No. 18-1762

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAQUAN HENDERSON,

Petitioner-Appellant,

v.

GREG SKIPPER, Warden,

Respondent-Appellant.

ORDER

Jaquan Henderson, a Michigan prisoner proceeding pro se, appeals the district court's denial of his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. This court construes Henderson's timely notice of appeal as an application for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b)(2).

On January 8, 2012, Henderson, armed with a .380 handgun, and Robert Wright and Steven Anderson, who were also armed, set out to exact revenge for a previous assault and robbery of Wright. Once at the scene, Henderson and his accomplices opened fire, killing one individual and injuring another. Testifying in his own defense at trial, Henderson admitted firing his weapon at the scene but stated that he went there "only intend[ing] a fistfight," *People v. Henderson*, 854 N.W.2d 234, 241 (Mich. Ct. App. 2014); that Anderson threatened him with a shotgun and forced him to use his handgun; and that Henderson only "fired his weapon harmlessly into the air, *id.* at 242. A jury convicted Henderson of second-degree murder, assault with intent to commit murder, being a felon in possession of a firearm, and three counts of possession of a firearm during the commission of a felony. The court sentenced Henderson as a fourth-offense habitual offender to concurrent prison terms of 35 to 80 years for the second-degree-murder and assault-with-intent-to-commit murder convictions and 76 to 360 months for

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the felon-in-possession conviction, and to 2 years for each felony-firearm conviction to be served concurrently with each other and consecutively to the sentences on the other convictions. The Michigan Court of Appeals affirmed the judgment, *see id.* at 237, and the Michigan Supreme Court denied leave to appeal, 856 N.W.2d 53 (Mich. 2014) (mem.). Henderson did not seek post-conviction relief in the state courts.

In his § 2254 petition, Henderson raises the same three claims that he raised on direct appeal: (1) the trial court erred by failing to instruct the jury on a duress defense; (2) there was insufficient evidence to support his convictions for second-degree murder and assault with intent to commit murder; and (3) the trial court erred by omitting language related to his duress defense from its instruction to the jury on the assault-with-intent-to-commit-murder charge. A magistrate judge issued a report recommending that Henderson's petition be denied. Over Henderson's objections, the district court adopted the report and recommendation and denied the petition. The court also declined to issue a COA.

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). Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), if a state court previously adjudicated a petitioner's claims on the merits, a district court may not grant habeas relief unless the state court's adjudication of the claim 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 "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); *see Harrington v. Richter*, 562 U.S. 86, 100 (2011). Where AEDPA deference applies, this court, in the COA context, must evaluate the district court's application of § 2254(d) to

determine "whether that resolution was debatable amongst jurists of reason." *Miller-El*, 537 U.S. at 336.

In his first claim, Henderson argued that the trial court erred by "failing to instruct the jury on duress, when there was evidence that [he] shot his gun only in response to being threatened with a shotgun by a co-defendant." At trial, after the court instructed the jury, the jury submitted a question: "Is it possible for us to be provided with the legal definition of duress or elements of duress for review?" The trial court responded with a note, stating, "You must follow the instructions given to you. Duress is not a defense to homicide murder." Defense counsel objected to this response and raised on appeal a due process challenge to the court's refusal to give the instruction.

The Due Process Clause of the Fourteenth Amendment "guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). This right, however, is not "unlimited." *United States v. Scheffer*, 523 U.S. 303, 308 (1998). "States are free to define the elements of, and defenses to, crimes." *Gimotty v. Elo*, 40 F. App'x 29, 32 (6th Cir. 2002). "In determining whether a petitioner was entitled to a defense under state law, federal courts must defer to state-court interpretations of the state's laws, so long as those interpretations are themselves constitutional." *Id.*; *see Volpe v. Trim*, 708 F.3d 688, 696 (6th Cir. 2013).

The Michigan Court of Appeals rejected Henderson's claim, explaining that the trial court did not err in declining to instruct on duress because it is well-established under Michigan law that duress is not a defense to homicide. *Henderson*, 854 N.W.2d at 238 (citing cases). The court further explained that this rule applies equally where a defendant is charged as an aider and abettor to a murder and also applies to an assault-with-intent-to-commit murder charge. *Id.* at 238-40.

The district court denied Henderson's request for habeas relief on this claim, explaining that the Michigan Court of Appeals' ruling that duress was not an available defense on the second-degree-murder and assault-with-intent-to-commit-murder charges was an interpretation

of state law to which a habeas court must defer. The court held that, because Henderson did not cite any clearly established federal law that requires the allowance of duress as a defense to murder or assault with intent to commit murder, he was not entitled to habeas relief on his claim that the trial court's failure to instruct on a duress defense violated his right to due process. *See* 28 U.S.C. § 2254(d). Reasonable jurists could not debate this resolution of Henderson's claim.

In his second claim, Henderson argued that there was insufficient evidence to support his second-degree-murder and assault-with-intent-to-commit murder convictions because the State failed to offer adequate evidence of malice and/or intent to kill. He asserted that he only went to the scene after being "tricked into accompanying Wright and Anderson by Wright's request that []he engage in another 'beat down'" and that he fired his gun into the air because Anderson threatened him with a shotgun.

In reviewing the sufficiency of 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). In a federal habeas proceeding, review of a sufficiency claim is doubly deferential: "First, deference should be given to the trier-of-fact's verdict, as contemplated by *Jackson*; second, deference should be given to the [state appellate court's] consideration of the trier-of-fact's verdict, as dictated by AEDPA." *Tucker v. Palmer*, 541 F.3d 652, 656 (6th Cir. 2008).

Applying the *Jackson* standard, the Michigan Court of Appeals found that there was sufficient evidence to establish that Henderson possessed the requisite intent for each offense. *Henderson*, 854 N.W.2d at 240-42. Noting that the jury had been instructed on an aiding-and-abetting theory of liability and citing numerous facts about Henderson's involvement in the shooting that were established at trial, the court concluded that the evidence "rationally supported a finding that [Henderson] intended to aid or abet a murder, that he had knowledge

that a murder was going to be committed, or that he intended to aid or abet conduct or an offense for which the natural and probable consequence was a homicide." *Id.* at 242; *see People v. Robinson*, 715 N.W.2d 44, 53 (Mich. 2006). Additionally, the court found that a jury could have reasonably discredited Henderson's claim that he did not aim his weapon at the victims and concluded that Henderson feared that he had fired the fatal shot in light of evidence that he fled from the scene, disassembled his weapon and threw all three guns in the Kalamazoo River, destroyed the mobile phone that he had been using to communicate with Wright on the day of the shooting, and repeatedly lied to police about which weapon he had fired. *Henderson*, 854 N.W.2d at 242.

No reasonable jurist could disagree with the district court's conclusion that the state appellate court's decision was not based on an unreasonable determination of the facts and was not contrary to, or an unreasonable application of, *Jackson*. In his petition, Henderson did not dispute the factual determinations made by the Michigan Court of Appeals; rather, he merely set forth his own version of events and argued that his version is the one to be believed. Such arguments ask the court to reweigh the evidence and substitute its judgment for that of the jury. This is not permitted on habeas review. *See Brown*, 567 F.3d at 205. Henderson's insufficient-evidence claim does not deserve encouragement to proceed further.

In his final claim, Henderson argued that the trial court erroneously omitted optional language from Michigan's standard jury instruction on assault with intent to commit murder. The Michigan Court of Appeals explained that the trial court's instruction on the elements of this charge was consistent with Michigan's standard instruction but eliminated the following optional text: "the circumstances did not legally excuse or reduce the crime." *Henderson*, 854 N.W.2d at 239-40 (quotation omitted). Henderson's challenge to the trial court's decision to eliminate this part of the standard instruction related to his claim concerning the court's failure to instruct the jury on duress—he maintained that his actions were excused by duress. The district court denied habeas relief on this claim, explaining that it was bound by Michigan case law that duress was not an available defense to the second-degree-murder and assault-with-intent-to-commit murder

charges and that Henderson did not identify any other circumstances that might "legally excuse or reduce the crime." *See Volpe*, 708 F.3d at 696; *Gimotty*, 40 F. App'x at 32. Reasonable jurists could not debate this conclusion.

Accordingly, Henderson's application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Jaquan Henderson, Petitioner,	)	
	)	No. 1:15-cv-1144
-v-	)	
	)	HONORABLE PAUL L. MALONEY
Shane Jackson, Respondent.	)	

OPINION

On November 5, 2015, Petitioner Jaquan Henderson filed a petition under 28 U.S.C. § 2254 seeking relief from a state conviction. (ECF No. 1.) The State of Michigan, through Jackson, filed its response on May 17, 2016. (ECF No. 5.) The Magistrate Judge issued an R&R on December 27, 2017, recommending that the petition be denied. (ECF No. 10.) The matter is now before the Court for de novo review of Petitioner's timely objections to the R & R. (ECF No. 13.)

Statement of Facts

Henderson takes no issue with the facts as summarized by the magistrate judge. Since he lodges objections only to legal conclusions, the Court **ADOPTS** the magistrate judge's summary of the facts contained in the R & R. (ECF No. 10.)

Legal Framework

With respect to a dispositive motion, a magistrate judge issues a report and recommendation, rather than an order. After being served with a report and recommendation (R & R) issued by a magistrate judge, a party has fourteen days to file written

Appendix / Exhibit "B"

After thoroughly examining each issue, the magistrate judge concluded Henderson's arguments lacked merit and recommended that the Court deny his petition. (ECF No. 10.) From these three grounds, Henderson now raises seven objections. (ECF No. 13.)

Objection 1: Jury Instructions on Duress

The magistrate judge concluded that the trial court did not commit an error of constitutional magnitude by refusing to instruct the jury on the defense of duress. The judge reasoned that, because "States are free to define elements of, and defenses to, crimes," *Gimotty v. Elo*, 40 F. App'x 29, 32 (6th Cir. 2002), the Michigan Court of Appeals' determination that the defense of duress was not available to Henderson was controlling. (*See* ECF No. 6-11.)

Henderson now asserts that Michigan "has long recognized the existence of the affirmative defense of duress." (ECF No. 13 at PageID.1559.) He cites *People v. Luther*, 394 Mich. 619, 622 (1975). But he does not acknowledge that duress is not a defense to homicide under Michigan law. *See People v. Gimotty*, 216 Mich. App. 254, 257 (1996). The Michigan Court of Appeals also concluded that duress was not applicable to a charge of Assault with Intent to Commit Murder. (*See* ECF No. 6-11 at PageID.1340 ("[A]pplication of a duress defense in the context of AWIM would be entirely incongruous with the principle that "one cannot submit to coercion to take the life of a third person, but should risk or sacrifice his own life instead.").)

The Court is bound to follow the Michigan state court's interpretation of Michigan law, including the Michigan Court of Appeals' determinations made in Henderson's direct

state court, concluded that they were well-supported by the record, and recommended that the Court reject Henderson's argument. (*Id.*)

In his objections, Henderson again selectively quotes his own trial testimony to offer up his own narrative of the facts and ignores the Michigan Court of Appeals' determination that the evidence supported his conviction. He states, "If Petitioner's version is believed, he neither gave encouragement [n]or assistance nor intended to act out the crime." (ECF No. 13 at PageID.1562.)

Once again, the trouble for Henderson is that the jury *did not* believe his version of the facts because it found him guilty. The issue in a sufficiency-of-the-evidence challenge is whether, in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime. *Jackson*, 443 U.S. at 319. It is "an intentionally hard" standard to meet; it erects a "nearly insurmountable hurdle" to petitioners like Henderson. *See Davis v. Lafler*, 658 F.3d 525, 531 (6th Cir. 2011 (en banc) (citations omitted). It requires significantly more than offering up an account of the facts in the light most favorable to the petitioner, as Henderson has done.

Thus, Henderson has failed to make out a sufficiency of the evidence claim, and there is no doubt that he has failed to show that the Michigan Court of Appeals' determination was an unreasonable application of *Jackson* or contrary to that decision. These objections (II and III) will be overruled.

> necessitated the instructional language that was not included by the court in instructing the jury.

(ECF No. 6-11 at PageID.1341.)

In his objections, Henderson only rehashes the general constitutional protections relating to jury instructions. He also asserts that the failure to provide a duress instruction violated the law established by the Supreme Court in *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 446 (1978). There, the Court concluded that it was reversible error to fail to give an instruction on withdrawal from a conspiracy when the defendants had proffered substantial evidence that would support such a defense, and withdrawal was a complete defense to the charge. *Id.* at 464-65.

The key distinction between *United States Gyspsum Company* and the instant case is that the Michigan courts have concluded that duress was not a defense to Henderson's charged crimes, and that Henderson had not submitted evidence that would have supported any other defense. Accordingly, Henderson has not demonstrated that the failure to include jury instructions relating to duress or other defenses was contrary to or, or an unreasonable application of federal law. These objections (4, 5, & 6) will be overruled.

7. Certificate of Appealability

Finally, Henderson objects that reasonable jurists would debate his claims, so the Court should issue a certificate of appealability. He says that the Court had to engage in considerable analysis, and that his claims are non-frivolous, so they should be reviewed by the Sixth Circuit Court of Appeals. The magistrate judge examined Henderson's claims under the appropriate standard, *Slack v. McDaniel*, 529 U.S. 473 (2000), and concluded that

debatable or wrong." 529 U.S. at 484. "A petitioner satisfies this standard by demonstrating 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). In applying this standard, the Court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of petitioner's claims. *Id.*

Examining petitioner's claims under the standard in *Slack*, a reasonable jurist would not conclude the Court's assessment of each of petitioner's claims to be debatable or wrong, particularly in light of the AEDPA deference owed to the Michigan courts. Accordingly, Petitioner's certificate of appealability is **DENIED**.

ORDER

For the reasons discussed in the accompanying opinion: Petitioner Jaquan Henderson's objections are **OVERRULED** (ECF No. 13); the magistrate judge's report and recommendation is **ADOPTED** as the Opinion of the Court (ECF No. 10); Petitioner's petition is **DENIED** (ECF No. 1); and a certificate of appealability is **DENIED**. Judgment will enter separately.

IT IS SO ORDERED.

Date: May 31, 2018

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge