IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14732-H

ARTHUR SHERMAINE BUSSEY,

Petitioner-Appellant,

versus

LT. MARTY ALLEN,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ORDER:

Arthur Shermaine Bussey is a Georgia prisoner serving a 20-year sentence, followed by 10 years' probation, after pleading guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 27 (1970), to 2 counts of aggravated assault. He seeks a certificate of appealability ("COA") to appeal the district court's denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition. He also moves for summary reversal, to expand the record, and for an evidentiary hearing. In his § 2254 petition, Bussey raised six claims for relief.

To obtain a COA, a § 2254 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).

If a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the state court's decision was (1) "contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court," or (2) "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). This Court reviews the district court's decision *de novo*, but reviews the state habeas court's decision with deference. *Reed v. Sec'y, Fla. Dep't of Corr.*, 593 F.3d 1217, 1239 (11th Cir. 2010).

In his § 2254 petition, Bussey contended that the arrest warrant used to bring him into custody was deficient because it lacked probable cause. He further contended that this deficiency deprived the trial court of personal jurisdiction over him. However, reasonable jurists would not debate whether the state court reasonably determined that these claims were waived because Bussey entered an *Alford* plea. *See Chandler v. United States*, 413 F.2d 1018, 1019 (5th Cir. 1969) (holding that a petitioner's claim that he was arrested without probable cause was waived by his guilty plea); *Blohm v. C.I.R.*, 994 F.2d 1542, 1554 (11th Cir. 1993) ("[T]he collateral consequences flowing from an *Alford* plea are the same as those flowing from an ordinary plea of guilt" so long as "the guilty plea represents a voluntary and intelligent choice among alternative courses of action open to the defendant and a sufficient factual basis exists to support the plea of guilt.") (citations omitted). Although Bussey asserted that the insufficiency of the warrant meant that the district court lacked jurisdiction over him, that argument is foreclosed by precedent. *See United States v. Stuart*, 689 F.2d 759, 762 (11th Cir. 1982) ("It is well established that irregularities in the manner

in which a defendant is brought into custody does not deprive the court of personal jurisdiction in a criminal case."). Accordingly, no COA is warranted on either of these claims.

Third, Bussey claimed that the indictment against him violated double jeopardy because it did not allege that he stabbed the victim in two completed exchanges separated by a meaningful interval of time or with distinct intentions. Reasonable jurists would not debate whether the state court reasonably denied this claim. As the state court noted, Bussey also waived his double jeopardy claim by entering his *Alford* plea. *See United States v. Broce*, 488 U.S. 563, 571, 576 (1989). Therefore, no COA is warranted on this claim, either.

Bussey next claimed that the indictment was insufficient in violation of his due process rights because the indictment failed to allege "two separate acts," show "separation of time" between the assaults, or assert he stabbed the victim with "distinct intentions." Reasonable jurists would not debate whether the state court reasonably determined that the indictment was sufficient. The Supreme Court has never required an indictment to allege any particular separation of time between offenses or any distinction of intentions between charged counts, so the state post-conviction court's determination that the indictment was sufficient cannot be "contrary to" or an "unreasonable application" of federal law. *See* 28 U.S.C. § 2254(d)(1). Accordingly, no COA is warranted on this issue.

Fifth, Bussey claimed that he would not have pleaded guilty had he known about the alleged deficiencies with the warrant and indictment. The district court correctly determined that Bussey knowingly and voluntarily entered his *Alford* plea. He declared in court that he understood the charges against him, understood the consequences of his plea, and that he was choosing voluntarily to plead guilty. He has alleged no facts that would overcome the "strong presumption" that his in-court statements were true. *See Blackledge v. Allison*, 341 U.S. 63, 74 (1997) (holding

that a defendant's in-court statements carry a "strong presumption" of verity). Accordingly, no COA is warranted on this claim. *See Stano v. Dugger*, 921 F.2d 1125, 1141 (11th Cir. 1991) ("If a defendant understands the consequences of a guilty plea, and voluntarily chooses to plead guilty, without being coerced to do so, the guilty plea . . . will be upheld on federal review."), *overruled on other grounds by United States v. Garey*, 540 F.3d 1253 (11th Cir. 2008) (*en banc*).

Finally, Bussey claimed that the accumulation of pre-plea errors deprived him of due process. Research has uncovered no Supreme Court precedent requiring state courts to adopt the cumulative-error doctrine in their habeas proceedings. Accordingly, the state court's determination that Bussey's claim of cumulative error was not cognizable in a Georgia habeas proceeding was not "contrary to" or an "unreasonable application of" federal law. *See* 28 U.S.C. § 2254(d)(1). Moreover, Bussey's claims either were waived by the entry of the plea or were meritless. Thus, there were no cognizable errors to accumulate, and he was not entitled to relief. *Morris v. Sec'y, Dep't of Corr.*, 677 F.3d 1117, 1132 (11th Cir. 2012).

Because there are no issues on which reasonable jurists would debate, Bussey's motion for a COA is DENIED. Bussey's motions for summary reversal, to expand the record, and for an evidentiary hearing are DENIED AS MOOT.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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April 11, 2019

Clerk - Northern District of Georgia
U.S. District Court
18 GREENVILLE ST
NEWNAN, GA 30264

Appeal Number: 18-14732-H
Case Style: Arthur Bussey v. Marty Allen
District Court Docket No: 3:18-cv-00064-TCB

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H
Phone #: (404) 335-6182

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

ARTHUR SHERMAINE BUSSEY, Petitioner, v. LT. MARTY ALLEN, Defendant.	HABEAS CORPUS 28 U.S.C. § 2254 CIVIL ACTION FILE NO. 3:18-cv-64-TCB-RGV

ORDER

This case comes before the Court on Magistrate Judge Russel G. Vineyard's report and recommendation ("R&R") [30], which recommends denying Plaintiff Arthur Bussey's motions [23, 24, 29] for entry of default, for default judgment, and "to challenge respondent to declare under penalty of perjury." Bussey has filed objections [35] to the R&R as well as four motions [32, 33, 34, 36] for miscellaneous relief, which the Court considers with Bussey's objections.

A district judge has a duty to conduct a "careful and complete" review of a magistrate judge's R&R. *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 408 (5th Cir. Unit B 1982)). This review may take different forms, however, depending on whether there are objections to the R&R. The district judge must "make a de novo determination of those portions of the [R&R] to which objection is made." 28 U.S.C. § 636(b)(1)(C). In contrast, those portions of the R&R to which no objection is made need only be reviewed for "clear error." *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006) (per curiam) (quoting *Diamond v. Colonial Life & Accident Ins.*, 416 F.3d 310, 315 (4th Cir. 2005)).[1]

[1] *Macort* dealt only with the standard of review to be applied to a magistrate's factual findings, but the Supreme Court has indicated that there is no reason for the district court to apply a different standard to a magistrate's legal conclusions. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Thus, district courts in this circuit have routinely reviewed both legal and factual conclusions for clear error. *See Tauber v. Barnhart*, 438 F. Supp. 2d 1366, 1373–74 (N.D. Ga. 2006) (collecting cases). This is to be contrasted with the standard of review on appeal, which distinguishes between the two. *See Monroe v. Thigpen*, 932 F.2d 1437, 1440 (11th Cir. 1991) (holding that when a magistrate's findings of fact are adopted by the district court without objection, they are reviewed on appeal under a "plain error standard" while questions of law always remain subject to de novo review).

"Parties filing objections must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court." *Nettles*, 677 F.2d at 410 n.8. "This rule facilitates the opportunity for district judges to spend more time on matters actually contested and produces a result compatible with the purposes of the Magistrates Act." *Id.* at 410.

After conducting a complete and careful review of the R&R, the district judge "may accept, reject, or modify" the magistrate judge's findings and recommendations. 28 U.S.C. § 636(b)(1)(C); *Williams*, 681 F.2d at 732. The district judge "may also receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1)(C).

Bussey objects to the magistrate judge's conclusion that he waived any Fourth Amendment challenges related to his arrest because he entered a guilty plea. The Supreme Court has instructed that a "Fourth Amendment claim is irrelevant to the constitutionality of [a] criminal conviction, and for that reason may not be the basis of a writ of habeas corpus . . . ." *Haring v. Prosise*, 462 U.S. 306, 322 (1983). A pleading

defendant's conviction is based upon the plea, i.e., his admission of the facts of the crime. As a result, the conviction is not caused by an invalid search or arrest under the Fourth Amendment. *Id.* at 321–22. It is "caused" by his admission of guilt. Thus, for habeas corpus purposes, alleged Fourth Amendment violations prior to the plea are inconsequential to the constitutional validity of Bussey's conviction.

Based on this, the magistrate judge did not err by rejecting Bussey's Fourth Amendment grounds for habeas corpus relief. *See Chandler v. United States*, 413 F.2d 1018, 1019 (5th Cir. 1969) (per curiam) ("The district court correctly held that the plea of guilty waived all non-jurisdictional defects, including [arrest without probable cause]."); *cf. Roberts v. Fannin*, No. 17-cv-00489-KOB-TMP, 2018 WL 1163891, at *4 (N.D. Ala. Jan. 30, 2018), *report and recommendation adopted by* No. 1:17-cv-00489-KOB-TMP, 2018 WL 1157208, at *1 (N.D. Ala. Mar. 5, 2018) (finding that a guilty plea waived challenge to arrest warrant under Alabama law). Thus, his objections with respect to his Fourth Amendment grounds for habeas corpus relief are overruled.

Bussey also objects on jurisdictional grounds, arguing that challenges to the state court's jurisdiction over his criminal case are not waived by entry of a guilty plea. *See Menna v. New York*, 429 U.S. 61, 62–63 (1975). This is correct. And it is why the magistrate court duly considered Bussey's double jeopardy claim, which if proven constitutes a jurisdictional defect in his criminal proceedings. Bussey does not, however, point out with any specificity defects in the magistrate judge's conclusion that his conviction did not contravene the double jeopardy clause, and this Court finds none upon its own de novo review.

Bussey alleges another jurisdictional defect. He argues that an invalid arrest deprived the state court of jurisdiction over his case. This is incorrect. *See Morrison v. State*, 626 S.E.2d 500, 502 (Ga. 2006) ("Georgia has long recognized that the manner in which an accused is brought before a court has no bearing on the court's jurisdiction in a criminal proceeding."); *cf. also United States v. Stuart*, 689 F.2d 759, 762 (11th Cir. 1982) ("It is well established that irregularities in the manner in which a defendant is brought into custody does not deprive the court of personal jurisdiction in a criminal case."). His objections are

accordingly overruled as they relate to his jurisdictional grounds for habeas corpus relief.

The remainder of Bussey's filings are an enlargement of the foregoing objections, or they request relief not raised before the magistrate court, request relief inappropriate at this stage of the proceedings,[2] or present invalid objections to the R&R. Bussey's motions seeking to place the burden of proof upon Respondent are inappropriate because he, not Respondent, bears the burden of proof. *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001) ("A petitioner has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation."). Bussey has not born this burden. His miscellaneous motions are therefore denied.

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[2] For example, Bussey moves this Court for an evidentiary hearing, which the magistrate judge denied. The Court agrees that this request should be denied. "The threshold inquiry in [determining entitlement to an evidentiary hearing] is whether the petitioner's allegations, if proved, would establish the right to habeas corpus relief." *Owen v. Wainwright*, 806 F.2d 1519, 1521 (11th Cir. 1986). Bussey's allegations do not demonstrate entitlement to habeas corpus relief because his petition is clearly barred by his guilty plea or otherwise due to be denied as described in this Order and/or the R&R. As a result, his request for an evidentiary hearing is denied.

Having conducted a complete and careful review of the R&R—including a de novo review of those portions of the R&R Bussey objects to—the Court overrules Bussey's objections [35] and adopts as its Order the R&R [30] to the extent consistent with this Order. Bussey's motions [23, 24, ,29, 32, 33, 34, 36] are denied, and he is denied a certificate of appealability because he has not made a substantial showing of the denial of a constitutional right. The Clerk is directed to close the case.

IT IS SO ORDERED this 31st day of October, 2018.

Timothy C. Batten, Sr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

ARTHUR SHERMAINE BUSSEY,	::	HABEAS CORPUS
Petitioner,	::	28 U.S.C. § 2254
	::	
v.	::	
	::	
LT. MARTY ALLEN,	::	CIVIL ACTION NO.
Respondent.	::	3:18-CV-0064-TCB-RGV

ORDER AND FINAL REPORT AND RECOMMENDATION

Petitioner Arthur Shermaine Bussey, an inmate at the Valdosta State Prison in Valdosta, Georgia, has filed this 28 U.S.C. § 2254 petition to challenge his August 4, 2015, convictions in the Superior Court of Meriwether County. This matter is currently before the Court on the petition, [Doc. 1], as supplemented, [Docs. 10-12]; respondent's answer-response, [Doc. 21]; petitioner's motion seeking entry of default, [Doc. 23], motion for default judgment, [Doc. 24], reply, [Doc. 25], motion to amend his reply, [Doc. 26], and motion to challenge respondent to declare under penalty of perjury, [Doc. 29]; and respondent's opposition to petitioner's motions for entry of default and for default judgment, [Doc. 28]. Petitioner's motion to amend his reply, [Doc. 26], is **GRANTED**. The Court construes petitioner's motion to challenge respondent to declare under penalty of perjury, [Doc. 29], as an additional reply to respondent's answer-response and **DIRECTS** the Clerk to **TERMINATE** this motion.

Because "default judgment is not contemplated in habeas corpus cases," Aziz v. Leferve, 830 F.2d 184, 187 (11th Cir. 1987), it is **RECOMMENDED** that petitioner's motions seeking entry of default and a default judgment, [Docs. 23 & 24], be **DENIED**. Additionally, for the reasons that follow, it is **RECOMMENDED** that the petition be **DENIED**.

I. PROCEDURAL HISTORY

On August 4, 2015, petitioner entered an Alford[1] plea to two counts of aggravated assault, and the Superior Court of Meriwether County imposed a total sentence of twenty years of imprisonment followed by ten years on probation. [Doc. 22-5 at 17-19]. Petitioner represented himself before the trial court. [Id. at 34]. Petitioner did not file a direct appeal.

On March 15, 2016, petitioner filed a pro se habeas corpus petition in the Superior Court of Lowndes County. [Docs. 22-1; 22-3]. In his state habeas petition, as amended, petitioner raised the following claims: (1) the arrest warrants failed to set forth probable cause; (2) he was sentenced twice for the same crime based upon

[1] North Carolina v. Alford, 400 U.S. 25, 37 (1970) (the court may accept defendant's guilty plea despite his claims of innocence where "defendant intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt").

different facts, in violation of double jeopardy; (3) the indictment was insufficient because it failed to allege two separate acts or "a separation of time in aggravated assaults," failed to state the material elements of the offenses, and failed to allege that petitioner stabbed the victim "with distinct intentions"; (4) he is entitled to withdraw his guilty plea based upon the double jeopardy violation, the insufficient indictment, and the void arrest warrants; (5) the accumulation of errors in this case violated due process; and (6) the trial court lacked jurisdiction over petitioner. [Doc. 22-1 at 5-6, 11-20; Doc. 22-2]. Following a May 12, 2016, evidentiary hearing, [Doc. 22-5 at 1-12], the state habeas court entered a written order denying the petition, [Doc. 22-3]. On December 11, 2017, the Georgia Supreme Court denied petitioner a certificate of probable cause to appeal the denial of habeas corpus relief. [Doc. 22-4].

Petitioner timely filed this § 2254 petition, arguing that: (1) the arrest warrants failed to set forth probable cause; (2) his constitutional rights were violated based on double jeopardy in that the indictment did not allege that he "stabbed the victim in two completed exchanges separated by a meaningful interval of time or with distinct intentions" to support two counts of aggravated assault on one victim; (3) the indictment was insufficient because it failed to allege two separate acts, separation of time in the aggravated assaults, and that petitioner stabbed the victim with distinct

intentions; (4) he would not have pleaded guilty had he known about the double jeopardy violation, that the warrants were void, and that the indictment was insufficient; (5) the accumulation of pre-plea errors in this case violated due process; and (6) the trial court had no personal jurisdiction to sentence petitioner due to the void warrants, rendering his guilty plea invalid. [Doc. 1 at 5, 7-8, 10-11, 16, 18; Doc. 1-1 at 5-14; Docs. 10-12]. Respondent argues, in pertinent part, that grounds one, five, and six were waived by petitioner's guilty plea and that the state habeas court's rejection of grounds two, three, and four is entitled to deference. [Doc. 21-1 at 3-19]. Petitioner's replies add nothing significant to the resolution of the issues presented. [Docs. 25-26, 29].

II. DISCUSSION

A. 28 U.S.C. § 2254 Standards

Under 28 U.S.C. § 2254, a federal court may issue a writ of habeas corpus on behalf of a person being held in custody pursuant to a judgment of a state court if that person is held in violation of his rights under federal law. 28 U.S.C. § 2254(a). In general, a state prisoner who seeks federal habeas corpus relief may not obtain that relief unless he first exhausts his available remedies in state court or shows that a state remedial process is unavailable or ineffective. Id. § 2254(b)(1). A federal court may

not grant habeas corpus relief for claims previously adjudicated on the merits by a state court unless the state court 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 of the United States"; or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Id. § 2254(d); Van Poyck v. Fla. Dep't of Corrs., 290 F.3d 1318, 1322 n.4 (11th Cir. 2002) (per curiam) ("[I]n the context of a habeas review of a state court's decision–only Supreme Court precedent can clearly establish the law.").

When applying § 2254(d), the federal court evaluating a habeas petition must first determine the applicable "'clearly established Federal law, as determined by the Supreme Court of the United States.'" Williams v. Taylor, 529 U.S. 362, 404-05 (2000) (quoting 28 U.S.C. § 2254(d)(1)). Next, the federal habeas court must ascertain whether the state court decision is "contrary to" that clearly established federal law by determining if the state court arrived at a conclusion opposite to that reached by the Supreme Court on a question of law, or whether the state court reached a result different from the Supreme Court on a set of materially indistinguishable facts. Id. at 412-13. In other words, a state court decision is "contrary to" clearly established federal law only when it "applies a rule that contradicts the governing law set forth in

[Supreme Court] cases." Id. at 405; see also Early v. Packer, 537 U.S. 3, 8 (2002) (per curiam) (holding that a state court decision is not contrary to federal law simply because it does not cite Supreme Court authority; the relevant inquiry is whether the reasoning or the result of the state decision contradicts that authority).

If the federal habeas court determines that the state court decision is not contrary to clearly established federal law, it must then determine whether the state court decision was an "unreasonable application" of clearly established federal law by determining whether the state court identified the correct governing legal principle from the Supreme Court's decisions but unreasonably applied that principle to the facts of the petitioner's case. Williams, 529 U.S. at 413. "For purposes of § 2254(d)(1), 'an unreasonable application of federal law is different from an incorrect application of federal law.'" Harrington v. Richter, 562 U.S. 86, 101 (2011) (quoting Williams, 529 U.S. at 410) (emphasis in original). "Under § 2254(d)(1)'s 'unreasonable application' clause, . . . a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly [but r]ather, that application must also be unreasonable." Williams, 529 U.S. at 411. Thus,

> [a]s a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

Harrington, 562 U.S. at 103; see also Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (per curiam) ("Where [in a federal habeas corpus petition] the state court's application of governing federal law is challenged, it must be shown to be not only erroneous, but [also] objectively unreasonable."). Additionally, the state court's determinations of factual issues are presumed correct. 28 U.S.C. § 2254(e)(1). A petitioner can overcome this presumption only by presenting "clear and convincing evidence" that the state court's findings of fact were erroneous. Id.

The undersigned has reviewed the pleadings and exhibits and finds that the record contains sufficient facts upon which the issues may be resolved. As petitioner has not made the showing required by 28 U.S.C. § 2254(e)(2) to entitle him to an evidentiary hearing, the undersigned finds that no federal evidentiary hearing is warranted, and the case is now ready for disposition.

B. Grounds One, Five, and Six Waived by Entry of Plea

In grounds one, five, and six, petitioner argues that the warrants for his arrest lacked probable cause, that the accumulation of pre-plea errors in this case violated

due process, and that the trial court had no personal jurisdiction to sentence him due to the void warrants. [Doc. 1 at 5, 16; Doc. 1-1 at 5-14; Doc. 10 at 1-2, 4]. Petitioner maintains that these grounds were not waived by his plea. [Docs. 11-12]. Respondent argues that they were waived. [Doc. 21-1 at 3-5]. Petitioner raised these grounds in his state habeas petition, and the state habeas court found that grounds one and six were waived by petitioner's plea and that ground five failed to state a cognizable claim for state habeas corpus relief. [Doc. 22-3 at 2-3, 7].

The Supreme Court has held that a criminal defendant who has entered a guilty plea "may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Tollett v. Henderson, 411 U.S. 258, 267 (1973). See also Johnson v. Sec'y, Dep't of Corr., No.8:08-cv-1439-T-23TGW, 2011 WL 4597358, at *1-2 (M.D. Fla. Oct. 3, 2011) (applying Tollett to Alford plea). By entering a guilty plea, a defendant "waives all nonjurisdictional challenges to the constitutionality of the conviction, and only an attack on the voluntary and knowing nature of the plea can be sustained." United States v. De La Garza, 516 F.3d 1266, 1271 (11th Cir. 2008) (citations omitted). See also United States v. Tome, 611 F.3d 1371, 1379 (11th Cir. 2010) (stating that a guilty

plea waives "all challenges to the factual basis underlying [a] violation and all other non-jurisdictional challenges to it.").

Petitioner's grounds one, five, and six all challenge the validity of the arrest warrants. [Doc. 1 at 5, 16; Doc. 1-1 at 5-14; Doc. 10 at 1-2, 4; Docs. 11-12]. By entering a plea, petitioner waived these claims. See Roberts v. Fannin, No. 1:17-cv-00489-KOB-TMP, 2018 WL 1163891, at *4 (N.D. Ala. Jan. 30, 2018) (finding that guilty plea waived claim that there was no probable cause for arrest), report and recommendation adopted, 2018 WL 1157208, at *1 (N.D. Ala. Mar. 5, 2018); Evans v. Crews, No. 5:12-cv-00097-MP-CJK, 2014 WL 537561, at *6, *9, *18 (N.D. Fla. Feb. 11, 2014) (finding that petitioner's plea waived his claims challenging a search warrant and alleging cumulative error based on pre-plea proceedings), report and recommendation adopted at, *1. To the extent that petitioner's cumulative error claim also included the claims alleged in grounds two through four, it further fails because, as discussed in subsection II.C. hereinafter, those individual grounds fail. See Morris v. Sec'y, Dep't of Corr., 677 F.3d 1117, 1132, n.3 (11th Cir. 2012) (declining to address whether a cumulative error claim presents a cognizable claim for habeas relief because "it is enough to say that Morris's cumulative error claim clearly fails in light

of the absence of any individual errors to accumulate"). Accordingly, petitioner is not entitled to federal habeas relief with respect to these grounds.

C. Grounds Two, Three, and Four: Double Jeopardy and Validity of Plea

In grounds two through four, petitioner alleges a double jeopardy violation, asserts that the indictment was insufficient due to the double jeopardy violation, and claims that he would not have pleaded guilty had he known about the double jeopardy violation and the invalid arrest warrants. [Doc. 1 at 7-8, 10]. Petitioner raised these grounds in his state habeas petition, and the state habeas court found that petitioner's double jeopardy claim lacked merit, that the indictment was sufficient, and that petitioner's request to withdraw his guilty plea was not cognizable in habeas corpus. [Doc. 22-3 at 3-6].

1. Double Jeopardy

The Double Jeopardy Clause provides that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The Fifth Amendment guarantee against double jeopardy is applicable to the states through the Fourteenth Amendment. Benton v. Maryland, 395 U.S. 784, 794 (1969). Even if there exists a substantial overlap between two offenses, as long as the offenses require proof of at least one different fact, cumulative punishment does not offend the

Fifth Amendment. Blockburger v. United States, 284 U.S. 299, 304 (1932). Petitioner's indictment charged him with two counts of aggravated assault that alleged distinct factual acts, namely, stabbing the victim in his chest and stabbing him in his back. [Doc. 22-5 at 27]. Additionally, the factual basis offered at petitioner's guilty plea hearing indicated that petitioner stabbed the victim multiple times in various parts of his body. [Id. at 59-60]. Accordingly, each aggravated assault charge required proof of at least one different fact and did not violate the Double Jeopardy Clause. See Thomas v. State, 714 S.E.2d 37, 42 (Ga. Ct. App. 2011) (defendant's convictions did not merge because the counts required the state to prove that defendant "slashed the victim's neck with a sharp-edged instrument, hit him with a hammer and wrapped a cord around his neck with the intent to murder" and thus "were based on different conduct"); Knight v. State, 378 S.E.2d 373, 374 (Ga. Ct. App. 1989) (holding that where the evidence showed that defendant stabbed the victim a dozen times sequentially, each stabbing constituted a separate offence because "each was established by proof of different facts"). Thus, the state habeas court's rejection of petitioner's double jeopardy claims is entitled to deference pursuant to § 2254(d). See Harrington, 562 U.S. at 101; Williams, 529 U.S. at 404-05, 412-13; Johnson, 643 F.3d at 911.

2. Validity of Plea

Because the state habeas court did not address the merits of petitioner's challenge to the validity of his guilty plea, this Court reviews the claim de novo. Conner v. Hall, 645 F.3d 1277, 1292 (11th Cir. 2011). "A reviewing federal court may set aside a state court guilty plea only for failure to satisfy due process: 'If a defendant understands the charges against him, understands the consequences of a guilty plea, and voluntarily chooses to plead guilty, without being coerced to do so, the guilty plea ... will be upheld on federal review.'" Stano v. Dugger, 921 F.2d 1125, 1141 (11th Cir. 1991) (citation omitted). "[A] *nolo contendere* plea is treated the same as a guilty plea and is governed by the same constitutional considerations." Wallace v. Turner, 695 F.2d 545, 546 (11th Cir. 1983). "Solemn declarations in open court carry a strong presumption of verity." Blackledge v. Allison, 431 U.S. 63, 74 (1977).

At the plea hearing, petitioner was sworn in and, after having an opportunity to review the evidence against him, elected to enter a guilty plea. [Doc. 22-5 at 35, 47-50]. Petitioner then reviewed the documents relating to his guilty plea, including the indictment. [Id. at 50-51]. Next, the prosecutor read the aggravated assault charges and noted that petitioner faced up to twenty years in prison on each count. [Id. at 54-

55]. Petitioner confirmed that he understood, that he wanted to represent himself, and that no one had forced him to do so. [Id.]. The prosecutor, and subsequently the judge, explained to petitioner the rights he was giving up in pleading guilty, and petitioner stated that he understood and that no one had threatened him to enter a guilty plea. [Id. at 55-56, 62-64]. Petitioner further affirmed that no one had promised him anything other than the State's recommended sentence and agreement to dismiss a count charging him with possession of a knife during the commission of a felony. [Id. at 56]. Petitioner also confirmed that he had reviewed the indictment with the prosecutor. [Id. at 57-58]. The prosecutor then summarized the factual basis for petitioner's plea, including that the victim was stabbed a total of five times "in his back, his chest, his arm, and on the left side." [Id. at 59-61]. Petitioner stated that he wanted to plead guilty because he believed it was in his best interest to do so. [Id. at 61]. Petitioner again confirmed that no one had promised him anything other than the State's agreement, that no one had threatened or coerced him to plead guilty, and that he was freely and voluntarily pleading guilty. [Id. at 62]. The judge accepted petitioner's plea, finding that it was freely and voluntarily made and that there was a factual basis for the charges. [Id. at 64].

In sum, the transcript of petitioner's plea hearing clearly shows that he understood the charges against him and the consequences of his guilty plea and that he chose voluntarily to plead guilty without coercion or duress. Turner v. Philbin, No. 1:16-cv-4266-WSD, 2017 WL 4408730, at *2 (N.D. Ga. Oct. 3, 2017). See also Armijo v. Eson, No. CV 10-3741-SJO (MLG), 2010 WL 5634367, at *7-10 (C.D. Cal. Dec. 1, 2010) (finding that the state court record clearly established that petitioner, who represented himself at the plea hearing, knowingly and voluntarily entered a no contest plea), report and recommendation adopted, 2011 WL 227630, at *1 (C.D. Cal. Jan 12, 2011). Accordingly, petitioner is not entitled to federal habeas relief on ground four.

III. CERTIFICATE OF APPEALABILITY

Under Rule 22(b)(1) of the Federal Rules of Appellate Procedure, "the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Section 2253(c)(2) of Title 28 states that a certificate of appealability ("COA") shall not issue unless "the applicant has made a substantial

showing of the denial of a constitutional right." A substantial showing of the denial of a constitutional right "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (internal quotation marks omitted). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, . . . a certificate of appealability should issue only when the prisoner shows both 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." Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (internal quotations marks omitted) (citing Slack, 529 U.S. at 484). Based on the foregoing discussion of petitioner's grounds for relief, the resolution of the issues presented is not debatable by jurists of reason, and the undersigned recommends that petitioner be denied a COA.

IV. CONCLUSION

For the reasons stated, petitioner's motion to amend his reply, [Doc. 26], is **GRANTED**, and **IT IS RECOMMENDED** that petitioner's motions seeking entry

of default and a default judgment, [Docs. 23 &24], this 28 U.S.C. § 2254 petition, and a COA be **DENIED**, and that this action be **DISMISSED**.

The Clerk is **DIRECTED** to terminate the referral to the Magistrate Judge.

SO ORDERED AND RECOMMENDED, this 1st day of AUGUST, 2018.

Russell G. Vineyard

RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14732-H

ARTHUR SHERMAINE BUSSEY,

Petitioner-Appellant,

versus

LT. MARTY ALLEN,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

Before: JORDAN and ROSENBAUM, Circuit Judges.

BY THE COURT:

Arthur Shermaine Bussey has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated April 11, 2019, denying his motions for a certificate of appealability, for summary reversal, to expand the record, and for an evidentiary hearing, in his appeal of the district court's denial of his 28 U.S.C. § 2254 petition for writ of habeas corpus. Upon review, Bussey's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit that warrant relief.