APPENDIX A

FILED
United States Court of Appea
Tenth Circuit

May 7, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CELESTINO QUINTANA,

Petitioner - Appellant,

v.

MATTHEW HANSEN; THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents - Appellees.

No. 17-1424
(D.C. No. 1:17-CV-01424-LTB)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **PHILLIPS**, **McKAY**, and **O'BRIEN**, Circuit Judges.

Celestino Quintana, a state prisoner, seeks a certificate of appealability (COA) under 28 U.S.C. 2253(c)(1) to challenge the denial of his 28 U.S.C. § 2254 habeas petition and moves to proceed *in forma pauperis* (IFP). We deny the request for a COA and deny the IFP motion.

BACKGROUND

On January 1, 2010, Quintana attended a house party of an acquaintance, and in the early morning hours, he slit another person's throat. Party guests summoned the police, and upon their arrival told them that Quintana had slit the victim's throat.

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* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

The guests then directed police to Quintana's trailer, located in the home's backyard. Police went to the trailer, knocked, and announced their presence. Police opened the trailer's unlocked door and seized Quintana, who was standing in the doorway. Two officers conducted a brief protective sweep of the trailer, during which they recovered two knives in plain view. Later, the police obtained a search warrant for the trailer. DNA testing revealed the victim's DNA on one of the knife blades.

Colorado then charged Quintana with first degree assault with a deadly weapon in violation of Colo. Rev. Stat. Ann. § 18-3-202(1)(a) and five habitual-criminal counts. Quintana moved to suppress evidence of the knives and DNA associated with them, but the trial court denied his motion. A jury found him guilty of first-degree assault with a deadly weapon. The trial court judge sentenced him to 64 years imprisonment. Quintana appealed his conviction, but the Colorado Court of Appeals affirmed. On December 23, 2013, Quintana then petitioned for a writ of certiorari, which the Colorado Supreme Court denied.

On May 2, 2014, Quintana filed a "Motion to Appoint Conflict Free Counsel Pursuant to Rule 35(c)," and within that motion, asked for a "continuance granting [him] time to procure and submit [a] previously neglected post conviction 35{c} [sic] motion." State R. at 338. On May 7, 2014, the state district court denied this motion, concluding that Quintana had "fail[ed] to state any grounds for post-conviction relief." *Id.* at 342. The court also stated Quintana could "re-file his motion in accordance with Rule 35(c) stating specific grounds for relief." *Id.* In his present petition for a certificate of appealability, Quintana describes this series of filings as

his first Rule 35(c) motion and alleges that he raised "jurisdictional and due process" arguments in that motion, including ineffective assistance of counsel.[1] Petitioner's Application for COA at 4.

On October 27, 2014, Quintana filed his second post-conviction motion under Rule 35(c) of the Colorado Rules of Criminal Procedure. In that motion, he alleged that his trial counsel provided ineffective assistance by "fail[ing] to argue and demand that the courts original order of a mental [] evaluation be performed by means of a minimum thirty (30) day stay at the Colorado State Mental Hospital and by un-biased and outside mental health professionals." State R. at 349. He also alleged that his trial counsel had a conflict of interest, that his mental-health evaluations were deficient, and that the trial court judge violated the Colorado Code of Judicial Conduct. The district court denied the motion. Quintana then appealed to the Colorado Court of Appeals, but while the appeal was pending, he sought a limited remand to allow the district court to consider a fourth claim, that the prosecution had violated an agreement not to pursue habitual-criminal charges. The Colorado Court of Appeals denied his motion for a limited remand, and on October 15, 2015, Quintana moved to dismiss his own appeal, which the Colorado Court of Appeals granted.

[1] The federal district court, in denying Quintana's habeas petition and request for a certificate of appealability, makes no mention of this alleged first Rule 35(c) motion, and instead terms the two Rule 35(c) motions that follow as his first and second petitions, respectively. Based on the record provided to us, it is unclear whether Quintana filed a Rule 35(c) motion separate from his request for counsel on May 2, 2014. For the sake of clarity, we will adopt Quintana's description of this filing as his first Rule 35(c) motion, and we term the two Rule 35(c) motions that follow as his second and third motions.

On October 30, 2015, Quintana filed his third Rule 35(c) post-conviction motion. He argued that the district court lacked jurisdiction to try him as a habitual criminal because in exchange for waiving his preliminary hearing, the prosecutor had promised not to file any habitual-criminal counts. The trial court dismissed the motion as successive on grounds that Quintana could have brought the same claim in his original Rule 35(c) motion, and also on grounds that the claim lacked merit. The Colorado Court of Appeals then affirmed the trial court's order because the petition was a successive motion barred by Rule 35(c)(3)(VII) of the Colorado Rules of Criminal Procedure.

On June 12, 2017, Quintana filed the instant habeas petition, alleging three claims: (1) that the prosecution violated his due-process rights by failing to honor an agreement not to file habitual-criminal charges if he waived his right to a preliminary hearing; (2) that the police violated his Fourth Amendment rights by their protective sweep, requiring suppression of all evidence obtained from that search; and (3) that he received ineffective assistance of counsel when his trial counsel didn't ensure that mental-health professionals evaluated his competency over a 30-day period.

On September 12, 2017, the District Court of Colorado dismissed claims one and three as procedurally barred under Rule 35(c)(3)(VII) of the Colorado Rules of Criminal Procedure, and on November 7, 2017, the district court denied Quintana's § 2254 habeas petition and declined to issue a certificate of appealability under 28 U.S.C. § 2253(c) on his remaining Fourth Amendment claim, relying on *Stone v. Powell*, 428 U.S. 465, 494 (1976), to foreclose that claim. In this regard, the court

concluded that Colorado had given Quintana a full and fair opportunity to litigate that claim. On November 20, 2017, Quintana appealed.

DISCUSSION

A. Certificate of Appealability

Before he may appeal, Quintana must obtain a COA. 28 U.S.C. § 2253(c)(1). To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "To make such a showing, an applicant must demonstrate 'that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that issues presented were adequate to deserve encouragement to proceed further.'" *Allen v. Zavaras*, 568 F.3d 1197, 1199 (10th Cir. 2009) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Here, the issues are (1) whether Rule 35(c)(3)(VII) procedurally bars Quintana's due process and ineffective assistance claims (claims one and three in his habeas petition), and (2) whether *Stone v. Powell*, 428 U.S. 465, 494 (1976), bars Quintana's Fourth Amendment claim (claim two in his habeas petition).

1. Rule 35(c)(3)(VII)

We won't "review issues that have been defaulted in state court on an independent and adequate state procedural ground, unless the default is excused through a showing of cause and actual prejudice or a fundamental miscarriage of justice." *Jackson v. Shanks*, 143 F.3d 1313, 1317 (10th Cir. 1998). "A state procedural ground is independent if it relies on state law, rather than federal law, as the basis for the decision." *English v. Cody*, 146 F.3d 1257, 1259 (10th Cir. 1998).

And the ground is adequate if it has been "applied evenhandedly in the vast majority of cases." *Id.*

Here, the district court dismissed claims one and three of Quintana's habeas petition under Rule 35(c)(3)(VII) of the Colorado Rules of Criminal Procedure. Rule 35(c)(3)(VII) of the Colorado Rules of Criminal Procedure states that "[t]he court shall deny any claim that could have been presented in an appeal previously brought or post-conviction proceeding previously brought." Colo. R. Crim. P. 35(c)(3)(VII). This rule is both independent and adequate because it comes from Colorado law and has been applied evenhandedly by the Colorado courts. *See LeBere v. Abbott*, 732 F.3d 1224, 1233 n.13 (10th Cir. 2013) (collecting several unpublished cases determining that Rule 35(c)(3)(VII) is an independent and adequate state ground precluding federal habeas review).

Quintana first claims that the prosecution violated his due-process rights by filing habitual-criminal charges after agreeing not to do so if Quintana waived his right to a preliminary hearing. We agree with the district court that Rule 35(c)(3)(VII) bars this claim. Quintana could have presented this argument in his October 27, 2014 Rule 35(c) post-conviction motion. He didn't. *See* State R. at 349–55. Both the trial court and the Colorado Court of Appeals rejected this claim on this basis.

Under his third claim, Quintana argues that his trial counsel provided ineffective assistance by failing to object to his second mental-health evaluation, which, he says, amounted to two 40-minute evaluations rather than a full 30-day

evaluation. In his October 27, 2014 motion made under Rule 35(c), Quintana *did* include this claim, *see* State R. at 349, but he later voluntarily dismissed that petition before the Colorado Court of Appeals could decide it. He failed to exhaust his state remedies on this claim as required. *Dever v. Kansas State Penitentiary*, 36 F.3d 1531, 1534 (10th Cir. 1994) ("The exhaustion requirement is satisfied if the federal issue has been properly presented to the highest state court[.]"). Further, if Quintana now attempted to bring this claim under a new Rule 35(c) motion, the Colorado courts would procedurally reject his claim under Rule 35(c)(3)(VII). *Anderson v. Sirmons*, 476 F.3d 1131, 1139 n.7 (10th Cir. 2007) ("'Anticipatory procedural bar' occurs when the federal courts apply [a] procedural bar to an unexhausted claim that would be procedurally barred under state law if the petitioner returned to state court to exhaust it.") (quoting *Moore v. Schoeman*, 288 F.3d 1231, 1233 n. 3 (10th Cir. 2002)). So the district court correctly concluded that Quintana has procedurally defaulted his third claim, too.

Even so, Quintana argues he can show cause for and prejudice from his failure to bring his first claim in his first Rule 35(c) proceeding and for voluntarily dismissing his third claim in that proceeding. To show cause, he must demonstrate that an "objective factor external to the defense" prevented him from complying with the state procedural rule. *Lepiscopo v. Tansy*, 38 F.3d 1128, 1130 (10th Cir. 1994) (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)). Quintana makes several arguments to show cause and prejudice: that he is mentally incompetent, that he is

pro se, that he has a 10th grade education, and that Colorado failed to provide him statutorily mandated post-conviction counsel.

Quintana has not shown that his alleged mental incompetence constitutes cause. Quintana alleges that he suffered a brain injury before his trial that affects his ability to comprehend the legal concepts at issue in his post-conviction challenges. He also alleges that while awaiting trial, a mental-health professional medicated him with Geodon, a drug to treat schizophrenia.

Before his trial, a mental-health professional twice examined Quintana and found him competent to stand trial. And Quintana hasn't provided the court with any medical records or evidence demonstrating his mental incompetence when he voluntarily dismissed his October 27, 2014 motion under Rule 35(c). So he hasn't shown cause. *See Bishop v. Colorado*, 12 F. App'x 807, 809 (10th Cir. 2001).

Additionally, Quintana's "pro se status and his corresponding lack of awareness and training on legal issues do not constitute adequate cause" to overcome a procedural bar. *Rodriguez v. Maynard*, 948 F.2d 684, 688 (10th Cir. 1991). That the Colorado courts didn't appoint him post-conviction counsel isn't cause either, because Quintana has "no constitutional right to an attorney in state post-conviction proceedings." *Coleman v. Thompson*, 501 U.S. 722, 752 (1991). And because Quintana "has failed to supplement his habeas claim with a colorable showing of factual innocence, he cannot demonstrate that our failure to review his ineffective assistance of counsel claims will result in a fundamental miscarriage of justice."

Smallwood v. Gibson, 191 F.3d 1257, 1269 (10th Cir. 1999). The district court properly denied Quintana a COA on claims one and three of his habeas petition.

2. *Stone v. Powell*

"[W]here the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Stone v. Powell*, 428 U.S. 465, 482 (1976). Here, at trial, Quintana moved to suppress evidence of the knives seized from his trailer during the police officers' protective sweep of his home. After a suppression hearing, the trial court denied this motion. On direct appeal, the Colorado Court of Appeals held that the police had lawfully conducted a protective sweep when they recovered the knives. Now, in his habeas petition, he claims that the trial court and Colorado Court of Appeals based their review of his Fourth Amendment claim on "unreasonable fact-findings and an unreasonable application of the relevant law." Petitioner's Application for COA at 24.

What matters is that Quintana had the full and fair opportunity to litigate his claim. We conclude that he had this opportunity, from the suppression hearing through his direct appeal to the Colorado Court of Appeals. Quintana's argument amounts to a claim that the trial court and Colorado Court of Appeals came to the wrong conclusion, which isn't a relevant argument under *Stone*. *Matthews v. Workman*, 577 F.3d 1175, 1194 (10th Cir. 2009) ("Mr. Matthews argues that Oklahoma misapplied Fourth Amendment doctrine in reaching these conclusions, but

that is not the question before us. The question is whether he had a full and fair opportunity to present his Fourth Amendment claims in state court; he undoubtedly did."). The district court properly denied Quintana a COA on claim two of his habeas petition.

B. IFP Motion

Having reviewed Quintana's IFP motion on appeal, we conclude that he hasn't demonstrated "the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 812–13 (10th Cir. 1997) (quoting *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991)). Thus, we deny his IFP motion.

CONCLUSION

We deny Quintana a COA and deny his IFP motion.

Entered for the Court

Gregory A. Phillips
Circuit Judge

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-01424-LTB

CELESTINO QUINTANA,

Applicant,

v.

MATTHEW HANSEN, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER DENYING APPLICATION FOR WRIT OF HABEAS CORPUS

This matter is before the Court on the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) (the "Application") filed *pro se* on June 12, 2017, by Applicant, Celestino Quintana. Mr. Quintana is challenging the validity of his conviction in Denver District Court case number 10CR22. Respondents have filed an Answer (ECF No. 23) ("the Answer") and Mr. Quintana has filed a Response (ECF No. 25) ("the Traverse").

The Court must construe the Application and other papers filed by Mr. Quintana liberally because he is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (per curiam); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. After reviewing the record, including the Application, the Answer, the Traverse, and the state court record, the Court FINDS and CONCLUDES that the Application should be denied and the case dismissed with prejudice.

I. BACKGROUND

The following background information is taken from the opinion of the Colorado Court of Appeals on direct appeal.

> Evidence was presented at trial that defendant and the victim were attending a party at the home of an acquaintance. In the early morning of January 1, 2010, a person slit the victim's throat, seriously injuring, but not killing, the victim.
>
> When the police arrived, they were informed that defendant was the assailant, was living in a trailer in the backyard of the acquaintance's home, and would be either in the trailer or nearby. After securing the house and ensuring that the victim was receiving medical attention, five police officers approached the approximately eight-foot by ten-foot trailer and knocked and announced their presence. The police opened the unlocked door and immediately seized defendant, who was standing in the doorway. Two officers then conducted a brief search of the trailer. While in the trailer, the police saw two knives in plain view. Using information gathered during defendant's arrest, including the existence of the two knives, the police obtained a search warrant and conducted a full search of the trailer. The police collected the knives and later determined that one of the knives had the victim's DNA on it.
>
> The trial court denied defendant's motion to suppress the knives, and the knives were presented as evidence at trial. Defendant was convicted of first degree assault with a deadly weapon, a class 3 felony, and five habitual criminal counts.

(ECF No. 12-4 at 2-3) (*People v. Quintana*, No. 11CA1693 (Colo. App. June 20, 2013) (unpublished)). The judgment of conviction was affirmed on direct appeal. (*See* id.)

Mr. Quintana asserts three claims in the Application. On September 12, 2017, the Court dismissed claims one and three as procedurally barred. (*See* ECF No. 19.) Therefore, claim two in the Application is the only remaining claim. Mr. Quintana contends in claim two that his Fourth Amendment rights were violated and the knives seized during the search of the trailer should have been suppressed because the police

did not have a warrant when they initially entered the trailer.

II. DISCUSSION

Respondents argue that Mr. Quintana's Fourth Amendment claim must be dismissed pursuant to *Stone v. Powell*, 428 U.S. 465 (1976). Under *Stone*, "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Id.* at 494 (footnotes omitted); *see also Miranda v. Cooper*, 967 F.2d 392, 401 (10th Cir. 1992). A full and fair opportunity to litigate a Fourth Amendment claim in state court includes the procedural opportunity to litigate the claim as well as a full and fair evidentiary hearing. *See Miranda*, 967 F.2d at 401. A full and fair opportunity to litigate also "contemplates recognition and at least colorable application of the correct Fourth Amendment constitutional standards." *Gamble v. Oklahoma*, 583 F.2d 1161, 1165 (10th Cir. 1978). It is Mr. Quintana's burden to demonstrate he was denied a full and fair opportunity to litigate his Fourth Amendment claim in state court. *See Young v. Conway*, 715 F.3d 79, 92 (2d Cir. 2013) (Raggi, Circuit J., dissenting from denial of reh'g en banc); *Peoples v. Campbell*, 377 F.3d 1208, 1224 (11th Cir. 2004); *Sanna v. Dipaolo*, 265 F.3d 1, 8 (1st Cir. 2001); *Woolery v. Arave*, 8 F.3d 1325, 1328 (9th Cir. 1993); *Davis v. Blackburn*, 803 F.2d 1371, 1372 (5th Cir. 1986) (per curiam); *Doleman v. Muncy*, 579 F.2d 1258, 1266 (4th Cir. 1978).

Mr. Quintana fails to demonstrate the absence of a procedural opportunity to litigate his Fourth Amendment claim in state court. In fact, the record demonstrates Mr.

Quintana took full advantage of the procedural opportunity to litigate his Fourth Amendment claim. In particular, Mr. Quintana filed a motion asking the trial court to suppress the knives as evidence at trial, the trial court held a hearing on the motion to suppress, the officers involved in the initial search of the trailer testified at the hearing and were cross-examined by defense counsel, defense counsel argued in favor of the motion to suppress at the hearing, defense counsel filed a motion to reconsider after the trial court denied the motion to suppress, and Mr. Quintana raised the Fourth Amendment claim on direct appeal.

Mr. Quintana also fails to demonstrate that the state courts failed to make colorable application of the correct Fourth Amendment standards. Once again, the record before the Court demonstrates the state courts thoughtfully considered and applied appropriate Supreme Court precedent to conclude the motion to suppress properly was denied. The Colorado Court of Appeals addressed the Fourth Amendment claim on direct appeal as follows:

> Defendant contends that the trial court erred by denying his motion to suppress the knives as evidence at trial. Specifically, he contends that the initial search of the trailer violated his Fourth Amendment rights because the police did not have a warrant and no exception to the warrant requirement applied. As a result, in his view the knives should have been suppressed under the fruit of the poisonous tree doctrine. We disagree.
>
> When reviewing a motion to suppress where no controlling facts are in dispute, we review de novo the legal effect of the undisputed facts, which is a question of law. *People v. Pate*, 71 P.3d 1005, 1010 (Colo. 2003).
>
> The Fourth Amendment of the United States Constitution and article II, section 7 of the Colorado

Constitution protect the right of persons against unreasonable searches and seizures. *People v. Aarness*, 150 P.3d 1271, 1275 (Colo. 2006). A search of a home without a warrant is presumptively unreasonable unless justified by an exception to the warrant requirement. *Id.*; *People v. Brunsting*, 224 P.3d 259, 262 (Colo. App. 2009) (cert. granted Feb. 16, 2010).

A lawful protective sweep may be conducted without a warrant. "A 'protective sweep' is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding." *Maryland v. Buie*, 494 U.S. 325, 327 (1990). Police may only conduct a protective sweep when there are "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Id.* at 334.

A protective sweep may be necessary when the arrest occurs "in a confined setting of unknown configuration," disadvantaging the police and potentially putting their safety at risk. *Id.* at 333 (protective sweep was reasonable when the defendant was arrested in his basement after committing a violent crime and police did not know if others were in the basement with him); *Aarness*, 150 P.3d at 1280 (protective sweep was reasonable when police had information that another person and possibly weapons were in the house where arrest occurred).

Here, the police knew that it was likely defendant was in the trailer. However, when they seized defendant at the trailer door, they knew that there had been a party at the house that night with many people present, and they did not know whether defendant was alone in the trailer. The officers also did not know whether the person they had seized was the person accused of committing the crime. Therefore, it was reasonable for the officers to suspect that there might be another person in the trailer, or that the person they had seized was not the assailant and that that person was still in the trailer.

Additionally, the arrest occurred at night and in a confined space, making the arrest more challenging and dangerous for the police. The entrance to the trailer faced the backyard's rear fence, with six or seven feet between the trailer and the fence. A tree and chairs in the yard further constricted the area around the trailer. The space was so small that not all five of the arresting officers were able to fit near the trailer door. Two police officers testified at the suppression hearing that they had concerns about officer safety and defendant's safety given the confined area in which the arrest occurred.

Immediately after defendant was seized, two of the officers entered the trailer for less than thirty seconds. Both officers testified at the suppression hearing that they were only searching for additional individuals who might be a threat or for additional victims.

Therefore, we conclude that, given the facts of the situation and the rational inferences drawn from those facts, a reasonably prudent officer would have believed that defendant's trailer could have been harboring an individual who posed a danger to the arresting officers. We also conclude that the protective sweep was properly confined to a visual inspection of the inside of the trailer and lasted no longer than was necessary to secure the area for the officers' safety. *See Buie*, 494 U.S. at 327.

Defendant also contends that the search was unlawful because he was seized at the threshold of his trailer, not inside his trailer. However, given that the arrest took place in a confined space with a single entrance to the trailer and in a fenced-in back yard, we conclude that it was reasonable to search the trailer for the purposes of securing the entire area in which the arrest was occurring. Although a defendant is entitled to protection in the curtilage of the house, the police are entitled to search the house when there is a reasonable need to do so for safety, even if the arrest occurs at the doorstep. *See Brunsting*, 224 P.3d at 262 ("Courts have recognized that the curtilage immediately surrounding a private house is entitled to the same level of protection as is a residential dwelling because it harbors the 'intimate activity associated with the "sanctity of a [person's] home and the privacies of life."'" (quoting *Oliver v. United States*, 466 U.S.

170, 180 (1984))).

> Because we conclude that the initial search was a lawful protective sweep, we also conclude that the warrant was lawfully obtained and the trial court did not err in denying defendant's motion to suppress the knives collected during the execution of the warrant.

(ECF No. 12-4 at 3-8.)

Mr. Quintana does not contend that the state courts failed to recognize and apply the correct Fourth Amendment constitutional standards. Instead, he contends he did not have a full and fair opportunity to litigate his Fourth Amendment claim in state court because the state courts relied on incorrect facts.

> A review of the State's denial of Mr. Quintana's Fourth Amendment issue shows that while on the surface it appeared to afford him a "full and fair" hearing of his claim, in reality it was based on unreasonable fact-findings and an unreasonable application of the relevant law.
>
> In deciding Mr. Quintana's appeal the Colorado Court of Appeals concluded that "it was reasonable for the officers to suspect that there might be another person in the trailer, or that the person they had seized was not the assailant and that that person was still in the trailer." (Slip Op. at page 4). But the court of appeals erred in its conclusion because it relied on incorrect facts, and other facts that were correct were not sufficient to support and justify the protective sweep.
>
> First, the court of appeals found that the officers did not know whether Mr. Quintana was alone in his small camper home. But all of the facts – as well as the reasonable inferences from them – indicated that Mr. Quintana was alone in his 8' x 10' camper. The man from whom officers obtained their information was a childhood friend, had known Mr. Quintana all his life, and allowed [M]r. Quintana to live in the camper. (Trans., May 31, 2011, page 72 and 73). The officers knew that there was only one victim, who was not in the camper, and that Mr. Quintana was the sole suspect. (Trans., December 16, 2010, pages 17-19, 33-34, and 45-46).

> The information pointed to the victim and Mr. Quintana having a one-on-one confrontation, and to Mr. Quintana being at the party on his own, alone. (Trans., December 16, 2010, 54-58). The other party-goers had gone home before the altercation occurred. (Trans., May 31, 2011, pages 85-89, 104-105; June 1, 2011, pages 68-69). And the camper was so small the officers could easily have used flash-lights to sweep it from the threshold without entering.
>
> The record also clearly shows that the officers were not confused about who they were arresting. They were well-informed about Mr. Quintana's full name and physical description as well as the fact that he was in the camper behind the house, not because he was "hiding," but because he lived there alone. (Trans., December 16, 2010, pages 9, 34; May 31, 2011, page 50). When the officers knocked, Mr. Quintana quickly came to the door and identified himself. (Trans., December 16, 2010, pages 34-35; May 31, 2011, page 132). One of the officers who conducted the illegal sweep admitted that they knew Mr. Quintana was the reported suspect and that he was in custody at the time they entered his camper. (Trans., December 16, 2010, pages 34-35).
>
> From the above it is clear that the Colorado Court of Appeals' factual conclusions were unreasonable and not fairly supported by the record. A house built upon a rotten foundation cannot stand. Since the State's application of the relevant case law (the house) rested upon its unreasonable, incorrect determination of the material facts (the foundation), its resolution of the Fourth Amendment claim was not sufficient for an application of *Stone's* prophylactic and pragmatic comity rule.

(ECF No. 25 at 6-8.)

The Court is not persuaded by Mr. Quintana's argument regarding the state court's factual determinations. Claim two in the Application is barred by *Stone* because the state courts "thoughtfully considered the facts underlying [the] Fourth Amendment claim and rejected the claim on its merits, applying appropriate Supreme Court precedent."

Smallwood v. Gibson, 191 F.3d 1257, 1265 (10th Cir. 1999). Ultimately, Mr. Quintana's real argument with respect to claim two is a substantive disagreement with the resolution of that claim by the state courts. However, disagreement with the state courts' resolution of a Fourth Amendment claim is not enough to overcome the bar in *Stone*. *See Matthews v. Workman*, 577 F.3d 1175, 1194 (10th Cir. 2009) (rejecting petitioner's argument that state court misapplied Fourth Amendment doctrine in reaching wrong conclusions about probable cause because that was not the proper question under *Stone*); *see also Pickens v. Workman*, 373 F. App'x 847, 850 (10th Cir. 2010) (stating that "[t]he opportunity for full and fair litigation is not defeated merely because a participant might prefer a different outcome"). Thus, consideration of the merits of claim two in the Application is barred by *Stone*.

III. CONCLUSION

In summary, the Court finds that Mr. Quintana is not entitled to relief on his remaining claim. Accordingly, it is

ORDERED that the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) is denied and this case is dismissed with prejudice. It is further

ORDERED that there is no basis on which to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

DATED November 7, 2017.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK
United States District Judge