

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12322-C

TIMOTHY L. JOE,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF
CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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

Before: TJOFAT and BRANCH, Circuit Judges.

BY THE COURT:

Timothy L. Joe has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated January 24, 2019, denying his motions for a certificate of appealability and leave to proceed *in forma pauperis* in order to appeal the district court's denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition. Because Joe 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.

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ORDER:

Timothy L. Joe, a Florida prisoner serving a 40-year total sentence for burglary of an occupied dwelling and grand theft over \$20,000, appeals the district court's denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition, in which he raised nine claims for relief. Joe moves this Court for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") on appeal. Specifically, Joe seeks a COA on four issues:

1. whether his trial counsel was ineffective for failing to move to suppress evidence seized from a storage shed based on his illegal detention, interrogation, and arrest;
2. whether his trial counsel was ineffective for failing to file a written motion to have the trial judge disqualified for bias;

3. whether his appellate counsel was ineffective for failing to raise on direct appeal that the trial court violated the Confrontation Clause by limiting his ability to impeach Detective Robert Carter on cross-examination; and
4. whether his trial counsel was ineffective for failing to proffer impeachment evidence related to Detective Carter's drug use and dismissal from the Daytona Beach Police Department


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 that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted). 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)(1), (2).

As to Joe's first claim, reasonable jurists would not debate the state court's denial of this claim. Joes's sister, who owned the property in question, gave actual consent for the police to search the shed in her backyard. As a result, Joe cannot show prejudice from his counsel's failure to challenge whether Joe was unlawfully "arrested" when he agreed to accompany police to the station prior to the search. *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986) (holding that, where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence).

Similarly, reasonable jurists would not debate the state court's denial of Joe's second claim. Counsel's decision not to file a duplicative written motion after the trial court denied his oral motion to disqualify the trial judge was not unreasonable. *See United States v. Freixas*, 332 F.3d 1314, 1319–20 (11th Cir. 2003) (holding that, to show deficient performance, a defendant must demonstrate that no competent counsel would have taken the action that counsel did take).

Finally, reasonable jurists would not debate the state court's denials of Claims 3 and 4. It was within the trial judge's authority to limit cross-examination that was only marginally relevant. *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) (“[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.”); *see also Francis v. Dugger*, 908 F.2d 696, 701–02 (11th Cir.1990) (holding on habeas review that a trial court did not violate the Confrontation Clause by prohibiting a defendant from asking a state witness about a pending unrelated murder charge because it was only “marginally relevant” to the case at bar). Additionally, Joe’s counsel was not ineffective for failing to proffer evidence impeachment evidence that was inadmissible under Florida law because Detective Carter’s firing for illegal drug use was unrelated to Joe’s case. *See Breedlove v. State*, 580 So. 2d 605, 608 (Fla. 1991) (stating that, in order to impeach a state witness with evidence that the witness is under criminal investigation, the investigation must be related to the case at hand to be relevant).

Accordingly, Joe's motion for a COA is DENIED. Joe's motion for leave to proceed IFP on appeal is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE