

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Aug 17, 2018

DEBORAH S. HUNT, Clerk

STEVEN BERNARD SYDNR,)
Petitioner-Appellant,)
v.)
DARREN SETTLES,)
Respondent-Appellee.)

ORDER

Steven Sydnor, a Tennessee prisoner proceeding pro se, appeals the district court's denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. Currently pending is Sydnor's application for a certificate of appealability ("COA").

In 2007, a jury convicted Sydnor of second-degree murder and theft of property valued between \$1,000 and \$10,000 for killing his girlfriend, April Anderson, and stealing her car. The Tennessee Court of Criminal Appeals affirmed the trial court's judgment, and the Tennessee Supreme Court denied leave to appeal. *State v. Sydnor*, No. M2007-02393-CCA-R3-CD, 2010 WL 366670 (Tenn. Crim. App. Feb. 2, 2010), *perm. app. denied* (Tenn. June 17, 2010). Sydnor filed a petition for post-conviction relief, which the trial court denied. The Tennessee Court of Criminal Appeals affirmed the post-conviction court's decision, and the Tennessee Supreme Court denied leave to appeal. *Sydnor v. State*, No. M2015-00651-CCA-R3-PC, 2016 WL 304415 (Tenn. Crim. App. Jan. 26, 2016), *perm. app. denied* (Tenn. June 23, 2016).

In his federal habeas corpus petition, Sydnor raised the following grounds for relief: (1) the trial court deprived him of his right to due process when it denied his motion to suppress statements taken by the police at the time of his arrest, in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966); (2) he was denied his right to a fair trial when the court admitted into evidence (a) a photograph of Anderson taken prior to her death, (b) the medical examiner's post-mortem

photographs of Anderson's face and certain photographs of her body, and (c) "evidence of prior hostilities" between Anderson and Sydnor; (3) his sentence was enhanced based on facts found by the judge and not the jury, in violation of *Cunningham v. California*, 549 U.S. 270 (2007), and *Blakely v. Washington*, 542 U.S. 296 (2004); and (4) there was insufficient evidence to support his theft conviction because the State failed to establish the value of Anderson's car. The district court denied Sydnor's petition, concluding that claims 2(a), 2(c), and 3 were procedurally defaulted and that the remaining claims lacked merit. The court declined to issue a COA. Sydnor now seeks a COA from this court on all claims.

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 satisfy this standard, a petitioner must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When the district court "denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim," the petitioner can satisfy § 2253(c)(2) by establishing that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Procedurally Defaulted Claims

A federal court may not entertain a habeas claim unless the petitioner has first exhausted his state court remedies. 28 U.S.C. § 2254(b)(1)(A). In order to exhaust a claim, the petitioner "must 'fairly present' [the] claim in each appropriate state court . . . thereby alerting that court to the federal nature of the claim." *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (quoting *Duncan v. Henry*, 513 U.S. 364, 365-66 (1995)). When a petitioner has failed to present his claims fairly to the state courts and no remedy remains, his claims are considered procedurally defaulted. *See Gray v. Netherland*, 518 U.S. 152, 161-62 (1996). To overcome a procedural default, a petitioner must show "cause for the default and actual prejudice as a result of the alleged

violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). A fundamental miscarriage of justice requires a showing of actual innocence. *See Dretke v. Haley*, 541 U.S. 386, 393 (2004).

In subclaims (a) and (c) of his second habeas claim, Sydnor asserted that the trial court improperly admitted into evidence a photograph of Anderson taken before she died and "evidence of prior hostilities" between Anderson and him and of his allegedly "threatening conduct" toward Anderson. Prior to trial, Sydnor had filed a motion to exclude prior bad acts evidence, pursuant to Tennessee Rule of Evidence 404(b), seeking to exclude testimony that he had been violent toward Anderson and had threatened her. And, during trial, when the prosecution sought to introduce a photograph of Anderson taken prior to her death, Sydnor objected. Sydnor challenged the trial court's rulings on these issues in his direct appeal, arguing that the photograph and the prior bad acts evidence were not admissible under the Tennessee Rules of Evidence. He did not argue that the admission of this evidence violated any federal constitutional right. In denying relief on these claims, the state appellate court considered the claims under state law only. *Sydnor*, 2010 WL 366670, at *14-18. Sydnor did not reassert these claims in his state post-conviction petition.

In his third habeas claim, Sydnor alleged that his sentence was increased based on facts found by the judge rather than the jury and that he was sentenced to the maximum range for second-degree murder without jury findings to support the sentence, in violation of his due process rights as set forth in *Blakely* and *Cunningham*. As with the above evidentiary claims, Sydnor challenged his sentence on direct appeal, but only as a violation of the Tennessee Sentencing Act. And in determining that no sentencing error occurred, the Tennessee Court of Criminal Appeals relied exclusively on state law. *Id.* at *20-24.

Because Sydnor did not fairly present these claims to the state appellate court as federal constitutional claims and presented them only as violations of state law, the claims are unexhausted. *See Stanford v. Parker*, 266 F.3d 442, 451 (6th Cir. 2001). And Sydnor no longer

has any means by which to exhaust these claims in state court. *See* Tenn. Code Ann. § 40-30-102(c). The claims are therefore procedurally defaulted. *See Gray*, 518 U.S. at 161-62. Further, despite having been alerted to the procedural default by the State in its response to the petition, Sydnor did not file a reply or otherwise attempt to explain his failure to raise his due process claims in the state courts. Nor did he make a showing of actual innocence that would have allowed the district court to review his claims on the merits. Accordingly, no reasonable jurist would debate the district court's rejection of these claims as procedurally defaulted. *See Slack*, 529 U.S. at 484.

Claims Denied on the Merits

Subclaim (b) of Sydnor's second habeas claim challenged the trial court's decision to admit into evidence various photographs from Anderson's autopsy—specifically, close-up photographs of rivet marks on her hands and wrists, the left side of her face and neck, and her face showing a sock in her mouth. As the district court explained, state court evidentiary rulings are generally not cognizable on habeas review. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). "A state court evidentiary ruling will be reviewed by a federal habeas court only if it w[as] so fundamentally unfair as to violate the petitioner's due process rights." *Coleman v. Mitchell*, 244 F.3d 533, 542 (6th Cir. 2001) (emphasis omitted) (citing *Seymour v. Walker*, 224 F.3d 542, 552 (6th Cir. 2000)).

Sydnor has failed to make a substantial showing that the introduction of Anderson's post-mortem photographs rendered the trial fundamentally unfair. In denying this claim on appeal, the Tennessee Court of Criminal Appeals concluded that any prejudicial impact of the photographs did not outweigh their probative value. *Sydnor*, 2010 WL 366670, at *16. The court explained that Sydnor maintained that Anderson's death was accidental. *Id.* He had told the police that, when he and Anderson argued, Anderson "'played like' she would commit suicide," *id.* at *3, and, on this occasion, at Anderson's urging, he had held the knife with her and together they had accidentally cut her throat, *id.* at *16. The court found that the photographs "clearly belie[d his] version of events" and "demonstrat[ed] a lack of accident," noting that the

rivet marks in the photograph of Anderson's hands and wrists showed that her hands were tightly bound, that the photograph of her face showed how tightly and deliberately she was gagged and the depth and number of cuts she received, and that the photograph of the sock in Anderson's mouth showed the many layers of binding placed around her face and neck. *Id.* The court also found that the photographs were "not overly gruesome," and therefore concluded that the trial court did not err in admitting them. *Id.* Under these circumstances, reasonable jurists could not debate the district court's conclusion that the state appellate court's ruling was not objectively unreasonable because the admission of the photographs did not "so perniciously affect the prosecution of [the] criminal case as to deny the defendant the fundamental right to a fair trial." *Kelly v. Withrow*, 25 F.3d 363, 370 (6th Cir. 1994); *see Biros v. Bagley*, 422 F.3d 379, 391 (6th Cir. 2005).

A) Turning to the first habeas claim, Sydnor argued that the trial court violated his due process rights by denying his motion to suppress statements that he made to the police without having been advised of his rights, as required by *Miranda*. The Tennessee Court of Criminal Appeals rejected Sydnor's *Miranda* claim, concluding that the trial court properly found that Sydnor was not in custody when he made certain statements to Officer Shane Fairbanks and Officer Spain after he had flagged Fairbanks down and told him that he wanted to "turn himself in." *Sydnor*, 2010 WL 366670, at *11. On review of this claim below, the district court concluded that the state court's ruling was not objectively unreasonable and did not result in a decision that was contrary to clearly established federal law. *See* 28 U.S.C. § 2254(d).

Miranda applies only to suspects who are subjected to "custodial interrogation." 384 U.S. at 444. "[C]ustodial interrogation" is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* "[T]he only relevant inquiry" for determining whether an individual is in custody "is how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). This presents two questions: "[F]irst, what were the circumstances surrounding the interrogation; and second, given those

circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.” *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (footnote omitted). Courts look to the following factors in determining whether a person is in custody for *Miranda* purposes: “(1) the location of the interview; (2) the length and manner of the questioning; (3) whether there was any restraint on the individual’s freedom of movement; and (4) whether the individual was told that he or she did not need to answer the questions.” *United States v. Hinojosa*, 606 F.3d 875, 883 (6th Cir. 2010).

The Tennessee Court of Criminal Appeals explained that the interaction between Sydnor and Officer Fairbanks was “cordial and conversational,” noting that Officer Fairbanks never told Sydnor that he could not leave and that Sydnor never expressed a desire to do so. *Sydnor*, 2010 WL 366670, at *11. The court further noted that the two men stood beside Officer Fairbanks’s police car during their conversation and that, up until the point that he was handcuffed so that he could sit down in the police car, Sydnor was not restrained. *Id.* And when Sydnor was restrained, the record shows that any questioning of Sydnor ceased. The state court found that Officer Fairbanks asked questions of Sydnor merely to discern what he was talking about and noted that Officer Fairbanks had testified that, initially, he was concerned that Sydnor had mental health issues. *Id.* Testimony from the suppression hearing established that Sydnor instigated the conversation with Officer Fairbanks and volunteered his statements about what had happened with his girlfriend in an apparent attempt to relieve his conscience and that he was not subject to any restraint during this conversation. Once Sydnor was restrained, the officers stopped any questioning. Under these circumstances, a reasonable person would not have felt that he was not free to end the conversation and leave. *See Hoffner v. Bradshaw*, 622 F.3d 487, 511-12 (6th Cir. 2010) (holding that petitioner was not subject to custodial interrogation where he volunteered statements to the police). Accordingly, jurists of reason could not debate the district court’s determination that the state court did not unreasonably apply *Miranda* in rejecting this claim.

In his final habeas claim, Sydnor argued that there was insufficient evidence to support his theft conviction because the State failed to establish the value of Anderson’s car. In

reviewing the sufficiency of the evidence, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The reviewing court may not “reweigh the evidence, re-evaluate the credibility of witnesses, or substitute [its] judgment for that of the jury.” *Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009). “[E]ven were [the court] to conclude that a rational trier of fact could *not* have found a petitioner guilty beyond a reasonable doubt, on habeas review, [the court] must still defer to the *state appellate court’s* sufficiency determination as long as it is not unreasonable.” *Id.*; *see* 28 U.S.C. § 2254(d)(2).

Applying the above standard, the Tennessee Court of Criminal Appeals concluded that the prosecution had introduced sufficient evidence of the car’s value. *Sydnor*, 2010 WL 366670, at *20. The court noted testimony that Anderson had bought a new Honda Accord in April 2004—less than two years prior to the incident—and that she was paying over \$500 a month for it. *Id.* The district court found that a jury could reasonably infer from this evidence that the car was worth more than \$1000. No reasonable jurist could debate the district court’s conclusion that the state court’s decision was objectively reasonable and that Sydnor was not entitled to habeas relief on this claim.

Accordingly, Sydnor’s application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

STEVEN BERNARD SYDOR,)
Petitioner,)
v.) Case No. 3:16-cv-1972
DARREN SETTLES, Acting Warden,) Judge Aleta A. Trauger
Respondent.)

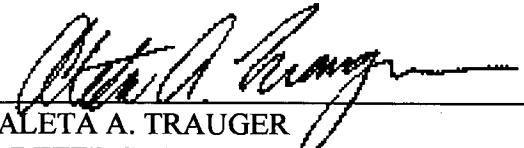
ORDER

For the reasons set forth in the accompanying Memorandum, the petitioner Steven Bernard Sydor's petition for the writ of habeas corpus (ECF No. 1) is **DENIED**, and this matter is **DISMISSED**.

As also discussed in the Memorandum, the court finds that the issues raised in the § 2254 petition do not "deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The court therefore **DENIES** a certificate of appealability ("COA"). The petitioner may, however, seek a COA directly from the Sixth Circuit Court of Appeals. Fed. R. App. P. 22(b)(1).

It is so **ORDERED**.

This is a final order for purposes of Fed. R. Civ. P. 58.



ALETA A. TRAUGER
UNITED STATES DISTRICT JUDGE