Hernandez faced had to be “stacked.” That means that Hernandez actually faced a mandatory minimum of 33 years’ imprisonment at the time of trial. He alleged that if he knew he faced the more substantial penalty, he would have accepted the plea agreement (and that the prosecution would not have withdrawn it and the court would have accepted its terms).

Reasonable jurists could debate whether this claim has merit. *See Miller-El*, 537 U.S. at 327 (2003). So, Hernandez has satisfied both of *Martinez*'s requirements and he overcame the procedural default.

*Questions in the certificate of appealability*

As to the questions in the certificate of appealability, we'll start with the third question: "is the existing state-court record sufficient" to entitle Hernandez to relief? A habeas petitioner must "prove his right to relief by a preponderance of the evidence." *Alvord v. Wainwright*, 731 F.2d 1486, 1488 (11th Cir. 1984). But while Hernandez has alleged he is entitled to relief, he lacks evidentiary support for his claims. Without testimony from Hernandez's trial counsel about what he advised regarding the mandatory minimum sentence, and without testimony or other evidence from Hernandez about whether he'd accept the plea offer, Hernandez cannot prove his claim. It is thus not surprising that on appeal Hernandez concedes that "the existing record is not sufficient to grant relief." The record is missing, Hernandez agrees, "testimony from [him] that he would have accepted the favorable offer" if his counsel had properly advised him of the mandatory minimum he faced.

So, in order to be entitled to relief, Hernandez would first need an evidentiary hearing to develop this missing evidence. Determining whether Hernandez is entitled to an evidentiary hearing is the subject of the certificate of appealability's first two questions. The first question asks whether a petitioner lacks diligence per se

when he fails to raise an issue in state court, and the second question asks whether Hernandez’s request for an evidentiary hearing on a *Brady* issue in state court is enough to satisfy the diligence requirement for his ineffective assistance of counsel claim. Because it is only necessary to answer the second question to resolve this appeal, that’s what we’ll do. Hernandez did not do enough in state court to satisfy the diligence requirement for an evidentiary hearing. *See* 28 U.S.C. § 2254(e)(2).

Hernandez contends that because his procedural default was excused, because the existing state court record is insufficient to evaluate his ineffective assistance of counsel claim, and because he asked for an evidentiary hearing on his *Brady* claim in state court, he should be entitled to an evidentiary hearing to develop his claim. He’s right that a federal habeas court may grant the petitioner an evidentiary hearing if the petition alleged sufficient facts that, if proven, would entitle him to habeas relief. *Jones v. Sec’y, Fla. Dep’t of Corr.*, 834 F.3d 1299, 1319 (11th Cir. 2016).

But “[s]ection 2254(e)(2) provides that, if a prisoner ‘has failed to develop the factual basis of a claim in [s]tate court proceedings,’ a federal court may hold ‘an evidentiary hearing on the claim’ in only two limited scenarios.” *Shinn*, 596 U.S. at 381 (quoting 28 U.S.C. § 2254(e)(2)). “Either the claim must rely on (1) a ‘new’ and ‘previously unavailable’ ‘rule of constitutional law’ made retroactively applicable by [the Supreme] Court, or (2) ‘a factual predicate

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that could not have been previously discovered through the exercise of due diligence.” *Id.* (quoting 28 U.S.C. §§ 2254(e)(2)(A)(i), (ii)).

Section 2254(e)(2) applies when, as here, a petitioner has “failed to develop the factual basis of a claim.” *See* 28 U.S.C. § 2254(e)(2). In order for us to say a petitioner failed to develop the factual basis for a claim, the petitioner “must be ‘at fault’ for the undeveloped record in state court.” *Shinn*, 596 U.S. at 382 (quoting *Williams v. Taylor*, 529 U.S. 420, 432 (2000)). “A prisoner is ‘at fault’ if he ‘bears responsibility for the failure’ to develop the record.” *Id.* at 382 (quoting *Williams*, 529 U.S. at 432). And because there is no right to post-conviction counsel, a prisoner is at fault “for all attorney errors during those proceedings.” *See id.* at 383 (citing *Williams*, 529 U.S. at 432).

Thus, “under [section] 2254(e)(2),” Hernandez “is ‘at fault’ even when [his] state postconviction counsel [wa]s negligent.” *Id.* at 384. That means Hernandez’s “claim must rely on (1) a ‘new’ and ‘previously unavailable’ ‘rule of constitutional law’ made retroactively applicable by [the Supreme] Court, or (2) ‘a factual predicate that could not have been previously discovered through the exercise of due diligence.’” *Id.* at 381 (quoting 28 U.S.C. § 2254(e)(2)(i), (ii)). Here, there is no new rule of constitutional law that applies, so Hernandez must show that the basis of his claim could not have been discovered through diligence.

He cannot. Even though Hernandez's post-conviction counsel's alleged ineffectiveness could be used to excuse procedural default, it cannot be used to excuse lack of diligence as it relates to the requirements to be entitled to an evidentiary hearing. A prisoner's diligence "depends upon whether the prisoner made a reasonable attempt, in light of the information available at the time, to investigate and pursue claims in state court." *Williams*, 529 U.S. at 435. And, "[d]iligence will require in the usual case that the prisoner, at a minimum, seek an evidentiary hearing in state court in the manner prescribed by state law." *Id.* at 437.

Hernandez never made an attempt to investigate and pursue a claim that his trial counsel was ineffective for failing to advise him about the correct mandatory minimum sentence. He concedes in his opening brief that he "raised this claim for the first time in his 2254 petition." But all of the evidence necessary for Hernandez to make his claim has been available from the moment his attorney allegedly misadvised him of the sentence he faced. The advice he was given was wrong at the moment it was given. *See Williams*, 186 So. 3d at 990.

Unable to point to any effort to develop the record on this issue in state court, Hernandez counters that his request for an evidentiary hearing on his state post-conviction *Brady* claim demonstrates his diligence. But this argument is inconsistent with the text of section 2254(e)(2). Section 2254(e)(2) requires that the petitioner show that "*the claim* relies on a factual predicate that could not have been previously discovered through the exercise of due diligence."



28 U.S.C. § 2254(e)(2)(A) (emphasis added). An evidentiary hearing on an unrelated *Brady* claim would not produce evidence related to Hernandez’s ineffective assistance of counsel claim. So, when the trial court denied Hernandez’s motion, it was not the court that stood between Hernandez and developing his claim—it was his own failure to investigate and pursue the claim.

*Pope v. Sec’y for Dep’t of Corr.*, 680 F.3d 1271 (11th Cir. 2012), shows how the diligence requirement in section 2254(e)(2) is claim-specific. In *Pope*, the petitioner requested and received an evidentiary hearing as to some of his claims of error in his state post-conviction proceeding. *Id.* at 1279. On appeal, we examined the petitioner’s claims one-by-one to determine whether he “requested an evidentiary hearing *on these claims* at every appropriate stage of the state court collateral proceeding.” *Id.* at 1289 (emphasis added). In addition, we separately verified that the petitioner’s allegations for two different types of penalty-phase ineffective assistance of counsel claims were sufficient.

*Rodney v. Garrett*, 116 F.4th 947 (9th Cir. 2024), is not to the contrary. There, after the petitioner’s direct appeal was denied by the state supreme court, he filed a post-conviction motion in the state trial court, requesting the appointment of post-conviction counsel because “counsel was necessary to proceed with discovery and investigation.” *Id.* at 953, 956. The trial court denied him post-conviction relief without appointing counsel or holding an evidentiary hearing. *Id.* at 953. Rodney, a prisoner proceeding pro se, filed

a federal habeas petition claiming that his trial counsel was ineffective in failing to challenge the state’s medical evidence and failing to obtain the victim’s medical records, but the district court denied it, finding that it could “consider only evidence in the state-court record in evaluating the substantiality of Rodney’s” ineffective assistance. *Id.* at 957.

This was error, the Ninth Circuit explained, because “Rodney requested the appointment of post-conviction counsel during his initial-review collateral proceeding and specifically argued that counsel was necessary to proceed with discovery and investigation.” *Id.* at 956. Because Rodney’s ineffective assistance claim “hinge[d]” on his trial counsel’s failure to obtain the medical records, his request for “appointment of counsel and argu[ment] that counsel was necessary for purposes of investigation and discovery” accomplished “all that he could to develop the evidentiary basis” of his ineffective assistance claim. *Id.* at 956–57. After all, “[a]n indigent prisoner who is denied counsel and discovery has no practical likelihood of obtaining a victim’s medical records or procuring expert testimony.” *Id.* at 957. Rodney, therefore, “did not fail to develop the state-court record within the meaning of [section] 2254(e)(2).” *Id.*

Here, Hernandez was represented by private counsel, and the ineffective assistance of counsel claim he raises in his habeas petition in no way “hinge[s]” on the *Brady* claim for which he sought an evidentiary hearing in his state post-conviction proceed-

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ings. *Id.* And unlike *Rodney*, Hernandez did not need medical records or expert testimony—all he had to do was tell the state court what mandatory minimum sentence his lawyer told him he faced. Unlike the prisoner in *Rodney*, we cannot say that Hernandez had done “all that he could to develop the evidentiary basis” of his claims. *Id.* That’s why the district court did not clearly err in finding that Hernandez was not entitled to an evidentiary hearing on this matter because of his lack of diligence.

### CONCLUSION

Answering the only necessary questions on appeal, we agree with the district court that the state-court record was insufficient to afford Hernandez relief, and his request for an evidentiary hearing on his *Brady* claim was not enough to satisfy section 2254(e)(2)’s diligence requirement for his ineffective-assistance claim. So, we affirm the district court’s denial of Hernandez’s habeas petition.

**AFFIRMED.**