No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

PASCUAL RENTAS- PETITIONER

VS.

JULIE L. JONES as SEC'Y DEPT. OF CORRECTIONS, and PAM BONDI, as ATTORNEY GENERAL of FLORIDA-RESPONDENT'S

APPENDIX

In Support Of

PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14344-H

PASCUAL RENTAS,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

To merit a certificate of appealability, Pascual Rentas must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Because Rentas has failed to make the requisite showing, his motion for a certificate of appealability is DENIED.

Rentas's motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PASCUAL RENTAS,

Petitioner,

v. Case No: 2:15-cv-751-FtM-99MRM

FLORIDA ATTORNEY GENERAL and SECRETARY, DOC,

Respondents.[1]

OPINION AND ORDER

This matter comes before the Court on a petition for habeas corpus relief filed pursuant to 28 U.S.C. § 2254 by Pascual Rentas ("Petitioner" or "Rentas"), a prisoner of the Florida Department of Corrections (Doc. 1, filed December 3, 2015). Rentas, proceeding pro se, attacks the conviction and sentence entered against him by the Twentieth Judicial Circuit Court in Lee County, Florida for second degree murder with a firearm. Id. Respondent filed a response to the petition (Doc. 10). Rentas was ordered to file a reply by August 22, 2016 (Doc. 16), but he did not

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[1] When the petitioner is incarcerated and challenges his present physical confinement "the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." Rumsfeld v. Padilla, 542 U.S. 426, 436 (2004) (citations omitted). In Florida, the proper respondent in this action is the Secretary of the Florida Department of Corrections. Therefore, the Florida Attorney General will be dismissed from this action.

comply. However, on July 10, 2017, Rentas filed a motion for leave to file a belated reply (Doc. 18). When reviewing the petition, the Court will consider the belated reply attached to the motion.

Upon due consideration of the pleadings and the state court record, the Court concludes that each claim must be dismissed or denied. Because the petition is resolved on the record, an evidentiary hearing is not warranted. See Schriro v. Landrigan, 550 U.S. 465, 474 (2007) (if the record refutes the factual allegations in the petition or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing).

I. Background and Procedural History[2]

On January 11, 2010, the state charged Rentas by felony information with second degree murder with a firearm, in violation of Florida Statute § 784.04(2) (Ex. 1 at 8). A jury found him guilty as charged (Ex. 6b at 499-502, 514-15; Ex. 1 at 86). On October 17, 2011, the trial court sentenced Rentas to life in prison without the possibility of parole (Ex. 1 at 158-59). Florida's Second District Court of Appeal affirmed the judgment and sentence without a written opinion (Ex. 4); Rentas v. State, 105 So. 3d 531 (Fla. 2d DCA 2013).

[2] Citations to exhibits or appendices are to those filed by Respondent on April 27, 2016 (Doc. 12). Citations to the trial transcript, located in Exhibit 6 will be cited as (T. at __).

On July 8, 2013, Rentas filed a motion pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure ("Rule 3.850 motion") (Ex. 6). The post-conviction court denied each ground (Ex. 6c at 669-799). Florida's Second District court of Appeal affirmed without a written opinion (Ex. 9); Rentas v. State, 173 So. 3d 897 (Fla. 2d DCA 2015).

Rentas filed the instant habeas petition on December 3, 2015 (Doc. 1).

II. Legal Standards

a. The Antiterrorism Effective Death Penalty Act ("AEDPA")

Pursuant to the AEDPA, federal habeas relief may not be granted with respect to a claim adjudicated on the merits in state court unless the adjudication of the claim:

> (1) resulted in a decision that 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) resulted in a decision that 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). This standard is both mandatory and difficult to meet. White v. Woodall, 134 S. Ct. 1697, 1702 (2014). Notably, a state court's violation of state law is not sufficient to show that a petitioner is in custody in violation of the "Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Wilson v. Corcoran, 562 U.S. 1, 16 (2010).

"Clearly established federal law" consists of the governing legal principles, rather than the *dicta*, set forth in the decisions of the United States Supreme Court at the time the state court issued its decision. White, 134 S. Ct. at 1702; Carey v. Musladin, 549 U.S. 70, 74 (2006) (citing Williams v. Taylor, 529 U.S. 362, 412 (2000)). That said, the Supreme Court has also explained that "the lack of a Supreme Court decision on nearly identical facts does not by itself mean that there is no clearly established federal law, since 'a general standard' from [the Supreme Court's] cases can supply such law." Marshall v. Rodgers, 133 S. Ct. 1446, 1449 (2013) (quoting Yarborough v. Alvarado, 541 U.S. 652, 664 (2004)). State courts "must reasonably apply the rules 'squarely established' by [the Supreme] Court's holdings to the facts of each case." White, 134 S. Ct. at 1706 (quoting Knowles v. Mirzayance, 556 U.S. 111, 122 (2009)).

Even if there is clearly established federal law on point, habeas relief is only appropriate if the state court decision was "contrary to, or an unreasonable application of," that federal law. 29 U.S.C. § 2254(d)(1). A decision is "contrary to" clearly established federal law if the state court either: (1) applied a rule that contradicts the governing law set forth by Supreme Court case law; or (2) reached a different result from the Supreme Court when faced with materially indistinguishable facts. Ward v. Hall,

592 F.3d 1144, 1155 (11th Cir. 2010); Mitchell v. Esparza, 540 U.S. 12, 16 (2003).

A state court decision involves an "unreasonable application" of the Supreme Court's precedents if the state court correctly identifies the governing legal principle, but applies it to the facts of the petitioner's case in an objectively unreasonable manner, Brown v. Payton, 544 U.S. 133, 134 (2005); Bottoson v. Moore, 234 F.3d 526, 531 (11th Cir. 2000), or "if the state court either unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." Bottoson, 234 F.3d at 531 (quoting Williams, 529 U.S. at 406). The petitioner must show that the state court's ruling was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." White, 134 S. Ct. at 1702 (quoting Harrington v. Richter, 562 U.S. 86 (2011)). Moreover, "it is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by [the Supreme] Court." Knowles, 556 U.S. at 122.

Notably, even when the opinion of a lower state post-conviction court contains flawed reasoning, the federal court must give the last state court to adjudicate the prisoner's claim on

the merits "the benefit of the doubt." Wilson v. Warden, Ga. Diagnostic Prison, 834 F.3d 1227, 1235 (11th Cir. 2016), cert. granted Wilson v. Sellers, 137 S. Ct. 1203 (Feb. 27, 2017). A state court's summary rejection of a claim, even without explanation, qualifies as an adjudication on the merits which warrants deference. Ferguson v. Culliver, 527 F.3d 1144, 1146 (11th Cir. 2008). Therefore, to determine which theories could have supported the state appellate court's decision, the federal habeas court may look to a state post-conviction court's previous opinion as one example of a reasonable application of law or determination of fact; however, the federal court is not limited to assessing the reasoning of the lower court. Wilson, 834 F.3d at 1239.

Finally, when reviewing a claim under § 2254(d), a federal court must bear in mind that any "determination of a factual issue made by a State court shall be presumed to be correct[,]" and the petitioner bears "the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); Miller-El v. Cockrell, 537 U.S. 322, 340 (2003) ("a decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding") (dictum); Burt v. Titlow, 134 S. Ct. 10, 15-16 (2013) (same).

b. Ineffective Assistance of Counsel

In Strickland v. Washington, the Supreme Court established a two-part test for determining whether a convicted person is entitled to relief on the ground that his counsel rendered ineffective assistance. 466 U.S. 668, 687-88 (1984). A petitioner must establish that counsel's performance was deficient and fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. Id. This is a "doubly deferential" standard of review that gives both the state court and the petitioner's attorney the benefit of the doubt. Burt, 134 S. Ct. at 13 (citing Cullen v. Pinholster, 563 U.S. 170 (2011)).

The focus of inquiry under Strickland's performance prong is "reasonableness under prevailing professional norms." Strickland, 466 U.S. at 688-89. In reviewing counsel's performance, a court must adhere to a strong presumption that "counsel's conduct falls within the wide range of reasonable professional assistance[.]" Id. at 689. Indeed, the petitioner bears the heavy burden to "prove, by a preponderance of the evidence, that counsel's performance was unreasonable[.]" Jones v. Campbell, 436 F.3d 1285, 1293 (11th Cir. 2006). A court must "judge the reasonableness of counsel's conduct on the facts of the particular case, viewed as of the time of counsel's conduct," applying a "highly deferential"

level of judicial scrutiny. Roe v. Flores-Ortega, 528 U.S. 470, 477 (2000) (quoting Strickland, 466 U.S. at 690).

As to the prejudice prong of the Strickland standard, Petitioner's burden to demonstrate prejudice is high. Wellington v. Moore, 314 F.3d 1256, 1260 (11th Cir. 2002). Prejudice "requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Strickland, 466 U.S. at 687. That is, "[t]he defendant must show 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. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

c. Exhaustion and Procedural Default

The AEDPA precludes federal courts, absent exceptional circumstances, from granting habeas relief unless a petitioner has exhausted all means of available relief under state law. Exhaustion of state remedies requires that the state prisoner "fairly presen[t] federal claims to the state courts in order to give the State the opportunity to pass upon and correct alleged violations of its prisoners' federal rights[.]" Duncan v. Henry, 513 U.S. 364, 365 (1995) (citing Picard v. Connor, 404 U.S. 270, 275-76 (1971)). The petitioner must apprise the state court of the federal constitutional issue, not just the underlying facts of

the claim or a similar state law claim. Snowden v. Singletary, 135 F.3d 732 (11th Cir. 1998).

In addition, a federal habeas court is precluded from considering claims that are not exhausted and would clearly be barred if returned to state court. Coleman v. Thompson, 501 U.S. 722, 735 n.1 (1991) (if a petitioner has failed to exhaust state remedies and the state court to which the petitioner would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred, there is a procedural default for federal habeas purposes regardless of the decision of the last state court to which the petitioner actually presented his claims).

Finally, a federal court must dismiss those claims or portions of claims that have been denied on adequate and independent procedural grounds under state law. Coleman, 501 U.S. at 750. If a petitioner attempts to raise a claim in a manner not permitted by state procedural rules, he is barred from pursuing the same claim in federal court. Alderman v. Zant, 22 F.3d 1541, 1549 (11th Cir. 1994).

A petitioner can avoid the application of procedural default by establishing objective cause for failing to properly raise the claim in state court and actual prejudice from the alleged constitutional violation. Spencer v. Sec'y, Dep't of Corr., 609 F.3d 1170, 1179-80 (11th Cir. 2010). To show cause, a petitioner

"must demonstrate that some objective factor external to the defense impeded the effort to raise the claim properly in state court." Wright v. Hopper, 169 F.3d 695, 703 (11th Cir. 1999); Murray v. Carrier, 477 U.S. 478 (1986). To show prejudice, a petitioner must demonstrate there is a reasonable probability the outcome of the proceeding would have been different. Crawford v. Head, 311 F.3d 1288, 1327-28 (11th Cir. 2002).

A second exception, known as the fundamental miscarriage of justice, only occurs in an extraordinary case, where a "constitutional violation has probably resulted in the conviction of one who is actually innocent[.]" Murray v. Carrier, 477 U.S. 478, 479-80 (1986). Actual innocence means factual innocence, not legal insufficiency. Bousley v. United States, 523 U.S. 614, 623 (1998). To meet this standard, a petitioner must "show that it is more likely than not that no reasonable juror would have convicted him" of the underlying offense. Schlup v. Delo, 513 U.S. 298, 327 (1995). "To be credible, a claim of actual innocence must be based on [new] reliable evidence not presented at trial." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup, 513 U.S. at 324).

III. Analysis

At Rentas' trial, evidence was presented that victim Eugene Brown was shot by a Hispanic man who drove to the Jones Walker Apartment complex in a silver Mitsubishi automobile. A large

black man was in the front passenger seat of the car. Rentas' theory of defense was that only a single witness, Antonio Dingle (the man in the passenger seat of the Mitsubishi), identified him as the shooter, and that Dingle lied to the police when he did so.

Rentas raises the following claims: (1) the state committed a Giglio[3] violation when it failed to correct Antonio Dingle's false statements at trial; (2) defense counsel ("Counsel") failed to impeach Antonio Dingle regarding his prior inconsistent statements about the state's inducement for him to testify; (3) Counsel failed to object to a non-race-neutral peremptory challenge to prospective juror Maria Carlson; (4) Counsel failed to effectively cross-examine witness Dionte Brown; and (5) the cumulative effect of Counsel's errors resulted in an unfair trial. Each claim will be addressed separately.

a. Claim One

Rentas asserts that the state committed a Giglio violation during trial (Doc. 2 at 6). Specifically, he alleges that the investigating detectives offered Antonio Dingle money and protection in exchange for his cooperation in Rentas' prosecution. Id. Rentas asserts that "the prosecutor knew that Dingle was

[3] In Giglio v. United States, 405 U.S. 150 (1972) the Unites States Supreme Court held that the prosecution's failure to inform the jury that a witness had been promised not to be prosecuted in exchange for his testimony was a failure to present all material evidence to the jury, and constituted a violation of due process, requiring a new trial.

threatened with implied culpability and offered inducements and exclusion as a suspect in exchange for his statements prior to Rentas implicating Dingle." Id. Rentas claims that "when Dingle denied being offered anything, the State did not correct the lie." Id. at 7 (footnote omitted).

Rentas raised this claim in his Rule 3.850 motion, and the post-conviction court denied it on the ground that Dingle's testimony did not concern a material issue:

> Defendant alleges that the State knowingly allowed false testimony to be presented to the jury through the false testimony of Antonio Dingle, the State's key witness. A claim pursuant to Giglio v. United States, 405 U.S. 150 (1972), can be raised in a rule 3.850 motion. However, a defendant must show that the testimony was false, the prosecutor knew the testimony was false, and the testimony was material. Routly v. State, 590 So. 2d 397 (Fla. 1991). A review of Antonio Dingle's trial testimony shows that even if the testimony was false and the State knew it was false, the testimony did not concern a material issue. Whether Dingle was, or was not, being threatened with prosecution, or offered money for his assistance, or promised protection in exchange for his cooperation was not a material issue in this case.

(Doc. 1-4 at 4-5). Florida's Second District Court of Appeal affirmed without a written opinion (Ex. 9). The Florida appellate court's summary rejection of Claim One, even without explanation, qualifies as an adjudication on the merits, which warrants deference. Accordingly, this Court must consider whether any

reasoning could support the Second District Court of Appeal's rejection of this claim. Wilson, 834 F.3d at 1239.

After review of the entire record, the Court concludes that Rentas is not entitled to habeas relief on his Giglio claim. To prevail on a Giglio claim, a petitioner must establish that: (1) the prosecutor knowingly used perjured testimony or failed to correct what he subsequently learned was false testimony; and (2) there is a reasonable likelihood that the false testimony could have affected the judgment. Ford v. Hall, 546 F.3d 1326, 1331-32 (11th Cir. 2008). When considering a Giglio claim on federal habeas review, a petitioner must also satisfy the harmless error standard set forth in Brecht v. Abrahamson, 507 U.S. 619 (1993). Specifically, a petitioner must demonstrate that the constitutional error—here the alleged Giglio violation—had "substantial and injurious effect or influence" on the jury's verdict. Id. at 637 (internal quotation marks omitted).

Rentas stresses that Counsel was aware "of the detectives' threats as well as the benefits and inducements offered. The state provided the interview transcripts in reciprocal discovery." (Doc. 1 at 9). Therefore, by Rentas' own admission, Claim One fails at the outset because a Giglio analysis presupposes that the evidence at issue was withheld from the defense. See Ford 546 F.3d at 1331 (emphasizing that Giglio error "occurs when the *undisclosed* evidence demonstrates that the prosecution's case

included perjured testimony") (emphasis added). In other words, "[t]here is no violation of due process resulting from prosecutorial non-disclosure of false testimony if defense counsel is aware of it and fails to object." Routly v. Singletary, 33 F.3d 1279, 1286 (11th Cir. 1994); Amado v. Gonzalez, 758 F.3d 1119, 1135 (9th Cir. 2014)("[D]efense counsel cannot lay a trap for prosecutors by failing to use evidence of which defense counsel is reasonably aware for, in such a case, the jury's verdict of guilty may be said to arise from defense counsel's stratagem, not the prosecution's failure to disclose."); Shuler v. Sec'y, Fla. Dep't of Corr., 610 F. App'x 856, 858 (11th Cir. 2015) ("Here, there was no Giglio violation because there was no undisclosed evidence."). Accordingly, because Rentas admits that no evidence was withheld by the state, no due process violation occurred as a result of prosecutorial non-disclosure of Dingle's allegedly false testimony.[4]

[4] The Court recognizes that where the government not only fails to correct materially false testimony but also affirmatively capitalizes on it, the defendant's due process rights are violated despite the government's timely disclosure of evidence showing the falsity. See DeMarco v. United States, 928 F.2d 1074, 1076-77 (11th Cir. 1991) (finding prosecutorial misconduct warranting a new trial despite no suppression of evidence where the prosecutor not only failed to correct false testimony, but also capitalized on the false testimony in closing argument). However, a review of the entire transcript of Rentas' trial, including the state's closing argument, shows that the state did not mention Dingle's allegedly false comments during closing argument, and did not attempt to affirmatively capitalize on the statements in any manner

Next, even if the police transcripts had not been disclosed to the defense, Rentas has not shown that Dingles testimony at trial was false. Rentas points to portions of Dingle's interview with the police to support his argument that Dingle was promised leniency in exchange for his testimony:[5]

> POLICE1. Okay. Did you tell him anything about what happened in Fort Myers?
>
> DINGLE. What happened in Fort Myers?
>
> Q1. Yeah.
>
> A. I talked to him, I talked to him and uh . . . the coach, Coach (unintelligible). I spoke to both of them. And I told them that the day I found out that y'all were looking for me. I went in there and talked to both of them and told them that y'all were looking for me.
>
> Q1. Mm hmm.
>
> A. That I don't know what to do.
>
> Q1. Okay. Um Antonio, just so that you know . . . um . . . we're not here to jam you up . . . okay?
>
> A. Mm hmm.
>
> Q1. I really do you [sic] need you to be honest with us about what happened or what you may have seen. Um . . . you know I don't think you're

(T. at 533-36). Accordingly, this exception to the "failure to disclose" requirement does not apply.

[5] Notably, the pages of the police interview supplied by Petitioner are incomplete and non-sequential, so it is not possible to discern the context of the detectives' questions or Dingle's answers during the interview.

> responsible . . . for the homicide. Okay? But . . . I do have info that you were there. Okay?
>
> A. Mm hmm.
>
> Q1. And like I said I'm not here to jam you up, okay, cause I know . . . I don't think. . .
>
> Q2. You got caught in a bad position . . .
>
> Q1. Right.
>
> A. Mm hmm
>
> Q1. Okay. But I need you to tell me the truth because . . . if, if you don't, you're going to, you're going to make me think other things.
>
> A. Mm hmm
>
> Q1. That, that I don't want to think.
>
> A1. Mm hmm.

(Doc. 2-4) (page 10 of 39-page transcript). Rentas also includes page 15 of the same transcript which contains a partial question from the police and no context:

> So let's just get right to it. Let's get this thing out of the way and go and then . . . you got my word and her word . . . that . . . we'll see to it that nobody is going to mess with you. There's things, there's money . . . there's all kinds of stuff . . . that we can help you out and make sure that you're safe. But we got to have the truth. We got and, and no one is ever call you a liar, cause you know what . . . if I was in those shoes . . . in those same shoes . . . that you were in that night . . . I wouldn't want to say nothing because you know what I didn't do nothing. So

> let's, lets go ahead and talk about it. . . so what happened?

Id. Rentas now urges that the foregoing portions of the police interview amounted to "promises" made to Dingle in exchange for his testimony. However, a review of Dingle's testimony at trial does not support Rentas' claim.

During trial, Dingle testified that he came to Fort Myers from North Carolina for a visit. He left a friend's apartment and went for a ride with Rentas on the night of the murder (T. at 309). Rentas eventually stopped the car in an area unfamiliar to Dingle and walked away from the car while yelling at someone to "come out." Id. at 312. Eventually, Rentas came back and removed a gun from the car. Id. at 316. Dingle heard a single gunshot. Id. Rentas returned to the car, and they drove away. Id. at 317. Dingle asked Rentas what had happened, but Rentas did not say anything the entire ride back to the friend's apartment. Id. at 318. Dingle returned to North Carolina the next day, but eventually heard that the Fort Myers police were looking for him. Id. at 321-22. Dingle, a professional athlete, told his football coaches what had happened, and they contacted the Fort Myers police department. Id. at 322. Fort Myers detectives traveled to North Carolina to take Dingles' statement. Id.

The state attorney then questioned Dingle about his statements to the Fort Myers police:

Q. And at the time when you were talking to the Fort Myers Police Department, would it be fair to say that you were quite reluctant to be very forthcoming in what had happened; did it take a while for you to actually tell them exactly what happened?

A. Umm, a little bit.

Q. Why?

A. I -- I just didn't want - I just didn't want to be involved in it because, I mean, I ain't never - I ain't never been involved in nothing like this.

Q. During the course of the interview did they, in fact, tell you that if you were worried about anything or being messed with, that they would supply you some assistance?

A. Yes, ma'am.

Q. Did they ever offer you in exchange for anything that you may have said in your interview, any type of monetary or any type of reward?

A. No, ma'am.

(T. at 323-24). On cross examination, Counsel also questioned Dingle as to what the police had promised in exchange for speaking with them:

Q. Okay. Now, when you gave your statement to the police - and I know you said you haven't read it - at first did you deny any knowledge of the shooting?

A. No. I told them I didn't know - see anybody get shot.

Q. Okay. And did you continue to not be helpful until they told you that you wouldn't be in trouble if you helped?

A. They never said anything about me being in trouble or wouldn't be in trouble.

Q. They never said you don't have to worry about being in trouble, that you have a career ahead of you?

A. No, sir, they didn't.

Q. They never made any promises to protect you?

A. No, sir, they didn't.

Q. Okay. They never offered even money if you needed it, so you would assist?

A. No, sir, they didn't.

(T. at 342-43). Rentas now appears to assert that Dingle lied when he said that the police did not offer him money or agree not to prosecute him if he implicated Rentas in the shooting. However, the portions of the police interview provided by Rentas do not support such a conclusion. While it appears that the police may have tried to reassure Dingle that they would protect him if he was afraid to tell the truth (and that they had the resources to do so), Dingle admitted that the police told him they would supply assistance if Dingle was worried about his safety. Moreover, the police consistently urged Dingle during the interview that he needed to tell them the truth. On this record, the Court cannot conclude that the state violated Giglio when it failed to correct Dingle's testimony because Rentas has not demonstrated that the

testimony was false. See Maharaj v. Sec'y for Dep't of Corr., 432 F.3d 1292, 1313 (11th Cir. 2005) ("In the Giglio context, the suggestion that a statement may have been false is simply insufficient; the defendant must conclusively show that the statement was actually false."); Coe v. Bell, 161 F.3d 320, 343 (6th Cir. 1998) ("The burden is on the defendants to show that the testimony was actually perjured, and mere inconsistencies in testimony by government witnesses do not establish knowing use of false testimony.").

Finally, even if this Court were to conclude that Dingle testified falsely at trial, Rentas has not demonstrated a Giglio violation because there is not a reasonable possibility that the testimony at issue affected the jury's finding of guilt. During closing argument, Counsel suggested that Dingle spoke with the police only because it was in his best interests to do so:

> [Dingle] was a professional athlete, he had people, he had people. He cried when he found he was a person of interest. He was scared when the detective came to talk to him, scared. He wasn't scared when a man is pulling a gun out of a car, he wasn't scared when a gunshot was fired, **he wasn't scared until [Detective] Melissa Langton came up, set a line of force, he was on the table and said ["]we don't want to jam you up.["]** When Melissa Langton went up to see Mr. Dingle in Fayetteville, North Carolina she had spoken to his coaches, knew he was a professional athlete, she knew that he had a lot to lose and she said - and -- and she had showed [sic] pictures of Mr. Rentas to every single eye witness at that apartment complex, every

> single eye witness who had some reason to identify the person that killed their friend and yet he saw that picture prior to them asking about it and said I don't know his last name.
>
> Prior to them asking about the shooting, I don't know that guy's last name, I recognize him. **So then the police, after they talk about his career and kind of make him relaxed, they start talking about the shooting and they said ["] we don't want to jam you up, but we could talk to somebody first or you can tell us what happened and you can make an identification,["] so he did. And they didn't jam him up and he wasn't arrested**[.]

(T. at 563-64) (emphases added). The jury was aware of Dingle's incentive to speak to the police and testify against Rentas and they were aware that the detectives had cajoled him into making a statement by reassuring him that he was not a suspect at that moment. See Alderman v. Zant, 22 F.3d 1541, 1554 (11th Cir. 1994) ("[T]he thrust of Giglio and its progeny has been to ensure that the jury know the facts that might motivate a witness in giving testimony."). In fact, Dingle admitted that when he initially spoke with the Fort Myers detectives, he was reluctant to relay what had happened because he had never been involved in a shooting, and he acknowledged that the investigators had offered him protection (T. at 366-67). Therefore, even if there was a tacit agreement between the police and Dingle regarding his statements and testimony, the jury was aware of such, and the agreement could not have had a "substantial and injurious effect or influence in

determining the jury's verdict." Brecht, 507 U.S. at 637; see also Depree v. Thomas, 946 F.2d 784, 797 (11th Cir. 1991) ("The thrust of Giglio and its progeny has been to ensure that the jury know the facts that might motivate a witness in giving testimony.").

Rentas is not entitled to relief on Claim One.

b. Claim Two

Rentas asserts that Counsel was ineffective for failing to impeach Dingle's trial testimony with the inducements made by the Fort Myers detectives during Dingle's interview with law enforcement (Doc. 1 at 8). Although Rentas admits that Counsel did impeach Dingle with other statements, he urges that Counsel "did not specifically impeach Dingle about police threats, exclusions, or other inducements." Id. at 11.

Rentas raised this claim in his Rule 3.850 motion, and the post-conviction court determined that the allegations were conclusively refuted by the record (Doc. 2-4 at 4). Specifically, the post-conviction court determined that "Counsel's cross examination of Dingle was thorough and thoughtful. Moreover, counsel did, in fact, impeach Dingle with testimony from both his deposition and the statements Dingle made to police." Id. The post-conviction court also concluded that Rentas had not demonstrated Strickland prejudice. Id. Florida's Second District Court of Appeal affirmed without a written opinion (Ex.

9). Therefore, the claim is exhausted and this Court must consider whether any reasoning could support the Second District Court of Appeal's rejection of this claim. Wilson, 834 F.3d at 1239.

A review of Dingle's testimony supports the post-conviction court's conclusion that Counsel was not ineffective on cross examination. Counsel impeached Dingle with a number of prior statements he had made to the police (T. at 331, 342, 343). Counsel also asked Dingle whether he was promised anything in exchange for his testimony and whether the police had "promised" not to "jam [Dingle] up" if he assisted them, and Dingle stated that they had not made such promises (T. at 342-43, 377). As noted in the discussion of Claim One, Rentas has presented no direct evidence that Dingle was actually promised anything in exchange for his testimony against him; reasonable competent counsel could have decided against attempting impeachment with ambiguous statements from the detectives. Moreover, on cross examination, Counsel sought to impeach Dingle's credibility by introducing evidence that he was a member of the Latin Kings street gang (T. at 357-76). The trial court told Counsel that he could not ask Dingle about his gang membership without opening the door to the facts that Rentas was also a member of the Latin Kings and that Dingle met Rentas through their mutual gang affiliation. Id. at 376. Given Rentas' gang affiliation, reasonable competent counsel could have strategically decided against bringing the

detectives' ambiguous statements regarding Dingle's need for "protection" to the jury's attention.[6] Moreover, Counsel pointed out in closing argument that Dingle was not prosecuted and suggested that the detectives had promised him leniency in exchange for implicating Rentas as the shooter (T. at 563-64). Rentas has demonstrated neither deficient performance nor resulting prejudice from Counsel's cross examination of Dingle. Accordingly, the state courts' rejection of Claim two was neither contrary to Strickland nor based upon an unreasonable determination of the facts. Claim Two is denied.

c. Claim Three

Rentas asserts that Counsel was ineffective for accepting the state's inaccurate race-neutral reason for excluding prospective juror Maria Carlson from the panel (Doc. 1 at 13). This is not the same claim Rentas raised in his Rule 3.850 motion. In his state court motion, Rentas urged that Counsel was ineffective for

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[6] Because this Court's inquiry is an objective one, Counsel's *actual* motivation is irrelevant on federal habeas review. See Castillo v. Sec'y, Fla. Dep't of Corr., 722 F.3d 1281, 1285 n.2 (11th Cir. 2013) ("The relevant question under Strickland's performance prong, which calls for an objective inquiry, is whether any reasonable lawyer could have elected not to object for strategic or tactical reasons, even if the actual defense counsel was not subjectively motivated by those reasons.").

failing to renew his Batson[7] objection prior to the jury being sworn (Ex. 6 at 4).

Respondent urges that Rentas' failure to raise this specific claim in his post-conviction motion renders it unexhausted and procedurally defaulted (Doc. 10 at 24). In his reply, Rentas asserts that, to the extent his current claim is unexhausted, his failure to exhaust is excused by the Supreme Court's decision in Martinez v. Ryan (Doc. 18 at 5). In Martinez v. Ryan, 132 S. Ct. 1309 (2012) the United State Supreme Court held:

> Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, 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.

Id. at 1320. Under Martinez, Rentas must still establish that his underlying ineffective assistance claim is "substantial" -- that is, that it has "some merit" before the procedural default can be excused. Martinez, 132 S. Ct. at 1318-19. Upon review of the record, the Court finds that Claim Three's ineffective assistance claim is unexhausted because it is not "substantial" and does not fall within Martinez' equitable exception to the procedural bar.

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[7] Batson v. Kentucky, 476 U.S. 79 (1986)(a prosecutor's use of a peremptory challenge in a criminal case—the dismissal of jurors without stating a valid cause for doing so—may not be used to exclude jurors based solely on their race).

During voir dire, prospective juror Carlson told the Court that she was originally from Mexico City, but had been in the United States for forty-two years (T. at 23). When asked whether she had ever been the victim of a crime, Carlson indicated that she had been, and explained:

> It was a group of guys who just got out of the car and my husband and me, we were married like a month, and young kid walking and these guys came out of the blue and just put guns at us and took my husband some place and they tried to rape me, nothing happened because I rolled under a car and I was just yelling and screaming and maybe some of the houses heard me and called the sheriff and they came thanks to that. And then once we - I couldn't speak any English then, I was yelling, they're stealing my husband, they're stealing my husband, you know, they came and they actually had to slap me from the sheriff.
>
> . . .
>
> But nothing did happen. They just took his wallet and passports because we were going to go to visit my family in Mexico for the first time; that was the only time that - yeah, but I was very scared.

(T. at 63-64). Carlson told Counsel that she would be able to separate her experience as a crime victim from what she heard in court because the crime against her had happened so long ago. Id. at 64. Later, when asked whether she had ever been accused of anything, Carlson responded:

> Yes, I have only once in my life that we had to go to court I've been accused of something that was done, I didn't do it. I would not accept it, and yes, definitely it's very hard to prove that you're not when somebody has

> papers and everything, with nothing written really, you know, and yeah, it is really hard to prove it, but, yeah, I have been accused of that.

(T. at 98). When the state used a peremptory challenge to strike Carlson from the panel, Counsel requested a race-neutral reason for the strike; the prosecutor replied:

> She was the victim of a rape and a possible shooting attempt on her husband's life when she was newly married. She also during some questioning from [Counsel] said that when he was doing his proving analysis with his daughter something about papers and they didn't have previous, but yet I still got convicted on it, she's very confused about what the law is.

(T. at 143). The trial court allowed the peremptory challenge and Carlson was struck from the jury panel. Id. Rentas now argues that Counsel should have challenged the prosecution's race-neutral explanation because Carlson had only been the victim of attempted rape and because he did not think she appeared particularly confused about the law. Rentas urges that Carlson was the only Hispanic member of the venire and that Counsel should have questioned the "genuineness" of the prosecutor's explanation (Doc. 1-1 at 14).

"Although a prosecutor ordinarily is entitled to exercise permitted peremptory challenges 'for any reason at all, as long as that reason is related to his view concerning the outcome' of the case to be tried, . . . the Equal Protection Clause forbids the

prosecutor to challenge potential jurors solely on account of their race[.]" Batson, 476 U.S. at 89 (internal citations omitted). As such, the Batson Court established a three-step test for evaluating claims of race discrimination in jury selection. First, a pattern of peremptory challenges of jurors of a particular race may establish a prima facie case of discriminatory purpose. Second, the prosecutor may rebut that prima face case by tendering a race-neutral explanation for the strikes. Third, the court must decide whether that explanation is pre-textual. Batson, 476 U.S. at 96-98. If the analysis proceeds to step three, "the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed." Hernandez v. New York, 500 U.S. 352, 365 (1991) (plurality opinion). The third step involves "a pure issue of fact, subject to review under a deferential standard," and peculiarly within a trial judge's province. Id. at 364-65.

First, Rentas has not shown a "pattern" of racial discrimination in the jury selection at his trial. Despite Rentas' assertion otherwise, Carlson was not the only Hispanic person on the venire. However, it was Counsel, not the prosecutor, who attempted to excuse prospective juror Yanneth Padilla-Aceves for cause--over the prosecutor's objection (T. at 139-40).[8] Next;

[8] When the trial court refused to strike Padilla-Aceves for cause, Counsel used a peremptory strike (T. at 142).

the prosecutor's proffered race-neutral explanation in this case—that he struck Carlson from the panel because she had been the victim of a crime and because she had seemed confused about the law—is race neutral and satisfied the prosecution's burden of articulating a nondiscriminatory reason for the strike. Being the victim of a crime or being confused about legal issues are not characteristics that are peculiar to any specific race or ethnic group. Although the prosecutor misstated the particular crime at issue, reasonable competent counsel could have decided against correcting the prosecutor's minor mistake. That Carlson had been the victim of attempted rape (as opposed to rape) did not affect the gravamen of the prosecutor's race-neutral explanation for using the peremptory strike—that Carlson had been the victim of a crime and appeared confused about the law. Finally, Rentas has not overcome the presumption of correctness given the trial court's conclusion that Carlson was not struck from the jury panel based upon her race. The trial court was in a better position than a district court on habeas review to evaluate Carlson and to consider her alleged confusion and any affect her victimhood may have had on her ability to serve.

The issue raised in Claim Three is not "substantial" so as to excuse Rentas' failure to exhaust it in state court. Martinez, 132 S. Ct. at 1318-20. Nor has Rentas presented new, reliable evidence indicating that the actual innocence exception would apply to

excuse his default of this claim. Claim Three is dismissed as unexhausted.

d. Claim Four

Rentas asserts that Counsel was constitutionally ineffective for failing to cross examine Dionte Brown about his eyewitness identification (Doc. 1 at 16). Specifically, he asserts that:

> During cross-examination, defense counsel failed to capitalize on the obvious discrepancies between Brown's statement to law enforcement, his deposition, and his courtroom testimony. Defense counsel did not realize or appreciate the negative implication of Brown's ambiguous testimony and failed to extract exonerating testimony from Brown that the Defendant was not the shooter during cross.

Id. at 17. Rentas raised this claim in his Rule 3.850 motion, and the post-conviction court denied the claim on the grounds that it was refuted by the record (Doc. 2-4 at 4-5). The post-conviction court noted that any claim that Brown would have not identified Rentas as the shooter, had he been asked was purely speculative and that Counsel's strategic decisions were not subject to collateral attack. Id. Florida's Second District Court of Appeal affirmed without a written opinion (Ex. 9). Accordingly, this Court must consider whether any reasoning could support the Second District Court of Appeal's rejection of this claim. Wilson, 834 F.3d at 1239.

A review of Brown's testimony indicates that it was not particularly compelling. Brown stated that he observed a heavy-set black man and a tall "Puerto Rican dude" with a mean face at the scene of the crime. He saw the victim walk towards the Puerto Rican man who shot him. He then saw the Puerto Rican man jump in a car and drive away with the black man. Brown left the scene, but the police eventually found him and took him to the station. Brown admitted that he had been drinking that day and was "maybe" "to the point [he] couldn't tell what was going on around [him]." When asked whether he had identified any photographs to the police, Brown said that "[s]omebody had - they had come to my head and I showed them something, I had showed them some of the pictures, what they had showed me. I had pointed out some of them, yeah." When asked whether he had ever picked somebody out, Brown said "Umm, I think I know so," but he could not remember the police officer with whom he had spoken. Brown did not testify that he picked Rentas from the lineup. Brown testified that he had never seen the Puerto Rican man before "and had never seen him after it happened[.]" (T. at 189-210). Brown did not identify Rentas in court (nor was he asked to do so).

When asked about his level of intoxication at the time of the shooting on cross examination, Brown admitted that he told the police that he was "so much feelin' good" and that he was inebriated at the time of the shooting (T. at 212-13). Counsel

did not ask Brown about his photo identifications, nor did he ask him to identify Rentas as the shooter in court. Id.

Rentas does not show how he suffered Strickland prejudice from any failure of Counsel to cross examine Brown about his identification. Brown did not identify Rentas as the shooter in Court, and he did not state that he identified Rentas to the police. Moreover, Brown did not provide any testimony that was not confirmed by other witnesses. Carolyn Jackson testified that she saw a Hispanic man and a heavy-set black man drive up to the apartment complex where the victim was shot (T. at 177). She saw the Hispanic man exit the car and shoot the victim. Id. at 180. Jasmine Williams testified that she witnessed a tall, thin Hispanic man standing next to a car with a heavy black man inside. She saw the Hispanic man shoot the victim. Id. at 221-24. Katrina Tarver saw a young Hispanic man and a passenger drive up to the apartment complex in a silver Mitsubishi. She saw the Hispanic man shoot the victim. Id. at 238-47. Most importantly, Detective Melissa Langton testified that no witness she interviewed could identify the shooter; rather, they could only provide descriptions of the shooter and the car (T. at 449-53). Detective Langton specifically stated that Dionte Brown could not identify the shooter. Id. at 454.

Given that other witnesses corroborated Brown's testimony, and given that the jury was aware that Brown had not identified

Rentas as the shooter, Rentas cannot demonstrate Strickland prejudice from Counsel's failure to more effectively cross-examine Brown. Accordingly, the state courts' rejection of this claim was neither contrary to Strickland nor based upon an unreasonable determination of the facts. Claim Four is denied.

e. Claim Five

Rentas asserts that he is entitled to habeas relief because of Counsel's cumulative errors (Doc. 1 at 19). This Court need not determine whether, under current Supreme Court precedent, cumulative error claims can ever succeed under 28 U.S.C. § 2254(d). Rentas has not shown an error of constitutional dimension with respect to any federal habeas claim. Therefore, he cannot show that the cumulative effect of the alleged errors deprived him of fundamental fairness in the state criminal proceedings. See Morris v. Sec 'y, Dep't of Corr., 677 F.3d 1117, 1132 (11th Cir. 2012)(refusing to decide whether post-AEDPA claims of cumulative error may ever succeed in showing that the state court's decision on the merits was contrary to or an unreasonable application of clearly established law, but holding that petitioner's claim of cumulative error was without merit because none of his individual claims of error or prejudice had any merit); Forrest v. Fla. Dep't of Corr., 342 F. App'x 560, 565 (11th Cir. 2009)(noting absence of Supreme Court precedent applying cumulative error doctrine to claims of ineffective assistance of counsel, but holding that the

petitioner's cumulative error argument lacked merit because he did not establish prejudice or the collective effect of counsel's error on the trial); Hill v. Sec'y, Fla. Dep't of Corr., 578 F. App'x 805 (11th Cir. 2014)(same). Rentas is not entitled to federal habeas relief on Claim Five.

Any of Rentas' allegations not specifically addressed herein have been found to be without merit.

IV. Certificate of Appealability[9]

Rentas is not entitled to a certificate of appealability. A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability ("COA"). "A [COA] may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, Rentas must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), or that

[9] Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, the "district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Id. As this Court has determined that Petitioner is not entitled to habeas corpus relief, it must now consider whether Petitioner is entitled to a certificate of appealability.

"the issues presented were 'adequate to deserve encouragement to proceed further.'" Miller-El, 537 U.S. at 335-36. Rentas has not made the requisite showing in these circumstances.

Because Rentas is not entitled to a certificate of appealability, he is not entitled to appeal *in forma pauperis*.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Florida Attorney General is **DISMISSED** as a named Respondent.

2. Rentas' motion for leave to file a belated reply (Doc. 18) is **GRANTED** to the extent the Court will consider the reply attached to the motion.

2. Claims One, Two, Four, and Five of the 28 U.S.C. § 2254 petition for habeas corpus relief filed by Pascual Rentas (Doc. 1) are **DENIED**, Claim Three is dismissed as unexhausted, and this case is dismissed with prejudice.

3. Rentas is **DENIED** a certificate of appealability.

4. The Clerk of Court is directed to terminate any pending motions, enter judgment accordingly, and close this case.

DONE and **ORDERED** in Fort Myers, Florida on this 27th day of July, 2017.

John E. Steele

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

SA: OrlP-4
Copies: All Parties of Record

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14344-H

PASCUAL RENTAS,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: WILSON and ROSENBAUM, Circuit Judges.

BY THE COURT:

Pascual Rentas has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated May 9, 2018, denying his motion for a certificate of appealability and denying as moot his motion for leave to proceed *in forma pauperis* in the appeal of the denial of his habeas corpus petition, 28 U.S.C. § 2254. Because Rentas has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, his motion for reconsideration is DENIED.