

APPENDIX "A"
DISTRICT COURT/SIXTH CIRCUIT ORDER(S)

No. 16-2753

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jun 28, 2017

DEBORAH S. HUNT, Clerk

TAJUAN WILLIAMS,

Petitioner-Appellant,

v.

SHERMAN CAMPBELL, Warden,

Respondent-Appellee.

ORDER

Tajuan Williams, a Michigan state prisoner, moves for a certificate of appealability, in forma pauperis status, the appointment of counsel, a remand, and an evidentiary hearing in this appeal from a district court judgment denying his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2244.

Williams was convicted in a 2010 jury trial of first-degree murder, possession of a firearm by a felon, and commission of a felony with a firearm. He was sentenced to life imprisonment. He moved for a new trial in the state court. The state trial court held an evidentiary hearing and denied the motion. The Michigan Court of Appeals upheld the denial of the motion. Williams then filed for federal habeas corpus relief, raising eighteen claims. The district court denied the claims on the merits in a thorough opinion.

In order to be entitled to a certificate of appealability, Williams must show that reasonable jurists could debate whether his petition should have been resolved in a different manner or that the issues are adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The conviction arose out of the murder of his former girlfriend. Williams was arrested the night of the crime for possession of a weapon as a felon, but the gun was found not to be the murder weapon. He was imprisoned on the weapon offense. More than one year later, he told a fellow inmate that he had committed the murder. That inmate went to the authorities in an attempt to lower his own sentence. He was provided with a recording device and successfully recorded a confession to the murder. Williams was then prosecuted for the crime.

Williams raised several claims arguing that the introduction of his recorded statements violated his Fourth Amendment rights. The district court held that these claims were barred because Williams received a full and fair opportunity to litigate these issues in the state courts. *See Machacek v. Hofbauer*, 213 F.3d 947, 952 (6th Cir. 2000). Reasonable jurists could not debate whether these issues should have been resolved in a different manner.

Williams also raised several claims arguing that the introduction of his recorded statements violated his Fifth and Sixth Amendment rights. The district court found that no claim was stated for numerous reasons, including that Williams had not been charged with murder at the time he made the statements, *see Texas v. Cobb*, 532 U.S. 162, 173 (2001), that he was not subjected to custodial interrogation, *see United States v. Cook*, 599 F.3d 1208, 1214-15 (10th Cir. 2010), that there was a break in custody of over fourteen months since he had invoked the right to counsel, *see Maryland v. Shatzer*, 559 U.S. 98, 110-11 (2010), that undercover informants are not required to administer *Miranda* warnings, *see Cook*, 599 F.3d at 1213-14, and that his belief that the informant was his jailhouse lawyer did not give rise to a federal constitutional claim, *see Sanborn v. Parker*, 629 F.3d 554, 575 (6th Cir. 2010). Reasonable jurists could not debate whether these issues should have been resolved in a different manner.

Williams also raised claims arguing that he was denied discovery and his right to confrontation, particularly with respect to the informant's record. An alleged violation of state discovery rules is not cognizable in a habeas corpus action. *See Lorraine v. Coyle*, 291 F.3d 416, 441 (6th Cir. 2002). Because the informant was cross-examined about his record, the allegedly withheld evidence was merely cumulative and therefore not pertinent. *See Brooks v. Tennessee*,

626 F.3d 878, 893 (6th Cir. 2010). For these reasons, reasonable jurists could not debate whether the district court properly resolved these claims.

Williams also raised claims challenging the trial court's evidentiary rulings, particularly the admission of allegedly expert testimony on the location of his cell phone at the time of the murder, and the admission of a voice mail recording. Evidentiary rulings are not a basis for habeas corpus relief, *see Seymour v. Walker*, 224 F.3d 542, 552 (6th Cir. 2000), and, absent Supreme Court authority holding that admission of similar expert testimony was a constitutional violation, Williams cannot show that he was denied a fair trial, *see Wilson v. Parker*, 515 F.3d 682, 705-06 (6th Cir. 2008). Reasonable jurists therefore could not debate the district court's denial of these claims.

Williams also raised several claims of ineffective assistance of counsel. The district court found that Williams did not establish that additional action by counsel would have benefitted the defense. *See Martin v. Mitchell*, 280 F.3d 594, 607-08 (6th Cir. 2002). Williams argued that counsel should have moved to suppress his recorded statements on the ground that his original arrest more than one year earlier was illegal. The statements were so attenuated from the arrest that there is no likelihood that such a motion would have been successful. Williams also argued that counsel was ineffective in challenging the cell phone expert. However, counsel cross-examined this witness and presented a witness who challenged his testimony. The state court's rejection of this claim was therefore not unreasonable. Finally, Williams argued that counsel should have moved to disqualify the trial judge. His claims that the judge was biased against him are not supported by the record. Reasonable jurists could not debate whether these issues should have been resolved in a different manner.

Williams argued that a witness was shown a photographic lineup including a picture of Williams that the witness had seen in the newspaper. This claim was unsupported by the record, as the witness testified that he had not seen any newspaper coverage of the crime. Williams argued that the prison had violated its own procedures in allowing the informant to record their conversations, but that claim is not a basis for habeas corpus relief. Williams argued that there

was insufficient evidence to bind him over for trial, but that is not a basis for habeas relief. *See Mayer v. Moeykens*, 494 F.2d 855, 859 (2d Cir. 1974). Williams argued that he was denied a speedy trial, but the district court found that the delays were caused by the defense. *See Vermont v. Brillon*, 556 U.S. 81, 90 (2009). Williams argued that the trial court erroneously allowed the admission of prior bad acts, but there is no clearly-established Supreme Court law disallowing prior bad acts evidence. *See Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003). Williams argued that the trial court judge was biased against him, but no such bias was demonstrated by the record. *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994). Williams argued that the prosecutor committed misconduct during the closing argument, but there was factual support in the record for the argument. *See United States v. Henry*, 545 F.3d 367, 377 (6th Cir. 2008). For these reasons, reasonable jurists could not debate whether any of these claims should have been resolved in a different manner.

Finally, Williams claimed that his equal protection, freedom of association, Eighth Amendment, and Fifth Amendment rights were violated. The state court, in a footnote to its opinion, refused to address this claim because it was not briefed. The district court therefore found that this claim was procedurally defaulted and that Williams had not attempted to establish cause and prejudice to excuse the default. Reasonable jurists could not debate whether the district court was correct in its procedural ruling. *See Slack*, 529 U.S. at 484.

For all of the above reasons, the motion for a certificate of appealability is **DENIED**. All other pending motions are **DENIED** as moot.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

No. 16-2753

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 21, 2018
DEBORAH S. HUNT, Clerk

TAJUAN WILLIAMS,
Petitioner-Appellant,

v.

SHERMAN CAMPBELL, Warden,
Respondent-Appellee.

ORDER

Before: COLE, Chief Judge; GIBBONS and BUSH, Circuit Judges.

Tajuan Williams, a Michigan state prisoner, petitions pro se for rehearing of this court's order, entered June 28, 2017, that denied his motion for a certificate of appealability to appeal a district court judgment denying his petition for a writ of habeas corpus, filed under 28 U.S.C. § 2254.

Upon consideration, the court concludes that it did not act under any misapprehension of law or fact in issuing its order. *See* Fed. R. App. P. 40(a).

Accordingly, we **DENY** the petition for rehearing.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**