APPENDIX A

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
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April 24, 2019

Mr. David O'Toole
Eastern District of Texas, Lufkin
United States District Court
104 N. 3rd Street
Lufkin, TX 75901-0000

No. 18-40767 Ronny Williams v. Lorie Davis, Director
USDC No. 9:17-CV-208

Dear Mr. O'Toole,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Dawn Shulin

By: _____
Dawn M. Shulin, Deputy Clerk
504-310-7658

cc w/encl:
Ms. Gretchen Berumen Merenda
Mr. Ronny Lee Williams

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18-40767

RONNY LEE WILLIAMS,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas

O R D E R:

Ronny Lee Williams, Texas prisoner, # 2001514, moves for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 application challenging his convictions and sentences for possession of a controlled substance, aggravated robbery, assault on a public servant, and burglary of a habitation. Williams seeks a COA with respect to his claim of prosecutorial misconduct and to his ineffective assistance claims based on his trial counsel's: failure to conduct an adequate investigation into his alleged intoxication on PCP at the time of the offenses and his social and mental history, intellectual abilities, and upbringing; failure to object to trial errors; failure to request a lesser-included-offense instruction; and instruction to the jury during closing arguments to find Williams guilty.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

RONNY LEE WILLIAMS	§	
VS.	§	CIVIL ACTION NO. 9:17-CV-208
DIRECTOR, TDCJ-CID	§	

FINAL JUDGMENT

Pursuant to the Order Overruling Petitioner's Objections and Adopting the Report and Recommendation of United States Magistrate Judge, filed in this matter this date, it is

ORDERED and **ADJUDGED** that this petition for writ of habeas corpus is **DENIED**. A certificate of appealability is **DENIED**. All motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **17** day of **July, 2018.**

Ron Clark

Ron Clark, United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

RONNY LEE WILLIAMS	§	
VS.	§	CIVIL ACTION NO. 9:17-CV-208
DIRECTOR, TDCJ-CID	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Ronny Lee Williams, a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

This action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules of Court for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

Petitioner is in custody pursuant to a judgment entered in the 145th Judicial District Court of Nacogdoches County, Texas. Petitioner was charged with aggravated robbery, assaulting a public servant, injury to an elderly person, and burglary. The charge of injury to an elderly person was dismissed prior to trial. Following a jury trial, petitioner was found guilty of the remaining three counts. Petitioner was sentenced to seventy years of imprisonment for the aggravated robbery, ten years for assault on a public servant, and eight years for burglary of a habitation. The sentences were ordered to run concurrently. Petitioner appealed the judgment. Counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). The Twelfth Court of Appeals affirmed the

judgment. Petitioner filed a petition for discretionary review, which the Texas Court of Criminal Appeals refused on January 25, 2017.

Petitioner filed three applications for writs of habeas corpus, one challenging each conviction. On December 18, 2017, the Texas Court of Criminal Appeals denied the applications without written order.

The Petition

Petitioner contends his attorney provided ineffective assistance by failing to conduct an adequate investigation.

Standard of Review

Title 28 U.S.C. § 2254 authorizes the District Court to entertain a petition for writ of habeas corpus on behalf of a person in custody pursuant to a state court judgment if the prisoner is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). The Court may not grant relief on any claim that was adjudicated in state court proceedings unless the adjudication: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States;[1] or (2) resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court. 28 U.S.C. § 2254(d). A decision is contrary to clearly established federal law if the state court reaches a conclusion opposite to a decision reached by the Supreme Court on a question of law, or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 412-13

[1] In making this determination, federal courts may consider only the record before the state court that adjudicated the claim on the merits. *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

(2000). An application of clearly established federal law is unreasonable if the state court identifies the correct governing legal principle, but unreasonably applies that principle to the facts. *Id.* State court decisions must be given the benefit of the doubt. *Renico v. Lett*, 559 U.S. 766, 773 (2010).

The question for federal review is not whether the state court decision was incorrect, but whether it was unreasonable, which is a substantially higher threshold. *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). Federal courts look to the "last reasoned opinion" as the state court's "decision." *Salts v. Epps*, 676 F.3d 468, 479 (5th Cir. 2012). If a higher state court offered different grounds for its ruling than a lower court, then only the higher court's decision is reviewed. *Id.* "Where a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief." *Harrington v. Richter*, 526 U.S. 86, 98 (2011); *see also Johnson v. Williams*, __ U.S. __, 133 S. Ct. 1088, 1091 (2013) (holding there is a rebuttable presumption that the federal claim was adjudicated on the merits when the state court addresses some claims, but not others, in its opinion).

This Court must accept as correct any factual determinations made by the state courts unless the petitioner rebuts the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e). The presumption of correctness applies to both implicit and explicit factual findings. *Young v. Dretke*, 356 F.3d 616, 629 (5th Cir. 2004); *Valdez v. Cockrell*, 274 F.3d 941, 948 n. 11 (5th Cir. 2001) ("The presumption of correctness not only applies to explicit findings of fact, but it also applies to those unarticulated findings which are necessary to the state court's conclusions of mixed law and fact."). Deference to the factual findings of a state court is not dependent upon the quality of the state court's evidentiary hearing. *See Valdez*, 274 F.3d at 951 (holding that "a full and fair

hearing is not a precondition to according § 2254(e)(1)'s presumption of correctness to state habeas court findings of fact nor to applying § 2254(d)'s standards of review.").

Analysis

In order to establish an ineffective assistance of counsel claim, petitioner must prove counsel's performance was deficient, and the deficient performance prejudiced petitioner's defense. *Strickland v. Washington*, 466 U.S. 668 (1984). Because petitioner must prove both deficient performance and prejudice, failure to prove either will be fatal to his claim. *Johnson v. Scott*, 68 F.3d 106, 109 (5th Cir. 1995).

Judicial review of counsel's performance is highly deferential. *Strickland*, 466 U.S. at 689. There is a strong presumption that counsel rendered reasonable, professional assistance and that the challenged conduct was the result of a reasoned strategy. *Id.* To overcome the presumption that counsel provided reasonably effective assistance, petitioner must prove his attorney's performance was objectively unreasonable in light of the facts of petitioner's case, viewed as of the time of the attorney's conduct. *Id.* at 689-90. A reasonable professional judgment to pursue a certain strategy should not be second-guessed. *Jones v. Barnes*, 463 U.S. 745, 751-54 (1983).

In addition to demonstrating counsel's performance was deficient, petitioner must also show prejudice resulting from counsel's inadequate performance. *Strickland*, 466 U.S. at 691-92. Petitioner must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Petitioner must show a substantial likelihood that the result would have been different if counsel performed competently. *Richter*, 131 S. Ct. at 791. In determining whether the petitioner was prejudiced, the

Court must consider the totality of the evidence before the fact-finder. *Berghuis v. Thompkins*, 560 U.S. 370, 389 (2010).

Analysis of an ineffective assistance claim on federal habeas review of a state court conviction is not the same as adjudicating the claim on direct review of a federal conviction. *Richter*, 131 S. Ct. at 785. The key question on habeas review is not whether counsel's performance fell below the *Strickland* standard, but whether the state court's application of *Strickland* was unreasonable. *Id.* Even if petitioner has a strong case for granting relief, that does not mean the court was unreasonable in denying relief. *Id.* at 786.

An attorney is required to conduct a reasonable amount of pretrial investigation. *Lockhart v. McCotter*, 782 F.2d 1275, 1282 (5th Cir. 1986). However, the defense of a criminal case does not "contemplate the employment of wholly unlimited time and resources." *Smith v. Collins*, 977 F.2d 951, 960 (5th Cir. 1992). An attorney is not necessarily ineffective for failing to investigate every conceivable, potentially nonfrivolous matter. *Id.* The petitioner must describe the evidence additional investigation would have uncovered, and he must also demonstrate that it would have changed the outcome of the trial. *Miller v. Dretke*, 420 F.3d 356, 361 (5th Cir. 2005).

Petitioner contends that his attorney failed to adequately investigate a potential insanity defense. Under Texas law, it is an affirmative defense to prosecution if the defendant, "as a result of severe mental disease or defect, did not know that his conduct was wrong." TEX. PENAL CODE §8.01(a).

During the state habeas proceedings, petitioner's trial attorney, Mr. William Agnew, Jr., stated that there was not much to investigate in petitioner's case, and the only potential defense was to raise petitioner's mental health problems as mitigating evidence. State Court Habeas Record

(SCHR), Docket Entry #14-24 at 27. In furtherance of this strategy, counsel raised an insanity defense and requested psychiatric evaluations. SCHR, #14-6 at 38-43, 46-49. The Court granted the motions and ordered evaluations by two psychiatrists. Both psychiatrists concluded that petitioner did not meet the legal definition of insanity, in part because he was voluntarily under the influence of PCP at the time of the offenses. SCHR, #14-6 at 45, 54. The psychiatrists also testified that petitioner's attempts to escape apprehension after the assault show that petitioner likely knew his actions were wrong. RR, Vol. 4 at 17-18, 21, 35.

Petitioner contends his attorney should have had petitioner tested for the presence of PCP after his arrest and should have investigated whether petitioner made recorded statements about whether he was under the influence of PCP at the time of the offenses. Petitioner contends evidence that he was not under the influence of PCP at the time of the offenses would have supported an insanity defense because it would prove that his erratic behavior was not the result of voluntary intoxication. However, the record shows there was significant evidence that petitioner was under the influence of PCP at the time of the offenses. At trial, law enforcement officers testified that petitioner acted in a manner consistent with someone who had taken PCP. Reporter's Record (RR), Volume 3 at 48-52, 61, 71, 86. Law enforcement officers found a vanilla extract bottle containing PCP in the pocket of the shorts petitioner was wearing prior to his arrest. RR, Vol. 3 at 93-100, 103; RR, Vol. 6 at 15. In addition, petitioner told both psychiatrists that he smoked marijuana that was probably dipped in PCP on the date of the offense. RR, Vol. 4 at 13, 31. Dr. James Buckingham noted in his report that petitioner said that the drugs caused him to commit the offenses. SCHR, #14-6 at 44-45. Further, Dr. Buckingham noted that petitioner's medical records from the date of the

offense reflect that petitioner told the emergency room staff that he had used PCP earlier that day. SCHR, #14-6 at 45.

There is no indication from the record that additional investigation would have uncovered evidence that petitioner was not under the influence of PCP at the time of the offense. Petitioner's claims that a drug test might not have shown the presence of PCP, or that there could be taped statements that would prove whether he admitted to using PCP are conclusory. "Mere conclusory allegations in support of a claim of ineffective assistance of counsel are insufficient to raise a constitutional issue." *Green v. Johnson*, 160 F.3d 1029, 1043 (5th Cir. 1998).

The state court's determination that counsel provided effective assistance of counsel is not contrary to, and does not involve an unreasonable application of, clearly established federal law. The state court's application of *Strickland* was reasonable. Therefore, the petition should be denied.

Recommendation

For the foregoing reasons, the petition for writ of habeas corpus should be denied.

Objections

Within fourteen days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen days after service shall bar an aggrieved party from the entitlement of *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *Douglass v. United*

Services Automobile Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996)(en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this 14th day of May, 2018.

Zack Hawthorn
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

RONNY LEE WILLIAMS	§	
VS.	§	CIVIL ACTION NO. 9:17-CV-208
DIRECTOR, TDCJ-CID	§	

ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Ronny Lee Williams, a prisoner confined at the Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge. The Magistrate Judge recommends denying the petition.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. The petitioner filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration of the pleadings and the relevant case law, the court concludes that the petitioner's objections lack merit for the reasons stated in the Magistrate Judge's Report and Recommendation. The petitioner has not shown that the state court's application of *Strickland v. Washington*, 466 U.S. 668 (1984), was unreasonable. Therefore,

the petitioner is not entitled to relief on his claims of ineffective assistance of counsel. *Harrington v. Richter*, 562 U.S. 86, 101 (2011).

In this case, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

Here, the petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason, or that a procedural ruling was incorrect. In addition, the questions

presented are not worthy of encouragement to proceed further. Therefore, the petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability.

ORDER

Accordingly, the petitioner's objections (document no. 20) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 16) is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation. A certificate of appealability will not be issued.

So **ORDERED** and **SIGNED** this **17** day of **July, 2018.**

Ron Clark

Ron Clark, United States District Judge