United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 8, 2018
Decided March 20, 2018

Before

DIANE P. WOOD, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

No. 17-2504

JOHN W. TAYLOR,
Petitioner-Appellant,

v.

RICHARD BROWN,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

No. 2:15-cv-00397-WTL-DKL

William T. Lawrence,
Judge.

ORDER

John Taylor has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. Taylor's motions to proceed in forma pauperis and for appointment of counsel are DENIED.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 10, 2018

Before

DIANE P. WOOD, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

No. 17-2504

JOHN W. TAYLOR,
Petitioner-Appellant,

v.

RICHARD BROWN, Superintendent,
Wabash Valley Correctional Facility,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

No. 2:15-cv-00397-WTL-DKL

William T. Lawrence,
Judge.

ORDER

On consideration of the petition for rehearing filed by petitioner-appellant on April 18, 2018, all members of the original panel have voted to deny the petition for panel rehearing.

Accordingly, the petition for rehearing is hereby DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JOHN TAYLOR,	)	
Petitioner,	)	
	)	
vs.	)	
	)	No. 2:15-cv-397-WTL-DKL
SUPERINTENDENT, Wabash Valley Correctional Facility,	)	
	)	
Respondent.	)	

Entry Discussing Petition for Writ of Habeas Corpus and Denying Certificate of Appealability

For the reasons explained in this Entry, the petition of John Taylor for a writ of habeas corpus must be **denied** and the action dismissed with prejudice. In addition, the Court finds that a certificate of appealability should not issue.

The Petition for Writ of Habeas Corpus

I. Applicable Law

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub.L. No. 104–132, 110 Stat. 1214, became effective on April 24, 1996, and governs the habeas petition in this case because Taylor filed his petition after the AEDPA's effective date. *See Lindh v. Murphy,* 521 U.S. 320, 336 (1997). Under the AEDPA, a federal court may not grant habeas relief unless the state court's adjudication of a claim resulted in a decision that (1) was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court

of the United States" or (2) was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1)-(2).

Based on the above standard, federal habeas relief is barred for any claim adjudicated on the merits in state court "unless one of the exceptions listed in 28 U.S.C. § 2254(d) obtains." *Premo v. Moore,* 131 S. Ct. 733, 739 (2011). Under the "contrary to" clause, a federal court may issue a writ of habeas corpus if the state court applied a rule that "contradicts the governing law" set forth by the Supreme Court or if the state court reached a different outcome based on facts "materially indistinguishable" from those previously before the Supreme Court. *Williams v. Taylor,* 529 U.S. 362, 405-06 (2000); *see also Calloway v. Montgomery,* 512 F.3d 940, 943 (7th Cir. 2008). Under the "unreasonable application" clause, a petitioner must show that the state court's decision unreasonably extended a rule to a context where it should not have applied or unreasonably refused to extend a rule to a context where it should have applied. *Virsnieks v. Smith,* 521 F.3d 707, 713 (7th Cir. 2008) (citing *Jackson v. Miller,* 260 F.3d 769, 774 (7th Cir. 2001)); *see also Wright v. Van Patten,* 128 S. Ct. 743, 746–47 (2008) (emphasizing that a state court's application of clearly established law is acceptable, even if it is likely incorrect, so long as it is reasonable).

A petitioner's challenge to a state court decision based on a factual determination under § 2254(d)(2) will not succeed unless the state court committed an "unreasonable error," and § 2254(e)(1) provides the mechanism for proving unreasonableness. *See Ward v. Sternes,* 334 F.3d 696, 703–04 (7th Cir. 2003). "A state court decision that rests upon a determination of fact that lies against the clear weight of the evidence is, by definition, a decision 'so inadequately supported by the record' as to be arbitrary and therefore objectively unreasonable." *Id.,* at 704 (quoting *Hall v. Washington,* 106 F.3d 742, 749 (7th Cir. 1997)).

The Seventh Circuit has stressed that habeas relief is "an extraordinary remedy because it asks the district court essentially to reopen the criminal process to a person who already has had an opportunity for full process." *Almonacid v. United States*, 476 F.3d 518, 521 (7th Cir. 2007). Habeas relief under § 2254 is a "'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Harrington v. Richter*, 562 U.S. 86, 102–103 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 332 n.2 (1979) (Stevens, J., concurring in judgment)). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington,* 562 U.S. at 101 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). "If this standard is difficult to meet, that is because it was meant to be." *Id.* "[T]he burden is on the petitioner to raise his federal claim in the state court at a time when state procedural law permits its consideration on the merits. . . ." *Bell v. Cone,* 543 U.S. 447, 451 n.3 (2005).

II. Background

Taylor is serving a 75-year sentence based on his 2012 Elkhart County, Indiana convictions for three counts of attempted murder. The Indiana Court of Appeals provided the following recitation of facts in his direct appeal:

> On October 26, 2011, Chamar Jackson (Jackson) and Avery Copeland (Copeland) walked to a fast food restaurant in Elkhart County, Indiana to visit their friend, Chynna Sipili (Sipili), who was employed there. When they arrived at the restaurant, Taylor was standing near the soda dispensers. Taylor and Sipili had just split up the previous day after Sipili had sent him a text message informing him that she needed space. When Jackson approached the counter to speak with Sipili, he was stared down by Taylor who told him to stop talking to his girlfriend. Jackson continued to talk to Sipili, and Taylor stormed angrily out of the restaurant. Thereafter, Jackson and Copeland returned to Copeland's house. Michael Raeder (Raeder) noticed them standing outside the residence and pulled up in his vehicle. Jackson and Copeland got in Raeder's car, intending to smoke marijuana together.

> Approximately ten to thirty minutes after Jackson and Copeland had left the fast food restaurant, Taylor returned and angrily confronted Sipili. He told her, "I swear to God after work I'll kill you and them niggas." (Transcript p. 340). Taylor again stormed out of the restaurant.
>
> Meanwhile, Jackson, Copeland, and Raeder were sitting in Raeder's vehicle. Raeder was in the driver's seat, Jackson in the front passenger seat, and Copeland was in the rear seat on the driver's side. While they were talking, Taylor drove up in his car. He pulled up next to Raeder's car and jumped out, carrying a large black rifle. He rapidly approached Raeder's vehicle. He walked to the driver's side of the car and stopped approximately ten feet away. Without saying anything, Taylor first started firing into the passenger compartment where Copeland was sitting. He then fired into the driver's seat. The vehicle became "riddled with bullets" and both of the driver's side windows were shot out. (Tr. p. 490). Jackson jumped out of the car and rolled underneath, Copeland laid flat on the backseat, and Raeder curled up into a ball with his hands up, then opened the door of the car and tried to crawl to the trunk. As Taylor walked around the car firing the rifle, he lowered his aim from the window level down into the body of the car. Following the shooting, police officers and ambulances arrived at Copeland's house. Jackson was not injured, Copeland was shot in the back, and Raeder received a shrapnel wound to the head and a bullet penetrated his right arm above the elbow.
>
> After the shooting, Taylor went to his sister's apartment where he spoke with Sarah Lemon (Lemon). He told Lemon that he thought he had killed Jackson. Police officers also found a note, written by Taylor, which read, "I'm Killin' niggas put em' in the dirt . . . The choppa is under the couch . . . Domo." (State's Exh. 21). The police searched Taylor's sister's home and found a black rifle under her couch in the living room. Ten shell casings and bullet fragments recovered from the scene were later determined to have been fired from the rifle recovered by the police.

Taylor v. State, 985 N.E.2d 373, *1 (Ind.Ct.App. 2013). Taylor now asserts that trial counsel was ineffective for failing to tender instructions to the jury on aggravated battery and attempted aggravated battery. This was the claim presented to and rejected by the Indiana state courts in Taylor's action for post-conviction relief. *Taylor v. State*, 38 N.E.3d 225 (Ind.Ct.App.), *transfer denied,* 38 N.E.3d 214 (Ind. 2015).

III. Discussion

The state courts adjudged what has become Taylor's habeas claim on its merits. *Strickland v. Washington,* 466 U.S. 668, 684 (1984), provides the clearly established Federal law, as determined by the Supreme Court of the United States that governs this first claim.

> *Strickland* recognized that the Sixth Amendment's guarantee that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence" entails that defendants are entitled to be represented by an attorney who meets at least a minimal standard of competence. *Id.,* at 685–687. "Under *Strickland,* we first determine whether counsel's representation 'fell below an objective standard of reasonableness.' Then we ask whether 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Padilla v. Kentucky,* 559 U.S. 356, 366 (2010) (quoting *Strickland, supra,* at 688, 694).

Hinton v. Alabama, 134 S. Ct. 1081, 1087-88 (2014)(parallel citations omitted). The Supreme Court framed the determinative question as "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland,* 466 U.S. at 686. "The likelihood of a different result must be substantial, not just conceivable," *Harrington v. Richter*, 562 U.S. 86, 112 (2011), and a movant must prove that counsel's errors "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Cullen v. Pinholster,* 563 U.S. 170, 189 (2011) (quoting Strickland, 466 U.S. at 686).

In the context of the claim that Taylor presents, however, AEDPA raises the bar. "The standards created by *Strickland* and § 2254(d) are both 'highly deferential,' and when the two apply in tandem, review is 'doubly' so." *Harrington v. Richter*, 131 S. Ct. 770, 788 (2011) (internal and end citations omitted). When the AEDPA standard is applied to a *Strickland* claim, the following calculus emerges:

> The question is not whether a federal court believes the state court's determination under the *Strickland* standard was incorrect but whether that determination was unreasonable--a substantially higher threshold. And, because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard.

Knowles v. Mirzayance, 556 U.S. 111, 123 (2009)(internal citations and quotations omitted). The emphasis on deferential review could not have been clearer:

> Federal habeas review thus exists as "a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal." This is especially true for claims of ineffective assistance of counsel, where AEDPA review must be "doubly deferential" in order to afford "both the state court and the defense attorney the benefit of the doubt.

Woods v. Donald, 135 S. Ct. 1372, 1376 (2015)(citations and some quotations omitted). A state court unreasonably applies clearly established federal law only if "no fairminded jurist could agree with the state court's" decision. *Davis v. Ayala,* 135 S. Ct. 2187, 2203 (2015). This standard is both mandatory and difficult to meet. *White v. Woodall,* 134 S. Ct. 1697, 1702 (2014).

The Indiana Court of Appeals recognized *Strickland* as establishing the controlling federal standard and correctly recited the elements of a claim of ineffective assistance of counsel. *Taylor v. State*, 38 N.E.3d 225, *5 (Ind.Ct.App.), *transfer denied,* 38 N.E.3d 214 (Ind. 2015). The Court of Appeals reviewed the evidence at the post-conviction relief, particularly the testimony of Taylor's trial attorney, Clifford Williams. "At the post-conviction hearing, while Taylor's trial counsel testified that he did not consider tendering instructions on aggravated battery or attempted aggravated battery, he testified that his strategy was to demonstrate that Taylor "basically committed an act that was reckless and not an act of attempted murder" and that he was trying to negate specific intent." *Id.*at *5. The Court of Appeals agreed with the trial court that Williams employed a reasonable strategy to show that Taylor acted recklessly and not knowingly or intentionally, or even with a specific intent to kill. *Id.* at *6. It also concluded, referencing Indiana

law on whether an offense could not factually be considered a lesser-included offense, *see Wright v. State,* 658 N.E.2d 563 (Ind. 1995), that Taylor was not prejudiced in this case.

> The record reveals that Sipili testified that Taylor said: "I swear to God after—after work or something I'll kill you and them niggas or something like that." Trial Transcript at 340. Taylor later pulled up to a vehicle containing Raeder, Jackson, and Copeland, exited his car, and started shooting a SKS or large rifle seconds later. During direct examination, Jackson testified that Taylor was "[n]ot even like 10 feet" away when he started shooting. The vehicle became "riddled with bullets." Based upon the record, we conclude that there was no serious evidentiary dispute regarding whether Taylor intended to kill the victims. The evidence was overwhelming and evinced an intent to kill. We cannot say that Taylor demonstrated prejudice from the alleged error.

Taylor v. State, 38 N.E.3d 225, *6 (Ind.Ct.App.), *transfer denied,* 38 N.E.3d 214 (Ind. 2015).

The decision of the Indiana Court of Appeals is a reasonable application of *Strickland* because that Court: (1) considered the circumstances of Taylor's defense, finding that strategy reasonable; and (2) concluded from the strength of the evidence that Taylor had not been prejudiced because there was no serious evidentiary dispute regarding whether Taylor intended to kill the victims. Thus, this decision complies with the federal standards established by the United States Supreme Court in *Strickland.* And because it is a reasonable application of the controlling federal standard, "[u]nder AEDPA . . . it cannot be disturbed." *Hardy v. Cross,* 132 S. Ct. 490, 495 (2011).

IV. Conclusion

This Court has carefully reviewed the state record in light of Taylor's claim and has given such consideration to that claim as the limited scope of its review in a habeas corpus proceeding permits. The lone claim which was properly preserved in the Indiana state courts does not warrant relief in light of the deferential standard required by the AEDPA. *Stern v. Meisner*, 812 F.3d 606,

610 (7th Cir. 2016) ("In other words, [the habeas petitioner] must show a complete absence of reasonableness in the [state] appellate court's decision.") (citing *Harrington,* 562 U.S. at 98).

Having applied the appropriate standard of review, and having considered the pleadings and the expanded record, Taylor's petition for writ of habeas corpus must be **denied.**

Judgment consistent with this Entry shall now issue.

V. Certificate of Appealability

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the *Rules Governing § 2254 Proceedings*, and 28 U.S.C. § 2253(c), the Court finds that Taylor has failed to show that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court therefore **declines** to issue a certificate of appealability.

IT IS SO ORDERED.

Date: 7/11/2017

William T Lawrence

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Distribution:

JOHN W. TAYLOR
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JOHN TAYLOR, Petitioner,	)	
vs.	)	
	)	No. 2:15-cv-397-WTL-DKL
SUPERINTENDENT, Wabash Valley Correctional Facility,	)	
Respondent.	)	

FINAL JUDGMENT PURSUANT TO FED. R. CIV. PRO. 58

The Court having this day directed the entry of final judgment, the Court now enters FINAL JUDGMENT in favor of the respondent and against the petitioner, John Taylor.

Taylor's petition for writ of habeas corpus is denied and the action is dismissed with prejudice.

Date: 7/11/2017

William T Lawrence

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Laura Briggs, Clerk of Court

By: Kelli E. Olive
Deputy Clerk

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