No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL BENZANT,

Petitioner,

v.

MARK S. INCH,

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX TO APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Michael Ufferman Law Firm
Florida Bar # 114227
2202-1 Raymond Diehl Road
Tallahassee, Florida 32308
Phone (850) 386-2345
Fax (850) 224-2340
Email: ufferman@uffermanlaw.com

Counsel for the Petitioner

TABLE OF CONTENTS

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11137-A

SAMUEL BENZANT,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

ORDER:

Samuel Benzant is a Florida prisoner serving a life sentence after being convicted by a jury in 2007 of first-degree felony murder, in violation of Fla. Stat. Ann. §§ 782.04(1), 775.087, and 777.011, and armed robbery, in violation of Fla. Stat. Ann. §§ 812.13(2)(A), 775.087, and 777.011. He seeks a certificate of appealability ("COA") in order to appeal the denial of his petition for writ of habeas corpus, 28 U.S.C. § 2254, alleging that the trial court violated his due process rights by not redacting a statement Benzant made regarding an unrelated crime and ineffective assistance of trial and appellate counsel.

In order 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). The petitioner satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or by demonstrating that the issues "deserve

encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Claim 1—The Trial Court's Denial of Benzant's Motion to Suppress

Before bringing a habeas action in federal court, a petitioner must exhaust all state court remedies that are available for challenging his conviction, either on direct appeal or in a state post-conviction motion. 28 U.S.C. § 2254(b), (c). "[F]or purposes of exhausting state remedies, a claim for relief in habeas corpus must include reference to a specific federal constitutional guarantee, as well as a statement of the facts that entitle the petitioner to relief." *Gray v. Netherland*, 518 U.S. 152, 162-63 (1996). "This limitation on federal habeas review is of equal force when a petition, which actually involves state law issues, is couched in terms of equal protection and due process." *Branan v. Booth*, 861 F.2d 1507, 1508 (11th Cir. 1998) (addressing a petition requiring an examination of Florida law despite being couched in terms of due process).

Here, reasonable jurists would not debate that the district court correctly determined that Benzant failed to exhaust his state court remedies with respect to this claim. In his direct appeal, Benzant only argued that the trial court erred under Florida law. He made no mention of any federal law, nor did he argue that the admission of the evidence denied him of a fundamentally fair trial. Although he now couches his argument in due process terms, any review of this issue would be a review of Florida law.

Claim 2—Counsel's Failure to Strike a Juror for Bias

To succeed on an ineffective-assistance claim, a petitioner must show that (1) his attorney's performance was deficient, and (2) the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel's performance is deficient if it falls below the wide range of competence demanded of attorneys in criminal cases. *Id.* at 687-88. To demonstrate

prejudice, the petitioner 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.

If a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the decision of the state court (1) "was contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." 28 U.S.C. § 2254(d). A state court's decision is "contrary to" federal law if "the state court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than th[e] Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000).

Here, reasonable jurists would not debate whether Benzant showed a valid claim of the denial of a constitutional right. The state court concluded that, under Florida law, a collateral attack based on juror bias is unavailable where a defendant himself affirmatively accepts the jury, as Benzant did. This is not contrary to any Supreme Court decision, nor is this an unreasonable application of *Strickland*. Accordingly, no COA is warranted as to this claim.

Claim 3—Ineffective Assistance of Appellate Counsel for Failure to Raise the Suppression Issue

In his motion for COA, Benzant concedes that this argument was not exhausted in the state court. He further concedes that his argument regarding the exception to the procedural bar found in *Martinez v. Ryan*, 566 U.S. 1, 15 (2012), is foreclosed by *Davila v. Davis*, 137 S. Ct. 2058 (2017), and he only raises the issue to preserve it for review by the Supreme Court, so no COA is warranted as to this claim. *See Hamilton v. Sec'y Fla. Dep't of Corr.*, 793 F.3d 1261, 1266 (11th

Cir. 2015) ("And no COA should issue where the claim is foreclosed by binding circuit precedent 'because reasonable jurists will follow controlling law.'").

Conclusion

Accordingly, there is no issue on which reasonable jurists would debate, and Benzant's motion for a COA is DENIED.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE