

Appeals affirmed. *See id.* at *1. Lambert then petitioned the trial court for post-conviction relief. The trial court denied Lambert's petition, and the Tennessee Court of Appeals affirmed. *See Lambert v. State*, No. M2016-01059-CCA-R3-PC, 2017 WL 825488 (Tenn. Crim. App. Mar. 2, 2017), *perm. app. denied* (Tenn. May 18, 2017).

Next, Lambert filed a § 2254 habeas petition in the district court, raising the following claims: (1) his trial counsel was ineffective for three reasons; (2) the indictment was insufficient because it failed to state a material element of the offense; (3) the trial court erred by refusing to order the prosecution to produce grand jury testimony; (4) the evidence was insufficient for the jury to find him guilty of premeditated murder and felony murder; and (5) the trial court violated his right to due process by imposing consecutive sentences.

The district court concluded that Lambert procedurally defaulted two of his three ineffective-assistance-of-trial-counsel subclaims, his insufficiency-of-the-indictment claim, his grand-jury-transcript claim, and his sentencing claim. The district court found no grounds to excuse Lambert's default of these claims. The district court denied the remaining claims on the merits and declined to grant Lambert a COA.

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant 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), a district court shall not grant a habeas petition with respect to any claim that was adjudicated on the merits in the state courts unless the adjudication resulted in a decision that: (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law as determined by the Supreme Court"; or (2) "was based on an unreasonable determination of the facts in light of the evidence presented to the State court." 28 U.S.C. § 2254(d). When a district court denies a habeas petition on procedural grounds, the court may issue a COA only if the applicant shows "that jurists of reason would find it

debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

A. Procedurally Defaulted Claims

In his second and third ineffective-assistance subclaims, Lambert alleged that his trial lawyer was ineffective for not consulting with him about jury selection and testifying at trial. The district court ruled that Lambert procedurally defaulted these claims because the Tennessee Court of Criminal Appeals invoked an adequate and independent state procedural rule that prevented it from reaching the merits of the claims.

Federal habeas review is foreclosed if a prisoner fails to obtain consideration of a claim by a state court, either by failing to present it to the state court while he still had state-court remedies available or because a state procedural rule prevented the state court from reaching the merits of the claim. *See Lundgren v. Mitchell*, 440 F.3d 754, 763 (6th Cir. 2006). When a state procedural rule prevented the state court from deciding the claim on the merits, a procedural default occurs if the prisoner failed to comply with the rule, the state court enforced the rule, and the rule is an adequate and independent state ground to bar federal review of the claim. *See id.*

Lambert did not raise his second and third ineffective-assistance subclaims until he appealed the trial court’s denial of his petition for post-conviction relief. The Tennessee Court of Criminal Appeals ruled that Lambert waived these two claims by not presenting them to the trial court in his original or amended post-conviction petition. *See Lambert*, 2017 WL 825488, at *8. Tennessee’s waiver rule is an adequate and independent state procedural ground that bars federal habeas review of a claim. *See Hutchison v. Bell*, 303 F.3d 720, 738-41 (6th Cir. 2002). Reasonable jurists therefore would not debate the district court’s conclusion that Lambert procedurally defaulted these two claims.

Lambert’s second, third, and fifth claims asserted federal due process violations concerning the alleged insufficiency of the indictment, the trial court’s denial of his motion to produce grand jury testimony, and the trial court’s imposition of consecutive sentences on his murder and

kidnapping convictions. The district court ruled that Lambert failed to exhaust these claims because he presented them to the Tennessee Court of Criminal Appeals as state-law violations only and that the claims were procedurally defaulted because state law now prohibits him from presenting them to the state courts.

The “fair presentation” rule requires a prisoner to present the factual and legal basis of his claim to the state courts as a federal constitutional issue. *See Williams v. Anderson*, 460 F.3d 789, 806 (6th Cir. 2006). A prisoner satisfies this requirement if his state-court brief relied on federal cases employing constitutional analysis, relied on state cases employing federal constitutional analysis, phrased his claims in constitutional terms or terms sufficient to allege the denial of a specific constitutional right, or alleged facts within the mainstream of constitutional law. *See id.* If a prisoner fails to present his claim fairly to the state courts, and a state procedural rule now bars the state courts from considering it, the claim is procedurally defaulted. *See Pudelski v. Wilson*, 576 F.3d 595, 605 (6th Cir. 2009).

In his state appellate brief, Lambert cited the Sixth Amendment to the United States Constitution and the Tennessee state constitution for the proposition that the prosecution must inform a criminal defendant of the nature of the charges against him. Lambert, however, did not cite any federal cases in support of his insufficiency-of-the-indictment claim, and neither of the two state cases that he cited, *State v. Hill*, 954 S.W.2d 725 (Tenn. 1997), and *State v. Hammonds*, 30 S.W.3d 294 (Tenn. 2000), were based on an analysis of federal constitutional law. And Lambert presented his claims concerning the grand jury transcript and his consecutive sentences to the state court as violations of state law only. Consequently, reasonable jurists would not debate the district court’s conclusion that Lambert did not fairly present these claims to the state courts. *See McMeans v. Brigano*, 228 F.3d 674, 682 (6th Cir. 2000) (holding that the petitioner failed to present his claim fairly to the state courts with a “few brief references to the Confrontation Clause in isolated cases”). Tennessee’s one-year statute of limitations on post-conviction petitions and its one-petition rule now bar Lambert from presenting these claims to the state courts as federal constitutional claims. *See Tenn. Code Ann. § 40-30-102(a), (c); Sutton v. Carpenter*, 745 F.3d

787, 789 (6th Cir. 2014); *Hannah v. Conley*, 49 F.3d 1193, 1196 (6th Cir. 1995). Reasonable jurists therefore would not debate the district court's conclusion that Lambert procedurally defaulted these three claims.

The district court also concluded that Lambert could not establish cause and prejudice to excuse his default of these claims. Because, as discussed below, Lambert's defaulted claims were either refuted by the record or failed to raise substantial constitutional issues, reasonable jurists would not debate that conclusion. *See Wade v. Timmerman-Cooper*, 785 F.3d 1059, 1077 (6th Cir. 2015) (stating that a petitioner cannot establish prejudice unless the underlying claim had a reasonable probability of success).

Even if the district court's procedural ruling as to these three claims were debatable, reasonable jurists would not debate whether Lambert stated meritorious constitutional claims. *See Dufresne v. Palmer*, 876 F.3d 248, 254 (6th Cir. 2017). The state-court indictment cited the relevant statutes under which Lambert was charged, *see Lambert*, 2013 WL 791618, at *6-7, which was sufficient to satisfy federal due process requirements, *see Williams v. Haviland*, 467 F.3d 527, 535-36 (6th Cir. 2006). And except for the prosecution's duty to disclose exculpatory or impeachment evidence to the defense (a breach of which Lambert did not raise in state court), a criminal defendant does not have a federal constitutional right to see grand jury testimony. *See Wilson v. Sheldon*, 874 F.3d 470, 477-78 (6th Cir. 2017); *LaMar v. Houk*, 798 F.3d 405, 430-31 (6th Cir. 2015) (stating that there is no federal constitutional right to discovery in criminal cases (citing *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977))). Finally, although Lambert cited *Blakely v. Washington*, 542 U.S. 296 (2004), as support for his sentencing-error claim, his argument was that the trial court misapplied the state sentencing factors in imposing consecutive sentences. Claims that a petitioner's sentence was imposed in violation of state law are not cognizable in federal habeas proceedings. *See Galloway v. Howes*, 77 F. App'x 304, 305 (6th Cir. 2003).

B. Non-Defaulted Claims

Lambert's first non-defaulted claim is that his trial counsel was ineffective for not investigating evidence and case law that rebutted the prosecution's theory that the murder of his wife was premeditated. The Tennessee Court of Criminal Appeals ruled that Lambert failed to show that his attorney's performance was deficient. *See Lambert*, 2017 WL 825488, at *8-9. The district court concluded that this decision was not contrary to or an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984).

In order to establish ineffective assistance of counsel, the petitioner must establish both (1) that his trial "counsel's representation fell below an objective standard of reasonableness" and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 688, 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. An attorney's performance is strongly presumed to be effective. *Id.* at 690. Under the AEDPA, a double layer of deference applies to ineffective-assistance claims: the petitioner must overcome the *Strickland* presumption that his attorney's performance was adequate, and he must demonstrate that the state court's application of *Strickland* was unreasonable. *See Kelly v. Lazaroff*, 846 F.3d 819, 831-32 (6th Cir. 2017).

Although this subclaim itself contained ten of its own subclaims, Lambert did not develop any argument or point to any evidence in the record from which a reasonable jurist could conclude that the state court's resolution of this ineffective-assistance claim was unreasonable. Reasonable jurists would not debate the district court's resolution of this claim. *See Wogenstahl v. Mitchell*, 668 F.3d 307, 335 (6th Cir. 2012) ("[M]erely conclusory allegations of ineffective assistance . . . are insufficient to state a constitutional claim.").

Lastly, claiming that he committed a "crime of passion," Lambert argued that the evidence was insufficient for the jury to find that he murdered Barnes with premeditation. He also claimed that the evidence was insufficient as to the jury's felony-murder verdict because there was no connection between the kidnapping and the murder. The Tennessee Court of Criminal Appeals

rejected both arguments. As to premeditation, the court concluded that the jury could reasonably have found that Lambert murdered Barnes after the “exercise of reflection and judgment,” pointing out that after unsuccessfully trying to get into Barnes’s hotel room, Lambert lay in wait for her in the parking lot, likely slashed the tires to her car with the murder weapon, forced her into an SUV that she had never seen before, stabbed her multiple times, and refused to take her to a hospital at a time when he believed she was still alive. As to the jury’s felony-murder verdict, the court found that there was sufficient evidence to connect the murder and the kidnapping. In support of that conclusion, the court pointed out that about only forty minutes elapsed between the time that Barnes checked out of the motel and the time that the state trooper stopped Lambert in the SUV, and in that short interval, he kidnapped Barnes, stabbed her multiple times, and drove her around while she died. *See Lambert*, 2013 WL 791618, at *9-10. Citing the same evidence, the district court found that these decisions were not contrary to or unreasonable application of *Jackson v. Virginia*, 443 U.S. 307 (1979).

In reviewing sufficiency-of-the-evidence claims under the AEDPA, the court must give the state court’s judgment a double layer of deference. *Brown v. Konteh*, 567 F.3d 191, 204-05 (6th Cir. 2009). First, the court must determine whether, 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.” *Id.* at 205 (citing *Jackson*, 443 U.S. at 319) (emphasis omitted). Second, even if the court concludes that a rational trier of fact could not have found the petitioner guilty beyond a reasonable doubt, it must defer to the state court’s “sufficiency determination as long as it is not unreasonable.” *Id.* (citing 28 U.S.C. § 2254(d)(2)).

Although Lambert claimed that he was distraught because of Barnes’s decision to divorce him and because he allegedly saw her with another man, he has not shown that the evidence, when viewed in favor of the prosecution, does not support the jury’s verdicts. In any event, the fact that Lambert waited for Barnes in the parking lot was strong evidence of premeditation. *See State v. Bullington*, 532 S.W.2d 556, 560 (Tenn. 1976) (“If the killing is accomplished by poisoning or by lying in wait, premeditation is obvious.”). And, as the Tennessee Court of Criminal Appeals

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pointed out, the short timeframe in which Lambert kidnapped and murdered Barnes supported the felony-murder verdict. *See Lambert*, 2013 WL 791618, at *9-10; *see also State v. Buggs*, 995 S.W.2d 102, 106 (Tenn. 1999) (stating that felony-murder requires “a connection in time, place, and continuity of action” between the murder and the underlying felony). Reasonable jurists would not debate the district court’s resolution of this claim.

Conclusion

The court **DENIES** Lambert’s COA application.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

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