IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14655-E

ADRIAN FRANCIS 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:

Adrian Francis Williams is a Florida prisoner serving a 12-year sentence, consecutive to a previously imposed sentence, after a jury convicted him of dealing in stolen property and false verification of ownership to a pawn broker. Williams directly appealed his conviction to the state court of appeals, which affirmed *per curiam* without issuing a written opinion. Williams also filed a petition for a writ

of habeas corpus in state court, which was denied. Williams then filed in 28 U.S.C. § 2254 petition for habeas corpus, alleging five grounds for relief:[1]

(1) His appellate counsel was ineffective for failing to raise the issue that Williams was denied the right to "confront his charging information sheet at arraignment";

(2) The state appeals court erred in affirming the trial court's decision to deny Williams access to the allegedly stolen ring at issue in the case;

(3) His appellate counsel was ineffective for failing to raise the issue that Williams's speedy-trial rights had been violated based on motions for speedy trial that he had filed;

(4) His appellate counsel was ineffective for failing to raise the issue that the trial court erred in denying Williams's motion to set aside the judgment because his speedy-trial rights had been violated;

(5) The state appeals court erred in failing to find that he was denied trial by an impartial jury.

Williams also filed a memorandum is support of his § 2254 petition. The government filed a response, seeking to refute Williams's claims, and Williams filed a reply. The district court denied Williams's § 2254 petition on the merits and denied Williams a COA. Williams has now appealed the district court's denial and seeks a COA and leave to proceed on appeal IFP.

BACKGROUND:

In September 2010, Williams was charged via information with burglary of a dwelling, dealing in stolen property, and false verification of ownership to a

[1] Williams's grounds for relief have been restated for the sake of clarity and brevity.

pawn broker. The information contained a sworn statement from an assistant state attorney that laid out the details of the charged offenses. The charges were based on the burglary of a woman's home, which resulted in a stolen ring that she later found in a pawn shop. Fingerprints on a pawn form with an assumed name indicated that Williams had sold the ring to the pawn shop. At some point before trial, the ring was released to the victim because of its sentimental value.

Williams was arrested on the charges in November 2011. Throughout his criminal proceedings, Williams represented himself. In December 2011, he filed the first of multiple documents seeking to invoke his rights to a speedy trial under Florida law. Williams also filed multiple pre-trial documents seeking discovery of the ring at issue, despite the fact that it had been released to the victim. His discovery motions were denied. Additionally, Williams filed pre-trial motions challenging the information and asserting that the state had committed fraud on the court by not providing him with sworn statements as the basis of the information. He argued that he had not received sworn statements from all of the relevant witnesses supporting the information, but, at a hearing, the state said that it had provided him with all of the statements. The trial court determined that the statements that Williams sought either already had been given to him or did not exist. Williams proceeded to trial in May 2012, and was permitted to represent himself with standby counsel.

During *voir dire*, a prospective juror named Beverly Randolph testified that her best friend was killed by a police officer, but that that would not affect her ability to be fair and impartial in the case. The state used a peremptory challenge to strike Randolph from the jury. Williams requested a race-neutral reason for the strike. The trial court stated that he had invoked a *Neil/Slappy*[2] inquiry and questioned the state regarding whether the state had a race-neutral, non-pretextual reason for striking Randolph from the jury. The state replied that the case involved law enforcement and the state did not want Randolph sitting on the jury thinking about someone close to her being shot by the police. The trial court found that the reason given by the state was race-neutral and non-pretextual and allowed the strike. Near the end of jury selection, Williams stated that he wanted to strike the entire jury because it was not impartial. The trial court denied his challenge.

At trial, Lou Ann Erickson testified that her home had been burglarized in 2007 and three rings had been stolen, including a distinctive opal and sapphire ring that she had bought for her now-deceased daughter. She testified that, after the burglary, she found what appeared to be the ring she gave her daughter in a pawn shop. Photographs of the ring in question were introduced into evidence and Erickson testified that the ring in the picture was the one that was stolen from her

[2] A *Neil/Slappy* inquiry is Florida's equivalent of an inquiry under *Batson v. Kentucky*, 476 U.S. 79 (1986). *See State v. Slappy*, 522 So. 2d 18 (Fla. 1988); *State v. Neil*, 457 So. 2d 481 (Fla. 1984).

home and then found in the pawn shop. She testified that there were no inscriptions on the inside of the ring other than the karat weight. The ring itself was not produced because it had been returned to Erickson. Upon seeing the pictures of the ring, the trial court noted that the ring looked "very unique," "different," and "intricate" in its opinion, and that it was "not a normal looking ring" and was "identifiable."

Subsequently, an employee of the pawnshop who had originally accepted the ring authenticated the pawn form for the ring. She also stated that the ring was pawned soon after the ring was reported stolen. The pawn shop employee noted that the ring looked like a custom ring. No testimony was elicited about whether there was an inscription in the ring. A fingerprint expert identified prints on the pawn form as belonging to Williams.

After the state presented its case, Williams filed a motion for acquittal, which was denied. Williams argued that he needed access to the actual ring for his defense. The ring was still not produced, but Williams took the stand to testify that the ring had been given to him by his grandmother and had her name and date of birth engraved inside of the band.

In 2012, Williams was convicted for dealing in stolen property and false verification of ownership. Williams received a total sentence of 12 years' imprisonment. Williams directly appealed his conviction and sentence. In his

brief on appeal, Williams argued that his due process rights were violated when the trial court denied him access to the stolen ring and, instead, relied on photographs. He also argued that the district court failed to conduct a proper inquiry into the state's peremptory strike of a juror, Beverly Randolph, as required by Florida law. William's asserted that the inadequate inquiry violated his due process rights. The state appeals court affirmed without issuing a written opinion.

Williams then filed a petition for a writ of prohibition with the Supreme Court of Florida, which was construed as a petition for writ of habeas corpus and transferred to a state appeals court. In his *pro se* petition for a writ of habeas corpus, Williams argued that his appellate counsel had been ineffective for failing to raise multiple issues. Williams argued that his appellate counsel was ineffective for failing to raise the issue that Williams's speedy-trial rights, according to Florida law, had been violated. He also asserted that his counsel was ineffective for failing to argue that the judgment against Williams should have been set aside due to the violation of his speedy-trial rights based on the fact that there was an overly long delay between the issuance of a warrant for his arrest and his actual arrest, despite the fact that Williams already was incarcerated for another, unrelated crime. Finally, Williams argued that his counsel was ineffective for failing to raise the issue that he had not been allowed to challenge the information that led to his

arrest. Williams stated that his appellate counsel's failures denied him his Fifth, Sixth, and Fourteenth Amendment rights. The state court denied his petition.

DISCUSSION:

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 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) (quotations omitted). This Court reviews *de novo* the district court's grant or denial of a habeas corpus petition. *McNair v. Campbell*, 416 F.3d 1291, 1297 (11th Cir. 2005).

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). 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) (quotations omitted). A state court's factual findings are presumed correct absent clear and convincing evidence to the contrary. 28 U.S.C. § 2254(e)(1).

To make a successful claim of ineffective assistance of counsel, a defendant must show both that (1) his counsel's performance was deficient; and (2) the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In determining whether counsel gave adequate assistance, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. Counsel's performance was deficient only if it fell below the wide range of competence demanded of attorneys in criminal cases. *Id.* at 688. To make such a showing, a defendant must demonstrate that "no competent counsel would have taken the action that his counsel did take." *United States v. Freixas*, 332 F.3d 1314, 1319-20 (11th Cir. 2003) (quotation marks omitted). Prejudice occurs when there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. Failure to establish either prong is fatal and makes it unnecessary to consider the other. *Id.* at 697. An ineffective assistance of appellate counsel claim is governed by the performance-and-prejudice standard set forth in *Strickland*. *Clark v. Crosby*, 335 F.3d 1303, 1310 (11th Cir. 2003).

When analyzing a claim of ineffective assistance under § 2254(d), this Court's review is "doubly" deferential to counsel's performance. *Harrington v. Richter*, 562 U.S. 86, 105 (2011). Under § 2254(d), "the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.*

Claim One:

In his first claim, Williams argued that his appellate counsel was ineffective for failing to raise on appeal the issue that his Confrontation Clause rights were violated when he was denied the right to "confront his charging information sheet at arraignment." He asserted that he had requested production of the sworn statements that had formed the basis of the information, but that the state said that they did not have any sworn statements, which was fraud on the court in violation of Fla. R. Crim. P. 3.140(g). The district court found that the state court's denial of the issue was not unreasonable and that Williams had not shown ineffective assistance under *Strickland.*

Reasonable jurists would not debate the denial of Claim One. Florida law requires that an information charging a felony must be signed under oath by the state attorney or a designated assistant state attorney, who must state his or her good faith in instituting the proceedings and certify that he or she has received testimony under oath from material witnesses. Fla. R. Crim. P. 3.140(g). The

information in this case contained the required oath, and the state trial court determined at a hearing that Williams had been provided with all of the information that to which he was entitled.

Furthermore, even if the information had been inadequate, the state would have been permitted to correct its error and re-file. *See, e.g., Hedglin v. State*, 892 So. 2d 1183, 1184 (Fla. 5th DCA 2005) (holding that, where the information lacked a proper oath by the material witness, the state was "free to cure the defect and file a proper information"). Moreover, the material witnesses testified at trial concerning the allegations in the charging information, indicating that Williams was not misled by any defect in the form of the charging information. *See* Fla. R. Crim. P. 3.140(o) (providing that no information shall be dismissed on account of form "unless the court shall be of the opinion that the indictment or information is so vague . . . as to mislead the accused"). Because Williams lacked a meritorious argument about challenging the information, he cannot demonstrate that the outcome of his appeal would have been different had counsel raised the information issue. Therefore, he failed to demonstrate *Strickland* prejudice, and a COA is not warranted. *See Strickland*, 466 U.S. at 694.

Claim Two:

In his second claim, Williams argued that the state court of appeals erred in upholding his conviction because his constitutional rights were violated by the trial

court's decision not to require that the ring at issue be presented as evidence. The district court denied the claim because the state appeals court's denial of the issue without opinion was not an unreasonable application of law or an unreasonable application of fact and because the claim was meritless.

Reasonable jurists would not debate the district court's denial of Claim Two. Florida law allows for the introduction of photographs instead of the actual object in a crime involving wrongfully taken property so that the property can be returned to the owner. Fla. Stat. Ann. § 90.91. This Court has consistently held that "federal courts will not generally review state trial court's evidentiary determinations." *Taylor v. Sec'y, Fla. Dep't of Corr.*, 760 F.3d 1284, 1295 (11th Cir. 2014). Federal habeas review for such relief "is warranted only when the error so infused the trial with unfairness as to deny due process of law." *Id.* (internal quotation marks omitted).

In this case, the state court's decision to use photographs instead of the actual ring did not so infuse the trial with unfairness as to deny due process of law. The three photographs of the ring introduced did include a view of most of the band. Furthermore, the victim, the pawn store employee, and the judge all mentioned that the ring looked unique and easy to identify. The uniqueness of the ring made it more reasonable to believe that it could have been identified purely through photographs. Finally, the jury was exposed to testimony about the ring

from both the victim and from Williams, and had the chance to make a credibility assessment to determine whether they believed that the ring belonged to the victim or to Williams. Accordingly, the use of photographs of the ring did not constitute a denial of due process, and the state appeals court's decision to affirm the trial court's decision was not unreasonable. 28 U.S.C. § 2254(d). Therefore, no COA is warranted on this issue.

Claims Three and Four:

Williams asserted in Claim Three that his appellate counsel was ineffective for failing to raise on direct appeal the issue that Williams's speedy-trial rights under Fla. R. Crim. P. 3.191 were violated. In Claim Four, Williams argued that his appellate counsel was ineffective for failing to raise the issue that the trial court erred in not vacating the judgment against him based on the delay between the issuance of an arrest warrant and his actual arrest, which he asserted violated his speedy-trial rights under Rule 3.191 and the Sixth Amendment. The district court denied Claims Three and Four because the state court was not unreasonable in denying the claims without opinion, and because Williams failed to show deficient performance or prejudice.

The Sixth Amendment to the U.S. Constitution guarantees criminal defendants the right to a speedy trial. *Barker v. Wingo*, 407 U.S. 514, 515 (1972). However, the Sixth Amendment right to a speedy trial is broad and is measured in

terms of reasonableness and prejudice, as opposed to a fixed time period. *Id.* at 529-30. In determining whether a speedy-trial violation has occurred under the Sixth Amendment, this Court employs a balancing test that requires it to weigh the following four factors: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant. *Id.* at 530. With regard to the first factor, "[d]elays exceeding one year are generally found to be presumptively prejudicial." *United States v. Ingram*, 446 F.3d 1332, 1336 (11th Cir. 2006) (quotations omitted). A presumptively prejudicial delay must be found before this Court may examine the remaining three factors. *Id.* Further, "[i]n this circuit, a defendant generally must show actual prejudice unless the first three factors . . . all weigh heavily against the government." *United States v. Dunn*, 345 F.3d 1285, 1296 (11th Cir. 2003) (quotations omitted). Actual prejudice may be established "in one of three ways: (1) oppressive pretrial detention, (2) anxiety and concern of the accused, and (3) possibility that the accused's defense [was] impaired." *Id.* (quotations omitted). The Sixth Amendment speedy-trial protection attaches when an individual becomes accused by arrest or by formal indictment or information. *United States v. Marion*, 404 U.S. 307, 320-21 (1971).

Additionally, Florida has its own speedy-trial provision, which requires a trial to commence within 175 days of arrest in cases in which the defendant is

charged with a felony and within a shorter time if the defendant files a demand for speedy trial. Fla. R. Crim. P. 3.191(a), (b). This Court has held that claims based on Rule 3.191 are not cognizable on federal habeas review because such claims involve only state procedural rules and not errors of federal constitutional dimension. *Davis v. Wainwright*, 547 F.2d 261, 264 (5th Cir. 1977).

In this case, reasonable jurists would not debate the district court's denial of Claims Three and Four. As a preliminary matter, Williams's claims based on Rule 3.191 are not cognizable on federal habeas review, so only his federal claim of denial of speedy-trial rights is relevant. *See id.* The state court's denial of Williams's speedy-trial claim was not contrary to, or an unreasonable application of, *Barker* and its progeny, or based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d)(1), (2); *Williams*, 529 U.S. at 412-13. Williams was charged by information in September 2010 and went to trial in May 2012, so he did experience a presumptively prejudicial delay, despite the fact that his trial was held only about six months after his arrest. *See Ingram*, 446 F.3d at 1336. However, the denial of Williams's speedy-trial claims was not unreasonable because he cannot make the necessary showing of actual prejudice. *See Dunn*, 345 F.3d at 1296. Williams already was incarcerated for another offense at the time he was charged, and, therefore, he did not experience oppressive pretrial detention. *See id.* There is no evidence on the record that he experienced anxiety or concern

between his charge and arrest, and no evidence that the delay impaired his defense. *See id.* Furthermore, Williams cannot make the necessary showing of prejudice to support his claims of ineffective assistance of appellate counsel because he cannot show that, had his counsel brought up the speedy-trial issues on appeal, the outcome of the proceedings likely would have been different. *See Strickland*, 466 U.S. at 694, 697. Especially in light of the applicable doubly deferential standard of review, no COA is warranted on these issues. *Harrington*, 562 U.S. at 105.

Claim Five:

In his fifth and final claim, Williams argued that the state appeals court erred, resulting in manifest injustice, in denying his argument that his conviction should have been overturned because he was denied his right to trial by an impartial jury. He asserted that the district court did not adequately investigate his *Neil/Slappy* challenge to the peremptory strike of juror Beverly Randolph. The district court determined that Williams was not entitled to relief on this claim because the state court had not been unreasonable and because the claim was meritless.

Reasonable jurists would not debate the district court's denial of Claim Five. The Sixth and Fourteenth Amendments guarantee a criminal defendant the right to an impartial jury at trial. *Ross v. Oklahoma*, 487 U.S. 81, 85 (1988). In *Batson*, the Supreme Court held that a prosecutor's use of peremptory strikes to preclude

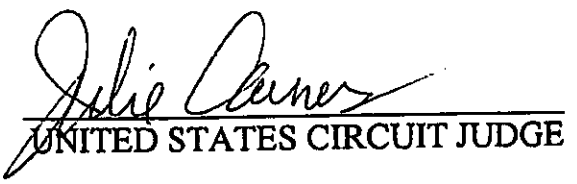
persons from serving on juries on account of their race violates the Equal Protection Clause of the Fourteenth Amendment. 476 U.S. at 89. *Batson* requires courts to use a three-part test to analyze equal protection challenges to the prosecutor's use of peremptory challenges. *Batson,* 106 S.Ct. at 1723-24. First, the defendant must make a *prima facie* showing of purposeful discrimination based on a prohibited ground. *Id.* at 1723. The burden then shifts to the prosecutor to articulate a neutral explanation for the challenge. *Id.* Third, the trial court has the duty to determine whether the defendant has established purposeful discrimination. *Id.* at 1724. At this stage, "the defendant bears the burden of convincing the . . . court that the proffered reasons are pretextual by introducing evidence of comparability." *Atwater v. Crosby,* 451 F.3d 799, 807 (11th Cir. 2006). "[T]he ultimate burden of persuasion regarding [discriminatory] motivation rests with, and never shifts from, the opponent of the strike." *Id.* at 806. This Court gives "great deference" to a trial court's determination that a peremptory strike was not racially motivated. *United States v. Cordoba-Mosquera,* 212 F.3d 1194, 1198 (11th Cir. 2000).

Williams cannot make the necessary showing under *Batson* that Randolph was excluded on account of her race, and, therefore, cannot show that his equal protection rights were violated because the jury was not impartial. *See Batson,* 476 U.S. at 89. Williams invoked a *Neil/Slappy* challenge without any details

indicating why he thought the state was being discriminatory in striking Randolph. Then, the state explained that it was striking Randolph because her answers in *voir dire* indicated that she might be biased against law enforcement. Thus, even if Williams had made out a *prima facie* case of discriminatory intent, the state offered a proper race-neutral reason for its strike, and the trial court agreed that the race-neutral reason was legitimate. Furthermore, the court's determination that the peremptory strike was not improperly motivated is entitled to great deference by this Court. *See Cordoba-Mosquera*, 212 F.3d at 1198. Accordingly, the state court's decision was not contrary to, nor did it involve an unreasonable application of, clearly established federal law or an unreasonable determination of the facts in light of the evidence, and Williams is not entitled to a COA on this issue.

CONCLUSION:

Because Williams did not show that reasonable jurists would find debatable the district court's denial of his § 2254 petition, his motion for a COA is DENIED and his IFP motion is DENIED AS MOOT.



UNITED STATES CIRCUIT JUDGE

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No. 17-14655-E

ADRIAN FRANCIS WILLIAMS,

Petitioner-Appellant,

versus

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ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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

Before BRANCH and JULIE CARNES, Circuit Judges.

BY THE COURT:

Adrian Francis Williams has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated November 19, 2018, denying a certificate of appealability and leave to proceed on appeal *in forma pauperis* in the appeal of the district court's denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. Williams has also filed a motion for leave to file an amended motion for reconsideration, along with a motion for reconsideration that appears to be identical to his original motion. Upon review, Williams's motion for leave to file an amended motion for reconsideration is GRANTED.

Because Williams has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, his amended motion for reconsideration is DENIED.

Additional material from this filing is available in the Clerk's Office.