

No. \_\_\_\_\_

---

**IN THE SUPREME COURT OF THE UNITED STATES**

---

DIRK WILLIAMS,

*Petitioner,*

v.

JULIE JONES,

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](mailto:ufferman@uffermanlaw.com)

Counsel for the Petitioner

## TABLE OF CONTENTS

<b>Document</b>	<b>Page</b>
1. August 6, 2018, order of the Eleventh Circuit Court of Appeals . . . . .	A-1
2. September 26, 2018, order on the Motion for Reconsideration. . . . .	A-4

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 18-11660-F

---

DIRK WILLIAMS,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

---

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

---

ORDER:

Dirk Williams, a Florida prisoner serving a nine-year sentence for sexual battery of a physically helpless person, appeals the denial of his 28 U.S.C. § 2254 petition. He seeks a certificate of appealability (“COA”) on the issue of whether his trial counsel was ineffective for failing to present the testimony of a toxicologist to demonstrate that the victim’s blood alcohol content (“BAC”) was not sufficiently high to render her physically helpless.

At Williams’s trial, the state outlined its theory that the victim, who “wasn’t drunk” and did not have drugs in her system, was unconscious and unable to consent to sexual activity. The victim, her friend, and several law enforcement officers testified that she was “unresponsive,” disoriented, and “out of it,” before and after the incident. Williams maintained that the victim consented to sexual intercourse. The jury returned a guilty verdict.

The state post-conviction court denied Williams's claim that his counsel was ineffective, concluding that it was "rank speculation on the part of [Williams] to suggest that a toxicologist would have testified that a blood alcohol level of 0[.]38 would not have rendered the victim physically helpless." The court stated that it was "common knowledge that a blood alcohol level of [.]08 raises a presumption of impairment under the DUI laws of the State of Florida," and the argument that "a blood alcohol content of almost five times that amount" would not sustain a jury's finding of physical helplessness was "so contrary to common sense as to be inherently incredible."

In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant 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 omitted).

If a state court adjudicated a claim on the merits, a federal court may grant habeas relief only if the state court's decision (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." 28 U.S.C. § 2254(d)(1), (2). The state court's factual findings are unreasonable when they are "clearly erroneous," or when the evidence was too powerful to conclude anything but what the petitioner claims is true. *Landers v. Warden, Atty. Gen. of Ala.*, 776 F.3d 1288, 1294 (11th Cir. 2015) (internal quotations and citation omitted); *Wiggins v. Smith*, 539 U.S. 510, 528-29 (2003)). If it is determined that the state court decision is unreasonable, the reviewing court is "unconstrained by § 2254's deference and must undertake

a *de novo* review of the record.” *Daniel v. Comm'r, Alabama Dep't of Corr.*, 822 F.3d 1248, 1260 (11th Cir. 2016) (internal quotations and citation omitted).

To establish a successful claim of ineffective assistance of counsel, a defendant must show that (1) his counsel’s performance was deficient, and (2) the deficient performance resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Deficient performance means that counsel’s representation fell below an objective standard of reasonableness, and no competent counsel would have taken the action that counsel did take. *Id.*; *United States v. Freixas*, 332 F.3d 1314, 1319-20 (11th Cir. 2003).

Here, the state habeas court’s decision was based on an unreasonable determination of fact, because the BAC figure used in the state court’s analysis (0.38) clearly contradicted the BAC indicated in the stipulated reports admitted at trial (0.036). *See* 28 U.S.C. § 2254(d)(2); *Landers*, 776 F.3d at 1294. However, even applying *de novo* review, reasonable jurists would not debate that the district court properly rejected Williams’s claim. As reflected by the state’s opening statement, the prosecution’s theory of the case was that the victim was physically helpless, though such helplessness was not necessarily a result of her alcohol consumption. Thus, it was not deficient for Williams’s counsel to decline to call a toxicologist to testify that the amount of alcohol in the victim’s system would not have been sufficient to render her physically helpless, as such testimony would not have contradicted the prosecution’s theory.

Because reasonable jurists would not debate the district court’s denial of Williams’s claim, his motion for a COA is DENIED.

/s/ Kevin C. Newsom  
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 18-11660-F

---

DIRK WILLIAMS,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

---

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

---

Before: NEWSOM and BRANCH, Circuit Judges.

BY THE COURT:

Dirk Williams has filed a motion for reconsideration of this Court's order dated August 6, 2018, denying his motion for a certificate of appealability in his appeal of the district court's denial of his 28 U.S.C. § 2254 petition for writ of habeas corpus. Upon review, Williams's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.