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

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

For rules and forms visit
www.ca11.uscourts.gov

November 19, 2018

Elizabeth Warren
U.S. District Court
300 N HOGAN ST
JACKSONVILLE, FL 32202

Appeal Number: 17-14655-E
Case Style: Adrian Williams v. Secretary, Florida Department, et al
District Court Docket No: 3:14-cv-00706-MMH-JBT

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: Gloria M. Powell, E
Phone #: (404) 335-6184

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

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

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.

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

For rules and forms visit
www.ca11.uscourts.gov

March 05, 2019

Adrian Francis Williams
Jackson CI - Inmate Legal Mail
5563 10TH ST
MALONE, FL 32445-3144

Appeal Number: 17-14655-E
Case Style: Adrian Williams v. Secretary, Florida Department, et al
District Court Docket No: 3:14-cv-00706-MMH-JBT

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED. NO FURTHER ACTION WILL BE TAKEN ON THIS APPEAL.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gloria M. Powell, E
Phone #: (404) 335-6184

MOT-2 Notice of Court Action

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ADRIAN FRANCIS WILLIAMS,

Petitioner,

v. **Case No: 3:14-cv-706-J-34JBT**

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that pursuant to this Court's Order, entered on July 3, 2017, this case is hereby

DISMISSED with prejudice.

*** Any motions seeking an award of attorney's fees and/or costs must be filed within 14 days of the entry of judgment.**

Date: July 5, 2017

ELIZABETH M. WARREN, CLERK
s/A. McCahill, Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders**: Courts of Appeals have jurisdiction conferred and strictly limited by statute:

   (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291**: Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).

   (b) **In cases involving multiple parties or multiple claims**, a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

   (c) **Appeals pursuant to 28 U.S.C. Section 1292(a)**: Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

   (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

   (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:

   (a) **Fed.R.App.P. 4(a)(1)**: A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

   (b) **Fed.R.App.P. 4(a)(3)**: "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

   (c) **Fed.R.App.P.4(a)(4)**: If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

   (d) **Fed.R.App.P.4(a)(5) and 4(a)(6)**: Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

   (e) **Fed.R.App.P.4(c)**: If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal**: Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal**: A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ADRIAN FRANCIS WILLIAMS,

Petitioner,

v. Case No. 3:14-cv-706-J-34JBT

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS,
et al.,

Respondents.

ORDER

I. Status

Petitioner Adrian Francis Williams, an inmate of the Florida penal system, initiated this action on June 18, 2014, by filing a pro se Petition for Writ of Habeas Corpus (Petition; Doc. 1) under 28 U.S.C. § 2254 with exhibits (P. Ex.) and a "2254 Argument Brief" (Memorandum; Doc. 2). In the Petition, Williams challenges a 2012 state court (Duval County, Florida) judgment of conviction for dealing in stolen property and false verification of ownership on a pawnbroker transaction form. Respondents have submitted a memorandum in opposition to the Petition. See Respondents' Response to Petition for Habeas Corpus (Response; Doc. 12) with exhibits (Resp. Ex.). On October 14, 2014, the Court entered an Order to Show Cause and Notice to Petitioner (Doc. 7), admonishing Williams regarding his obligations and giving Williams a time frame in which

to submit a reply. Williams submitted a brief in reply. See Response (Reply; Doc. 13). This case is ripe for review.

II. Procedural History

On September 23, 2010, the State of Florida, in case number 2010-CF-10746, charged Williams with burglary of a dwelling (count one), dealing in stolen property (count two), and false verification of ownership on a pawnbroker transaction form (count three). See Resp. Ex. A at 1. The State of Florida issued a capias that same day, see id. at 4, and Williams was arrested on November 28, 2011, see id. at 7; PD-1 at 1. In May 2012, Williams proceeded to trial, see Resp. Exs. D, E, F, Transcripts of the Jury Trial (Tr.), at the conclusion of which, on May 8, 2012, a jury found him guilty of dealing in stolen property (count two) and false verification of ownership on a pawnbroker transaction form (count three), see Resp. Ex. A at 118, 119, Verdicts, and not guilty of burglary (count one), as charged in the Information, see id. at 116-17, Verdict. On December 13, 2012, the court sentenced Williams to terms of imprisonment of twelve years on count two and ten years on count three, to run concurrently with each other and consecutively to the sentences imposed in case numbers 2007-CF-14505 and 2007-CF-14726. See Resp. Ex. B at 218-24.

On direct appeal, Williams, with the benefit of counsel, filed an initial brief, arguing that: (1) Williams' due process rights under the Florida and United States Constitutions were violated

when the court denied him access to relevant and material evidence - the stolen ring - despite repeated motions to compel its production; production of the ring, still in the victim's possession, would have proven William's innocence, and (2) the circuit court failed to conduct a proper Melbourne[1] inquiry into the State's peremptory strike of prospective juror Beverly Randolph. The State filed an answer brief. See Resp. Ex. H. On January 22, 2014, the appellate court affirmed Williams' conviction per curiam, see Williams v. State, 130 So.3d 232 (Fla. 1st DCA 2014), and the mandate issued on February 7, 2014, see Resp. Ex. I. During the pendency of Williams' appeal, he filed several petitions for extraordinary relief. See PD-2.

On March 10, 2010, Williams filed a pro se petition for writ of habeas corpus. In the petition, he asserted that appellate counsel (John Burr Kelly, III) failed to raise the following issues on direct appeal: Williams' right to speedy trial (claim one); the court's denial of his motion to vacate and set aside judgment based on a violation of Florida Rule of Criminal Procedure 3.191 (claim two); and Williams' right to challenge the Information as a violation of Florida Rule of Criminal Procedure 3.140(g) (claim three). See Resp. Ex. M. The appellate court denied the petition on the merits on April 8, 2014. See Williams v. State, 135 So.3d 1133 (Fla. 1st DCA 2014); Resp. Ex. N.

[1] Melbourne v. State, 679 So.2d 759 (Fla. 1996).

III. One-Year Limitations Period

The Petition appears to be timely filed within the one-year limitations period. See 28 U.S.C. § 2244(d).

IV. Evidentiary Hearing

In a habeas corpus proceeding, the burden is on the petitioner to establish the need for a federal evidentiary hearing. See Chavez v. Sec'y, Fla. Dep't of Corr., 647 F.3d 1057, 1060 (11th Cir. 2011). "In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief." Schriro v. Landrigan, 550 U.S. 465, 474 (2007); Jones v. Sec'y, Fla. Dep't of Corr., 834 F.3d 1299, 1318-19 (11th Cir. 2016), cert. denied, No. 16-8668, 2017 WL 1346407 (June 12, 2017). "It follows that if the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." Schriro, 550 U.S. at 474. The pertinent facts of this case are fully developed in the record before the Court. Because this Court can "adequately assess [Williams'] claim[s] without further factual development," Turner v. Crosby, 339 F.3d 1247, 1275 (11th Cir. 2003), an evidentiary hearing will not be conducted.

V. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governs a state prisoner's federal petition for habeas corpus. See Ledford v. Warden, Ga. Diagnostic & Classification Prison, 818 F.3d 600, 642 (11th Cir. 2016), cert. denied, 137 S. Ct. 1432 (2017). "'The purpose of AEDPA is to ensure that federal habeas relief functions as a guard against extreme malfunctions in the state criminal justice systems, and not as a means of error correction.'" Id. (quoting Greene v. Fisher, 565 U.S. 34, 38 (2011) (quotation marks omitted)). As such, federal habeas review of final state court decisions is "'greatly circumscribed' and 'highly deferential.'" Id. (quoting Hill v. Humphrey, 662 F.3d 1335, 1343 (11th Cir. 2011) (quotation marks omitted)).

The first task of the federal habeas court is to identify the last state court decision, if any, that adjudicated the claim on the merits. See Wilson v. Warden, Ga. Diagnostic Prison, 834 F.3d 1227, 1235 (11th Cir. 2016) (en banc), cert. granted, 137 S. Ct. 1203 (2017); Marshall v. Sec'y, Fla. Dep't of Corr., 828 F.3d 1277, 1285 (11th Cir. 2016). Regardless of whether the last state court provided a reasoned opinion, "it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." Harrington v. Richter, 562 U.S. 86, 99 (2011) (citation omitted); see also Johnson v. Williams, 568 U.S. 289, --, 133 S. Ct. 1088,

1096 (2013).[2] Thus, the state court need not issue an opinion explaining its rationale in order for the state court's decision to qualify as an adjudication on the merits. See Richter, 562 U.S. at 100.

If the claim was "adjudicated on the merits" in state court, § 2254(d) bars relitigation of the claim unless the state court's decision (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." 28 U.S.C. § 2254(d); Richter, 562 U.S. at 97-98. As the Eleventh Circuit has explained:

> First, § 2254(d)(1) provides for federal review for claims of state courts' erroneous legal conclusions. As explained by the Supreme Court in Williams v. Taylor, 529 U.S. 362, 120 S. Ct. 1495, 146 L.Ed.2d 389 (2000), § 2254(d)(1) consists of two distinct clauses: a "contrary to" clause and an "unreasonable application" clause. The "contrary to" clause allows for relief only "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 [the Supreme] Court has on a set of materially indistinguishable facts." Id. at 413, 120 S. Ct. at 1523 (plurality opinion). The "unreasonable application"

[2] The presumption is rebuttable and "may be overcome when there is reason to think some other explanation for the state court's decision is more likely." Richter, 562 U.S. at 99-100; see also Williams, 133 S. Ct. at 1096-97. However, "the Richter presumption is a strong one that may be rebutted only in unusual circumstances . . . ." Williams, 133 S. Ct. at 1096.

> clause allows for relief only "if the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." Id.
>
> Second, § 2254(d)(2) provides for federal review for claims of state courts' erroneous factual determinations. Section 2254(d)(2) allows federal courts to grant relief only if the state court's denial of the petitioner's claim "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). The Supreme Court has not yet defined § 2254(d)(2)'s "precise relationship" to § 2254(e)(1), which imposes a burden on the petitioner to rebut the state court's factual findings "by clear and convincing evidence." See Burt v. Titlow, 571 U.S. ---, ---, 134 S. Ct. 10, 15, 187 L.Ed.2d 348 (2013); accord Brumfield v. Cain, 576 U.S. ---, ---, 135 S. Ct. 2269, 2282, 192 L.Ed.2d 356 (2015). Whatever that "precise relationship" may be, "'a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance.'"[3] Titlow, 571 U.S. at ---, 134 S. Ct. at 15 (quoting Wood v. Allen, 558 U.S. 290, 301, 130 S. Ct. 841, 849, 175 L.Ed.2d 738 (2010)).

Tharpe v. Warden, 834 F.3d 1323, 1337 (11th Cir. 2016), cert. denied, No. 16-8733, 2017 WL 1386004 (U.S. June 26, 2017); see also Daniel v. Comm'r, Ala. Dep't of Corr., 822 F.3d 1248, 1259 (11th Cir. 2016). Also, deferential review under § 2254(d) generally is limited to the record that was before the state court that

---

[3] The Eleventh Circuit has described the interaction between § 2254(d)(2) and § 2254(e)(1) as "somewhat murky." Clark v. Att'y Gen., Fla., 821 F.3d 1270, 1286 n.3 (11th Cir. 2016).

adjudicated the claim on the merits. See Cullen v. Pinholster, 563 U.S. 170, 182 (2011) (stating the language in § 2254(d)(1)'s "requires an examination of the state-court decision at the time it was made"); Landers v. Warden, Att'y Gen. of Ala., 776 F.3d 1288, 1295 (11th Cir. 2015) (regarding § 2254(d)(2)).

Where the state court's adjudication on the merits is "'unaccompanied by an explanation,' a petitioner's burden under section 2254(d) is to 'show[] there was no reasonable basis for the state court to deny relief.'" Wilson, 834 F.3d at 1235 (quoting Richter, 562 U.S. at 98). Thus, "a habeas court must determine what arguments or theories supported or, as here, could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the] Court." Richter, 562 U.S. at 102; see also Wilson, 834 F.3d at 1235. To determine which theories could have supported the state appellate court's decision, the federal habeas court may look to a state trial court's previous opinion as one example of a reasonable application of law or determination of fact. Wilson, 834 F.3d at 1239; see also Butts v. GDCP Warden, 850 F.3d 1201, 1204 (11th Cir. 2017).[4] However, in Wilson, the en banc Eleventh Circuit stated

[4] Although the United States Supreme Court has granted Wilson's petition for certiorari, the "en banc decision in Wilson remains the law of the [Eleventh Circuit] unless and until the Supreme Court overrules it." Butts, 850 F.3d at 1205 n.2.

that the federal habeas court is not limited to assessing the reasoning of the lower court. 834 F.3d at 1239. As such,

> even when the opinion of a lower state court contains flawed reasoning, [AEDPA] requires that [the federal court] give the last state court to adjudicate the prisoner's claim on the merits "the benefit of the doubt," Renico,[5] 559 U.S. at 773, 130 S.Ct. 1855 (quoting Visciotti,[6] 537 U.S. at 24, 123 S.Ct. 357), and presume that it "follow[ed] the law," Donald,[7] 135 S.Ct. at 1376 (quoting Visciotti, 537 U.S. at 24, 123 S.Ct. 357).

Id. at 1238.

Thus, "AEDPA erects a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court." Burt v. Titlow, 134 S. Ct. 10, 16 (2013). "Federal courts may grant habeas relief only when a state court blundered in a manner so 'well understood and comprehended in existing law' and 'was so lacking in justification' that 'there is no possibility fairminded jurists could disagree.'" Tharpe, 834 F.3d at 1338 (quoting Richter, 562 U.S. at 102-03). "If this standard is difficult to meet, that is because it was meant to be." Richter, 562 U.S. at 102. Thus, to the extent that Williams' claims were adjudicated on the merits in the state courts, they must be evaluated under 28 U.S.C. § 2254(d).

---

[5] Renico v. Lett, 559 U.S. 766 (2010).

[6] Woodford v. Visciotti, 537 U.S. 19 (2002).

[7] Woods v. Donald, 135 U.S. 1372 (2015).

VI. Exhaustion/Procedural Default

There are prerequisites to federal habeas review. Before bringing a § 2254 habeas action in federal court, a petitioner must exhaust all state court remedies that are available for challenging his state conviction. See 28 U.S.C. § 2254(b)(1)(A). To exhaust state remedies, the petitioner must "fairly present[]" every issue raised in his federal petition to the state's highest court, either on direct appeal or on collateral review. Castille v. Peoples, 489 U.S. 346, 351 (1989) (emphasis omitted). Thus, to properly exhaust a claim, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999).

In addressing exhaustion, the United States Supreme Court explained:

> Before seeking a federal writ of habeas corpus, a state prisoner must exhaust available state remedies, 28 U.S.C. § 2254(b)(1), thereby giving the State the "'"opportunity to pass upon and correct" alleged violations of its prisoners' federal rights.'" Duncan v. Henry, 513 U.S. 364, 365, 115 S.Ct. 887, 130 L.Ed.2d 865 (1995) (per curiam) (quoting Picard v. Connor, 404 U.S. 270, 275, 92 S.Ct. 509, 30 L.Ed.2d 438 (1971)). To provide the State with the necessary "opportunity," the prisoner must "fairly present" his claim in each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim. Duncan, supra, at 365-366, 115 S.Ct. 887; O'Sullivan v. Boerckel, 526 U.S.

> 838, 845, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999).

Baldwin v. Reese, 541 U.S. 27, 29 (2004).

A state prisoner's failure to properly exhaust available state remedies results in a procedural default which raises a potential bar to federal habeas review. The United States Supreme Court has explained the doctrine of procedural default as follows:

> Federal habeas courts reviewing the constitutionality of a state prisoner's conviction and sentence are guided by rules designed to ensure that state-court judgments are accorded the finality and respect necessary to preserve the integrity of legal proceedings within our system of federalism. These rules include the doctrine of procedural default, under which a federal court will not review the merits of claims, including constitutional claims, that a state court declined to hear because the prisoner failed to abide by a state procedural rule. See, e.g., Coleman,[8] supra, at 747-748, 111 S.Ct. 2546; Sykes,[9] supra, at 84-85, 97 S.Ct. 2497. A state court's invocation of a procedural rule to deny a prisoner's claims precludes federal review of the claims if, among other requisites, the state procedural rule is a nonfederal ground adequate to support the judgment and the rule is firmly established and consistently followed. See, e.g., Walker v. Martin, 562 U.S. --, --, 131 S.Ct. 1120, 1127-1128, 179 L.Ed.2d 62 (2011); Beard v. Kindler, 558 U.S. --, --, 130 S.Ct. 612, 617-618, 175 L.Ed.2d 417 (2009). The doctrine barring procedurally defaulted claims from being heard is not without exceptions. A prisoner may obtain federal review of a defaulted claim by showing cause for the

---

[8] Coleman v. Thompson, 501 U.S. 722 (1991).

[9] Wainwright v. Sykes, 433 U.S. 72 (1977).

> default and prejudice from a violation of federal law. See Coleman, 501 U.S., at 750, 111 S.Ct. 2546.

Martinez v. Ryan, 132 S.Ct. 1309, 1316 (2012). Thus, procedural defaults may be excused under certain circumstances. Notwithstanding that a claim has been procedurally defaulted, a federal court may still consider the claim if a state habeas petitioner can show either (1) cause for and actual prejudice from the default; or (2) a fundamental miscarriage of justice. Maples v. Thomas, 132 S.Ct. 912, 922 (2012) (citations omitted); In re Davis, 565 F.3d 810, 821 (11th Cir. 2009) (citation omitted). In order for Petitioner to establish cause,

> the procedural default "must result from some objective factor external to the defense that prevented [him] from raising the claim and which cannot be fairly attributable to his own conduct." McCoy v. Newsome, 953 F.2d 1252, 1258 (11th Cir. 1992) (quoting Carrier, 477 U.S. at 488, 106 S.Ct. 2639). Under the prejudice prong, [a petitioner] must show that "the errors at trial actually and substantially disadvantaged his defense so that he was denied fundamental fairness." Id. at 1261 (quoting Carrier, 477 U.S. at 494, 106 S.Ct. 2639).

Wright v. Hopper, 169 F.3d 695, 706 (11th Cir. 1999).

In the absence of a showing of cause and prejudice, a petitioner may receive consideration on the merits of a procedurally defaulted claim if he can establish that a fundamental miscarriage of justice, the continued incarceration of one who is

actually innocent, otherwise would result. The Eleventh Circuit has explained:

> [I]f a petitioner cannot show cause and prejudice, there remains yet another avenue for him to receive consideration on the merits of his procedurally defaulted claim. "[I]n an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default." Carrier, 477 U.S. at 496, 106 S.Ct. at 2649.[10] "This exception is exceedingly narrow in scope," however, and requires proof of actual innocence, not just legal innocence. Johnson v. Alabama, 256 F.3d 1156, 1171 (11th Cir. 2001).

Ward v. Hall, 592 F.3d 1144, 1157 (11th Cir. 2010). "To meet this standard, a petitioner must 'show that it is more likely than not that no reasonable juror would have convicted him' of the underlying offense." Johnson v. Alabama, 256 F.3d 1156, 1171 (11th Cir. 2001) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)). Additionally, "'[t]o be credible,' a claim of actual innocence must be based on reliable evidence not presented at trial." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup, 513 U.S. at 324). With the rarity of such evidence, in most cases, allegations of actual innocence are ultimately summarily rejected. Schlup, 513 U.S. at 324.

[10] Murray v. Carrier, 477 U.S. 478 (1986).

VII. Ineffective Assistance of Appellate Counsel

"The Sixth Amendment guarantees criminal defendants the effective assistance of counsel. That right is denied when a defense attorney's performance falls below an objective standard of reasonableness and thereby prejudices the defense." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (per curiam) (citing Wiggins v. Smith, 539 U.S. 510, 521 (2003), and Strickland v. Washington, 466 U.S. 668, 687 (1984)). This two-part Strickland standard also governs a claim of ineffective assistance of appellate counsel. Overstreet v. Warden, 811 F.3d 1283, 1287 (11th Cir. 2016).

The Eleventh Circuit has stated:

> To prevail on a claim of ineffective assistance of appellate counsel, a habeas petitioner must establish that his counsel's performance was deficient and that the deficient performance prejudiced his defense. See Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); Brooks v. Comm'r, Ala. Dep't of Corr., 719 F.3d 1292, 1300 (11th Cir. 2013) ("Claims of ineffective assistance of appellate counsel are governed by the same standards applied to trial counsel under Strickland.") (quotation marks omitted). Under the deficient performance prong, the petitioner "must show that counsel's representation fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688, 104 S.Ct. at 2064. "The standards created by Strickland and § 2254(d) are both highly deferential, and when the two apply in tandem, review is doubly so." Harrington, 562 U.S. at 105, 131 S.Ct. at 788 (quotation marks and citations omitted); see also Gissendaner v. Seaboldt, 735 F.3d 1311, 1323 (11th Cir. 2013) ("This double deference is doubly difficult for a petitioner to overcome, and it will be a rare case in

> which an ineffective assistance of counsel claim that was denied on the merits in state court is found to merit relief in a federal habeas proceeding.") (quotation marks and alteration omitted). "If this standard is difficult to meet, that is because it was meant to be." Harrington, 562 U.S. at 102, 131 S.Ct. at 786.

Rambaran v. Sec'y, Dep't of Corr., 821 F.3d 1325, 1331 (11th Cir. 2016), cert. denied, 137 S.Ct. 505 (2016).

When considering deficient performance by appellate counsel,

> a court must presume counsel's performance was "within the wide range of reasonable professional assistance." Id.[11] at 689, 104 S. Ct. 2052. Appellate counsel has no duty to raise every non-frivolous issue and may reasonably weed out weaker (albeit meritorious) arguments. See Philmore v. McNeil, 575 F.3d 1251, 1264 (11th Cir. 2009). "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Smith v. Robbins, 528 U.S. 259, 288, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000) (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)); see also Burger v. Kemp, 483 U.S. 776, 784, 107 S. Ct. 3114, 97 L.Ed.2d 638 (1987) (finding no ineffective assistance of counsel when the failure to raise a particular issue had "a sound strategic basis").

Overstreet, 811 F.3d at 1287; see also Owen v. Sec'y, Dep't of Corr., 568 F.3d 894, 915 (11th Cir. 2009) (stating "any deficiencies of counsel in failing to raise or adequately pursue [meritless issues on appeal] cannot constitute ineffective assistance of counsel").

---

[11] Strickland, 466 U.S. at 689.

To satisfy the prejudice prong, a petitioner must show a reasonable probability that "but for the deficient performance, the outcome of the appeal would have been different." Black v. United States, 373 F.3d 1140, 1142 (11th Cir. 2004) (citations omitted); see Philmore v. McNeil, 575 F.3d 1251, 1264-65 (11th Cir. 2009) ("In order to establish prejudice, we must first review the merits of the omitted claim. Counsel's performance will be deemed prejudicial if we find that 'the neglected claim would have a reasonable probability of success on appeal.'") (citations omitted).

VIII. Findings of Fact and Conclusions of Law

A. Ground One

As ground one, Williams asserts that his appellate counsel was ineffective because he failed to argue on direct appeal that the trial court erred when it denied his pretrial motions[12] challenging the Information and asserting that the prosecutor committed fraud when he failed to comply with Florida Rule of Criminal Procedure 3.140(g). See Petition at 5; Memorandum at 4-6; Reply at 24-28. Williams raised the ineffectiveness claim in his state petition for writ of habeas corpus. See Resp. Ex. M at 17-22. The appellate

[12] The trial court denied Williams' pro se pretrial motions: "6th Amendment Right to the Confrontation Clause Violation and 5th and 14th Amendment Right of Due Process Violation, filed January 3, 2012, and Fraud on the Court - Motion to Dismiss Charges, filed May 7, 2012. See P. Ex. A; Resp. Ex. A at 29-31, 93-104.

court ultimately denied the petition on the merits. See Williams, 135 So.3d 1133; Resp. Ex. N.

Thus, as there is a qualifying state court decision, the Court will address this claim in accordance with the deferential standard for federal court review of state court adjudications. After a review of the record and the applicable law, the Court concludes that the state court's adjudication of this claim was not contrary to clearly established federal law, did not involve an unreasonable application of clearly established federal law, and was not based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. Thus, Williams is not entitled to relief on the basis of this claim.

Moreover, even assuming that the state court's adjudication of this claim is not entitled to deference, Williams' ineffectiveness claim is without merit. Williams has failed to establish that appellate counsel's failure to raise the issue on direct appeal was deficient performance. Under Florida law, the state circuit courts have jurisdiction over all felonies. See Fla. Stat. § 26.012(2)(d). Moreover, the Information filed in Williams' case, see Resp. Ex. A at 1-3, properly set forth the elements of burglary of a dwelling (count one), dealing in stolen property (count two), and false verification of ownership on a pawnbroker transaction form (count three), and therefore met the minimum requirement for invoking the jurisdiction of the state circuit court. Additionally, the

Information contains the required sworn oath of the Assistant State Attorney, certifying that the allegations in the Information "are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged," that the prosecution "is instituted in good faith," and "that testimony under oath has been received from the material witness(es) for the offense." Id. at 1. Such a sworn oath by the prosecutor that he received testimony under oath from the material witness(es) for the offense is sufficient pursuant to applicable Florida law. See Fla. R. Crim. P. 3.140(g).[13] Undoubtedly, the trial court had subject matter jurisdiction over Williams' case since the Information charged him with burglary of a dwelling, dealing in stolen property, and false verification of ownership on a pawnbroker transaction form in violation of Florida Statutes sections 810.02(3)(b), 812.019(1), and 539.001(8)(b)8a. See Resp. Ex. A at 1. Williams was neither inadequately informed of the charges nor hampered in preparing a defense.

Given the record, Williams has not shown a reasonable probability exists that the claim would have been meritorious on direct appeal, if counsel had raised the claim in the manner

[13] Florida Rule of Criminal Procedure 3.140(g) "requires that informations be under oath of the prosecuting attorney of the court in which the information is filed."

suggested by Williams.[14] Accordingly, Williams' ground one is without merit since he has neither shown deficient performance nor resulting prejudice.

B. Ground Two

As ground two, Williams asserts that the trial and appellate courts erred when they denied him "access to the alleged stolen ring." Petition at 7; Memorandum at 7-9; Reply at 3-15. Williams argued this issue on direct appeal, see Resp. Ex. G at 2, 19-29; the State filed an Answer Brief, see Resp. Ex. H at 10-14; and the appellate court affirmed Williams' conviction and sentence per curiam without a written opinion as to this issue, see Williams, 130 So.2d 232. To the extent Williams is raising, in ground two, the same claim he presented on direct appeal, the claim is sufficiently exhausted.

In its appellate brief, the State addressed the claim on the merits, see Resp. Ex. H at 11-14, and therefore, the appellate court may have affirmed Williams' conviction based on the State's argument. If the appellate court addressed the merits, the state court's adjudication of this claim is entitled to deference under AEDPA. After a review of the record and the applicable law, the Court concludes that the state court's adjudication of this claim

[14] Notably, at a February 7, 2012 pretrial hearing, the trial court addressed Williams' assertions relating to sworn affidavits from material witnesses. See Resp. Ex. A at 58-83; P. Ex. A.

was not contrary to clearly established federal law and did not involve an unreasonable application of clearly established federal law. Nor was the state court's adjudication based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. Accordingly, Williams is not entitled to relief on the basis of this claim.

Even assuming that the state court's adjudication of this claim is not entitled to deference, and that the claim presents a sufficiently exhausted issue of federal constitutional dimension,[15] Williams' claim is without merit. Williams filed pro se pretrial motions relating to the allegedly stolen ring. See Resp. Ex. A at 32-33, 106-08. In the motions, he asserted that the State's use of photographs, instead of the ring itself, hampered his ability to prepare and present his defense to the charge of dealing in stolen property; he argued that the ring belonged to him, not the victim, because his great grandmother had given it to him before she died.[16] Thus, he requested access to the ring for examination and asked the court to prohibit the State from eliciting any testimony about the ring from witnesses at trial. The trial court addressed the issue and denied Williams' request for access to and examination of the

[15] See Response at 5-6.

[16] Williams asserts that his great grandmother's name and date of birth were engraved inside the ring. See Memorandum at 7.

ring. See Resp. Exs. A at 78-79, 105; B at 269-71, 293-94; see Tr. at 37-38.

Prior to trial, the following colloquy ensued.

> THE COURT: Mr. Williams, let me remind you of something. You're supposed to be your own attorney, you're supposed to know the rules, and things that I've already ruled upon you do not get to just bring up an infinite number of times. As a matter of fact, once the Court has ruled[,] you can't even bring it up again. You don't get to re-argue your issues that you've lost in the past.
>
> Now, if you've got something new[,] tell me all about it, but if all you're going to do is bring up the issue of whether --- the State has already said they don't have the ring, right?
>
> [PROSECUTOR]: Correct.
>
> THE COURT: Who has the ring?
>
> [PROSECUTOR]: The victim. It was released back to the victim, however, pictures were taken and the State feels that it's substantial enough for the victim to testify that's her ring, as well as the pawnshop broker to say that's the ring released to justify it. He's allowed to cross-examine them on that, and if [the] jury does not believe that's enough, then, of course, their verdict will be not guilty.
>
> THE COURT: Does she -- I'm just curious, does she even still own the ring?
>
> [PROSECUTOR]: I'm not aware of --
>
> THE COURT: Is she, for example, going to wear the ring to --
>
> [PROSECUTOR]: I do not believe she's going be bringing it into court. But it's often -- perhaps a scenario could be that the

pawnshop had sold the ring, we could still move forward on dealing in stolen property even if the pawnshop had, in fact, already sold an item. So the actual ring being presented in court is not required.

MR. WILLIAMS: It's required for my defense, Your Honor, because I got to prove my innocence with it. I got to prove my innocence with the ring before they give it to somebody it didn't even belong to.

THE COURT: Have you got a picture of the ring here that I can look at that you're going to be putting in evidence?

By the way, let's talk about the evidence. Usually the State has a list of their exhibits. Do you have something like that?

[PROSECUTOR]: I can tell you, Judge, it's going to be three pictures and the pawn form.

THE COURT: These three pictures[17] and the pawn ticket?

[PROSECUTOR]: Yes, sir.

. . . .

THE COURT: I am looking at three photographs now, I'm glad -- I'm glad I got a chance to look at these now. It's a good thing we're bringing this up before the trial starts. I have no idea what that triangular figure is, but at any -- I think that's just something to get the ring to stand up or something.

. . . . .

THE COURT: There's a ring, it's a nice looking ring, it's very unique, extremely unique in my humble opinion, not being an

[17] See Resp. Ex. A at 148-50.

> expert in jewelry. But there are five separate oval-shaped white stones. I don't know if they're opals or what, and then there are five smaller blue stones that look like sapphires. And then there's another design, as far as the setting, it's very intricate. So the ring is extremely unique and identifiable. I'm not saying there aren't others exactly like it, but it's not a normal looking ring. It's definitely different.
>
> The defendant does have the right to cross-examine and ask [the victim] all about why the ring is not important, I guess. But, at any rate, that's just a -- it's just a matter that goes to the weight of the evidence, not to the admissibility.

Tr. at 218-22. During Williams' open statement to the jury, he argued that, if he had physical possession of the ring, rather than just a photograph, he could prove his great grandmother had given him the ring because of the engravings of her name and date of birth. See id. at 253-54.

At trial, Lou Ann Erickson, the victim, testified that she was away from her home about an hour on the day it was burglarized. See id. at 256. She stated that, when she returned to her home, she discovered that "three pieces" of "good valuable jewelry" were missing from her bedroom dresser. Id. at 259. According to Erickson, one of the missing rings was a gift she had given to her daughter for her twenty-first birthday, see id. at 260; the "small little opals" were "very fragile" and broke several times, so she "would take [the ring] back and have it fixed and then give it back to [her daughter];" upon her daughter's death in 2007, she got the

ring back and often wore it; after the theft of her ring, she periodically stopped at pawn shops to look for her jewelry, but never found anything, see id. at 260-61; approximately one year later, she asked a store clerk at Gold Star Pawn shop if the store had any opal rings; the clerk pointed to a display case with thirty or more opal rings; Erickson immediately saw her ring, "started to cry," and called the officer she had dealt with to report her discovery, see id. at 261.

Erickson identified three photographs of the ring and testified that she was "certain" that the photographs accurately depicted the ring that belonged to her daughter. Id. at 262, 264. She explained that she "was very familiar with [her] daughter's ring since [she and her ex-husband] had bought it for her and had replaced one of the opals numerous times." Id. at 262. The court overruled Williams' objection to the introduction of the photographs. See id. at 263. According to Erickson, the only marking on the ring's inner band was the carat weight; the ring "had no other inscription of any kind." Id. at 266. She testified that one of the officers returned the ring to her. See id.

On cross-examination, Erickson testified about the uniqueness of her daughter's ring.

> That is absolutely the only opal ring that was made like that. Because I looked at all the others and besides, the ring, as you saw in the pictures, is a very unique setting. It has five small opals and five small sapphires in it. It is arranged very different

> than a lot of rings. Most opal rings are just one stone with maybe something around it. This was very unusual. This setting was very unusual. I knew my daughter's ring. That is why I chose it for her.
>
> . . . .
>
> I just knew it was my ring. And I didn't say anything to them. I just simply told the officer. I called the officer and told him it was my ring that was in there. And I showed it to him when he arrived at the pawnshop. It was still in the counter -- in the counter. I showed him which one it was.

Id. at 272, 273. Additionally, Judy Farhat, manager and records custodian of Gold Star Pawn shop, testified on recross-examination: "there [are] plenty of rings that are made alike, but not this particular ring. This obviously looks like a custom ring." Id. at 297.

When the State rested its case, see id. at 307-08, Williams moved for a judgment of acquittal and asserted that he could have proved his innocence if the court had permitted him access to the ring, see id. at 308-09, 314-15. The court reminded Williams that, while he alluded to the issue in his opening remarks to the jury, the opening statements were not evidence. See id. at 312. The court denied his motion for judgment of acquittal. See id. at 315. Williams testified that he could have proved his innocence if the court had allowed him access to the ring to show the jury that the inside of the ring has specific markings with his great grandmother's name and birthdate. See id. at 319-20. During closing

argument, Williams argued that the State deprived him of the right to present the ring in court. See id. at 348-49.

Although alleged state law errors generally are not grounds for federal habeas relief, "a habeas court may review a state court's evidentiary rulings in order to determine whether those rulings violated the petitioner's right to due process by depriving him of a fundamentally fair trial." Copper v. Wise, 426 F. App'x 689, 692 (11th Cir. 2011) (citing Felker v. Turpin, 83 F.3d 1303, 1311-12 (11th Cir. 1996)). The Eleventh Circuit explained:

> Indeed, in a habeas corpus action brought by a state prisoner, our authority is "severely restricted" in the review of state evidentiary rulings. Shaw v. Boney, 695 F.2d 528, 530 (11th Cir. 1983) (per curiam); see Estelle v. McGuire, 502 U.S. 62, 67-68, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States."). Habeas relief is warranted only when the error "so infused the trial with unfairness as to deny due process of law." Lisenba,[18] 314 U.S. at 228, 62 S.Ct. 280; see Estelle, 502 U.S. at 75, 112 S.Ct. 475 (holding that habeas relief was not warranted because neither the introduction of the challenged evidence, nor the jury instruction as to its use, "so infused the trial with unfairness as to deny due process of law"); Bryson v. Alabama, 634 F.2d 862, 864-65 (5th Cir. Unit B Jan. 1981) ("A violation of state evidentiary rules will not in and of itself invoke Section 2254 habeas corpus relief. The violation must be of

[18] Lisenba v. California, 314 U.S. 219 (1941).

> such a magnitude as to constitute a denial of 'fundamental fairness.'"); cf. Chambers,[19] 410 U.S. at 302, 93 S.Ct. 1038 (concluding that the exclusion of "critical evidence" denied the defendant "a trial in accord with traditional and fundamental standards of due process").

Taylor v. Sec'y, Fla. Dep't of Corr., 760 F.3d 1284, 1295 (2014) (footnote omitted), cert. denied, 135 S. Ct. 2323 (2015). On this record, the trial court did not err when it permitted the State to introduce the three photographs of the ring. In the context of the trial as a whole, the trial court's ruling did not so infuse the trial with unfairness as to deny Williams due process of law. Williams is not entitled to federal habeas relief on ground two.

C. Ground Three

As ground three, Williams asserts that his appellate counsel was ineffective because he failed to raise the following issue on direct appeal: Williams was entitled to be discharged from the crime when he was not brought to trial within fifty days of the filing of the demand for speedy trial under Florida Rules of Criminal Procedure 3.191(b)(4) and (p). See Petition at 8; Memorandum at 9-17; Reply at 29-43. Williams raised the ineffectiveness claim in his state petition for writ of habeas corpus. See Resp. Ex. M at 4-13. The appellate court ultimately denied the petition on the merits. See Williams, 135 So.3d 1133; Resp. Ex. N.

---

[19] Chambers v. Mississippi, 410 U.S. 284 (1973).

There is a qualifying state court decision. Therefore, the Court will address this claim in accordance with the deferential standard for federal court review of state court adjudications. After a review of the record and the applicable law, the Court concludes that the state court's adjudication of this claim was not contrary to clearly established federal law, did not involve an unreasonable application of clearly established federal law, and was not based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. Thus, Williams is not entitled to relief on the basis of this claim.

Moreover, even assuming that the state court's adjudication of this claim is not entitled to deference, Williams' ineffectiveness claim is without merit. Williams was arrested on the instant charges on November 28, 2011. See Resp. Ex. A at 7, 13-15, 17; PD-1 at 1. On December 22, 2011, he filed a pro se Demand for Speedy Trial (Demand).[20] See Resp. Ex. A at 27-28. In the Demand, he requested to be brought to trial within sixty days of the receipt and filing of the demand.[21] See id. at 27. He filed a notice of expiration of speedy trial time (first notice) on February 9, 2012,

---

[20] The demand was dated December 21, 2011. See Resp. Ex. A at 27-28; P. Ex. C.

[21] Florida Rule of Criminal Procedure 3.191(a) provides for a right to speedy trial without demand within 175 days of the arrest if the crime charged is a felony. Rule 3.191(b) provides for a speedy trial upon demand within 60 days.

and asserted that the fifty days[22] "ran out" on February 9th. See id. at 42-43. Williams filed a "new notice of expiration of speedy trial time" (second notice) on April 3, 2012, and asked the court to disregard the first notice and rule on the second notice.[23] Id. at 46-47. In the second notice, Williams explained why he filed the new notice:

> The Defendant cites under the penalty of perjury that his 1st Notice of Expiration of Speedy Trial Time is meritless based on 3.191(p) because it was filed on the expiration date was [sic] 2-9-2012 which it should have been filed on 2-10-2012 the 51st day instead of the 50th after the expiration of time needed on the demand for speedy trial.... Therefore the Defendant submits this new notice of expiration of speedy trial time because the first one could be in error.

Id. at 47.

Florida Rule of Criminal Procedure 3.191(g) provides in pertinent part:

> No demand for speedy trial shall be filed or served unless the accused has a bona fide desire to obtain a trial sooner than otherwise might be provided. A demand for speedy trial shall be considered a pleading that the accused is available for trial, has diligently investigated the case, and is prepared or will be prepared for trial within 5 days. . . .

---

[22] Florida Rule of Criminal Procedure 3.191(b)(4) provides: "If the defendant has not been brought to trial within 50 days of the filing of the demand, the defendant shall have the right to the appropriate remedy as set forth in subdivision (p)."

[23] The second notice was dated April 2, 2012. See Resp. Ex. A at 47; P. Ex. C.

In January and February 2012, Williams filed several pretrial motions in preparation for trial. He was neither prepared for trial within five days of his December 22, 2011 demand nor within five days of his first and second notices of expiration. At a February 7, 2012 hearing on pretrial motions, see id. at 58-83, Williams was still trying to obtain discoverable evidence. Notably, the court addressed the speedy trial issue at the hearing, and the following colloquy ensued.

> [THE PROSECUTOR]: Your Honor, I would just like to address the issue of speedy trial. It runs in this case, my calculations based on [the] arrest date is May 21, 2012. I have a trial date that works for the State.
>
> I'm not sure if it works for the defense of April 30, 2012. I'm not sure if that is CR-I week or not. We can, of course, do it the week before.
>
> THE COURT: That would be the week of the 23rd.
>
> [THE PROSECUTOR]: That is correct, and that is fine with the State, your Honor, and a pre-trial the week before. That gets us --
>
> THE COURT: Well actually April 30th we are yielding our courtroom to Judge Arnold. So do you want to set it for April 23rd?
>
> [THE PROSECUTOR]: Yes, sir. For trial and it would [be] the 19th of April for final pre-trial. The State will be prepared those week[s]; but also, we won't have any issue with the month of May with the courthouse moving.
>
> THE COURT: What is the speedy trial date?

[THE PROSECUTOR]: May 21, 2012.[24]

THE COURT: The final pre-trial would be what?

[THE PROSECUTOR]: April 19th.

THE CLERK: April 19th.

THE COURT: Is that right?

THE CLERK: That's correct.

THE COURT: Okay. Did you want to be heard about the trial date?

THE DEFENDANT: I am alright. I want to know if I can get a copy of the order or --

THE COURT: I can't understand what you just said.

THE DEFENDANT: Can I have a copy of the order for the law library?

THE COURT: We will give you that. Anything else?

[PROSECUTOR]: Nothing further from the State, your Honor.

THE COURT: All right. Thank you. You can take the defendant back.

Id. at 80-82.

On April 19, 2012, the court held a hearing and addressed the speedy trial issue and the effect of Williams' second notice of expiration. See Resp. Ex. B at 295-318. Five days later, the trial judge continued the hearing, at which he stated:

---

[24] See Fla. R. Crim. P. 3.191(a) (providing for a right to speedy trial without demand within 175 days of the arrest if the crime charged is a felony).

The issue today is whether the Court dismisses your case because the rule has not been complied with, and, therefore -- I already told you what the issues were. They're not whether the clerk notified the Court or not. That's not the issue. The issue -- we all agreed that the Court was not notified. But the issue is, number one, did you serve the State with their copy. Because regardless of what you did with the clerk, you've got a duty to serve both the State and the clerk. So that's the issue. Did you serve them on the 3rd or on the 19th.

And the second issue is, was there a waiver, and we're going to get the transcript for that.

. . . .

And at this time the Court rules that factually the most credible evidence is that the defendant mailed a document to the State or sent it out from the jail. It was received on the 4th of April of this month and it contained, unfortunately for the defendant, not his new notice or any notice of expiration of speedy trial, but, in fact, he mistakenly copied his old demand for speedy trial, which the State had already received way back in December. Therefore, the State was not put on notice of expiration of any speedy trial period until the State received, as they have told the Court, the first -- for the first time, a copy of the defendant's new notice for expiration of speedy trial, and the date that they first received that, the Court is finding most credible evidence and testimony, or at least evidence, as an officer of the court proffered to the Court, is that the State first received that notice on the -- and help me with this, State. You told me it was the 19th, I think; is that correct?

[PROSECUTOR]: Yes, sir.

THE COURT: So the Court is finding that the -- it was received first from -- by the

> State on the 19th of April 2012; therefore, the Court did start the calendar call within the five days, today's a continuation of that. Today's date, in fact, is the 24th of April, so we're still within that five days. And at this time I'm going to set the case for a further hearing on Thursday of this week, which is the 26th.
>
> And, I want to -- in an abundance of caution, even though I've already ruled that the State didn't get notice and the time didn't begin to tick until the 19th of this month, that -- under that ruling we still would have to try this case next week, if we go to trial. So I want to continue to look at the waiver question.
>
> . . . .
>
> But, anyway, I want to put everybody on notice so that on Thursday we can dig deeper into this issue because I've already ruled that the speedy trial period didn't begin to tick, this five -- five plus ten day period didn't begin to tick until the 19th. But if the defendant did, in fact, waive speedy trial back on the 7th of February, then we don't have to try this case next week.

Id. at 350, 354-57. After ordering and reviewing the transcript of the February 7th hearing, the court held another hearing on April 26th. At the hearing, the court summarized its prior findings and proceeded to address the speedy trial waiver issue.

> [T]his is a continuation of a hearing that we've had on several previous dates. And what I did last time is we narrowed the issues, speedy trial issues and we narrowed them down. I've already ruled in part and I ruled that [the prosecutor] did not receive your amended notice or final notice or new notice [of] expiration of speedy trial until the 19th of this month was it, counsel?

> [PROSECUTOR]: Yes, sir.
>
> THE COURT: So we're still within that period, but I reserved on the issue of whether there was a waiver of speedy trial back on -- [February 7th].
>
> . . . .
>
> THE COURT: Well, Mr. Williams, I've complimented you before and said you were doing a good job, and in many ways you were doing a good job, but when you told me you never agreed to setting of the court date beyond this period that would have been triggered by your demand for speedy trial, I took your word for it but I did trust and verify as they say and I ordered the transcript. Frankly I was surprised to find that you clearly agreed to the continuance when you said I'm all right. You agreed to the setting of the Court [date] of the jury trial beyond the date required by your demand, clearly. And you told me you didn't and I consider that to be misrepresentation.
>
> . . . .
>
> We're going to pass this case at this time for trial and the date I do find that Mr. Williams still has his original speedy trial period and so we're going to set it within that six months on the date that the State asked about which was May 7th ....

Id. at 363-64, 370, 377-78. Given the record, including the trial judge's findings on the issue and his remarks relating to an appeal on the issue, see id. at 372, Williams has failed to establish that appellate counsel's failure to raise the issue on direct appeal was deficient performance.

Given the record, Williams has not shown a reasonable probability exists that the claim would have been meritorious on

direct appeal, if counsel had raised the claim in the manner suggested by Williams. Accordingly, Williams' ground three is without merit since he has neither shown deficient performance nor resulting prejudice.

D. Ground Four

As ground four, Williams asserts that his appellate counsel was ineffective because he failed to argue on direct appeal that the trial court erred when it denied his motion to set aside the judgment based on violation of his right to a speedy trial within six months.[25] See Petition at 10; Memorandum at 17-18; Reply at 44-49. Williams raised the ineffectiveness claim in his state petition for writ of habeas corpus. See Resp. Ex. M at 13-17. The appellate court ultimately denied the petition on the merits. See Williams, 135 So.3d 1133; Resp. Ex. N.

As there is a qualifying state court decision, the Court will address this claim in accordance with the deferential standard for federal court review of state court adjudications. After a review of the record and the applicable law, the Court concludes that the state court's adjudication of this claim was not contrary to clearly established federal law, did not involve an unreasonable application of clearly established federal law, and was not based on an unreasonable determination of the facts in light of the

[25] Williams' reference to six months corresponds to the 175-day deadline in Florida Rule of Criminal Procedure 3.191(a).

evidence presented in the state court proceedings. Thus, Williams is not entitled to relief on the basis of this claim.

Moreover, even assuming that the state court's adjudication of this claim is not entitled to deference, Williams' ineffectiveness claim is without merit. Williams has failed to establish that appellate counsel's failure to raise the issue on direct appeal was deficient performance. He asserts that "the State should have brought [him] to face the criminal charges within 6 months as proscribed [sic] by the 6th Amendment and [rule] 3.191." Petition at 10. Florida Rule of Criminal Procedure 3.191(a), titled "Speedy Trial without Demand," provides in pertinent part:

> Except as otherwise provided by this rule ... every person charged with a crime shall be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or **within 175 days of arrest if the crime charged is a felony**. If trial is not commenced within these time periods, the defendant shall be entitled to the appropriate remedy as set forth in subdivision (p). The time periods established by this subdivision shall commence when the person is taken into custody as defined under subdivision (d).... This subdivision shall cease to apply whenever a person files a valid demand for speedy trial under subdivision (b).

Fla. R. Crim. P. 3.191(a) (emphasis added). The rule defines "custody" as:

> For purposes of this rule, a person is taken into custody (1) **when the person is arrested as a result of the conduct or criminal episode that gave rise to the crime charged**, or (2) when the person is served with a notice to appear in lieu of physical arrest.

Fla. R. Crim. P. 3.191(d) (emphasis added).

Williams was arrested on the instant charges on November 28, 2011. See Resp. Ex. A at 7, 13-15, 17; PD-1 at 1. A jury was sworn in on May 7, 2012, just 161 days after his arrest. See Tr. at 211-12. There was no violation of his right to speedy trial without demand. The 175-day speedy trial period would have run on May 21, 2017. See Resp. Exs. A at 80-81; B at 296.

Given the record, Williams has not shown a reasonable probability exists that the claim would have been meritorious on direct appeal, if counsel had raised the claim in the manner suggested by Williams. Accordingly, Williams' ground four is without merit since he has neither shown deficient performance nor resulting prejudice.

E. Ground Five

As ground five, Williams asserts that the trial court failed to conduct a proper Neil[26] and Slappy[27] inquiry into the State's peremptory strike of prospective juror Beverly Randolph, thus denying Williams a fair and impartial jury in violation of the Sixth Amendment. See Petition at 12; Memorandum at 19; Reply at 15-16. Williams argued this issue on direct appeal, see Resp. Ex. G at 2, 30-32; the State filed an Answer Brief, see Resp. Ex. H at 15-17; and the appellate court affirmed Williams' conviction and

[26] State v. Neil, 457 So.2d 481 (Fla. 1984).

[27] State v. Slappy, 522 So.2d 18 (Fla. 1988).

sentence per curiam without a written opinion as to this issue, see Williams, 130 So.2d 232. To the extent Williams is raising, in ground five, the same claim he presented on direct appeal, the claim is sufficiently exhausted.

In its appellate brief, the State addressed the claim on the merits, see Resp. Ex. H at 16-17, and therefore, the appellate court may have affirmed Williams' conviction based on the State's argument. If the appellate court addressed the merits, the state court's adjudication of this claim is entitled to deference under AEDPA. After a review of the record and the applicable law, the Court concludes that the state court's adjudication of this claim was not contrary to clearly established federal law and did not involve an unreasonable application of clearly established federal law. Nor was the state court's adjudication based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. Accordingly, Williams is not entitled to relief on the basis of this claim.

Even assuming that the state court's adjudication of this claim is not entitled to deference, and that the claim presents a sufficiently exhausted issue of federal constitutional dimension,[28] Williams' claim is without merit. Two juries were selected on May 7, 2012: one for Williams' trial and another for Benjamin Morales'

[28] See Response at 9-10.

trial. See Tr. at 44, 50. During the jury selection proceeding for Morales' trial, the court stated:

> Okay. So now we've got -- and for the record, Mr. Williams is present and is not participating because this is not his jury selection but he is present and aware of everything that's going on, because he's currently having some quiet conversation with his standby counsel. All right. As long as they're whispering and don't distract us.

Id. at 164-65. During the examination of panelists, Ms. Beverly Randolph, see id. at 78, stated that an officer killed her best friend, see id. at 156, but that incident would not affect her ability to be a fair and impartial juror, see id. at 156-57. During the jury selection proceeding for Williams' trial, see id. at 180, the State exercised a "backstrike" to remove Ms. Randolph, id. at 204. The following colloquy ensued.

> [PROSECUTOR]: Your Honor, the State would exercise a backstrike and strike number 28, Ms. Randolph.
>
> THE COURT: Okay. It may be a backstrike. Backstriking is allowed up until the jury is sworn.
>
> MR. WILLIAMS: And, Your Honor, I ask for a race neutral reason.
>
> THE COURT: All right. A Neil-Slappy has been invoked. The State is trying to strike Ms. Randolph. That would be your number what, State?
>
> [PROSECUTOR]: That's my third peremptory.
>
> THE COURT: Your third. Okay. You have to give a race neutral and non-pretexual reason to have the Court sustain that strike.

[PROSECUTOR]: Judge, the race neutral reason, Ms. Randolph did state that during an arrest of, I believe it was her family members, that an officer shot and killed one of her family members. This case does involve law enforcement. The State does not want her to be sitting there thinking about her relative that was shot by the police.

THE COURT: Okay. She must have -- she wasn't included in our original 11 cause challenges.

[PROSECUTOR]: She did state that she could set that aside and be fair and impartial, that's why the State did not --

THE COURT: But she does have a family -- what was the nature of the relationship?

[PROSECUTOR]: I believe she just testified that it was a family member. I apologize, I wasn't the individual asking the questions during that, but that's the State's race neutral reason.

THE COURT: All right. Have you stricken every other juror -- frankly, I don't have a photographic memory to remember every other one --

[PROSECUTOR]: I don't think any other juror stated that a police officer had killed their [sic] family member.

THE COURT: It was a police officer?

[PROSECUTOR]: A police officer killed their family member.

THE COURT: All right. I don't recall that, you're right, with any other juror. That's the second phase in announcing -- not only does it have to be race neutral, but it has to be non-pretexual and I've considered that to mean you have to be very consistent. So I find that that is a race neutral reason

> and I don't see any inconsistencies so that will be allowed.

Id. at 204-06.

"[T]he Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant." Batson v. Kentucky, 476 U.S. 79, 89 (1986). Even a single peremptory strike that results from discriminatory intent violates the Equal Protection Clause. See Cochran v. Herring, 43 F.3d 1404, 1412 (11th Cir. 1995). The Eleventh Circuit has stated:

> When a party accuses her opponent of violating Batson's prohibition, a district court deploys a three-step process to adjudicate the claim:
>
> > First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race; second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination.
>
> Foster v. Chatman, -- U.S. --, 136 S.Ct. 1737, 1747, 195 L.Ed.2d 1 (2016).

United States v. Hughes, 840 F.3d 1368, 1381 (11th Cir. 2016), cert. denied, 137 S.Ct. 1354 (2017); see Batson, 476 U.S. at 96-98;

see also Truehill v. State, 211 So.3d 930, 942-43 (Fla. 2017), petition for cert. filed, No. 16-9448 (U.S. June 2, 2017).

The trial judge conducted an adequate inquiry[29] when Williams challenged the State's use of one of its peremptory challenges to strike Ms. Randolph. The prosecutor provided a race-neutral reason as to why he used one of his peremptory challenges to strike Ms. Randolph. Next, the trial judge determined that Williams had not shown purposeful discrimination. He found that the prosecutor's race-neutral reason was non-pretextual and his strategy was "very consistent."[30] On this record, the trial judge did not err in his factual determination that the prosecutor did not strike Ms. Randolph for discriminatory reasons. Accordingly, Williams is not entitled to federal habeas relief on ground five.

IX. Certificate of Appealability Pursuant to 28 U.S.C. § 2253(c)(1)

If Williams seeks issuance of a certificate of appealability, the undersigned opines that a certificate of appealability is not warranted. This Court should issue a certificate of appealability only if the petitioner makes "a substantial showing of the denial

---

[29] Notably, the trial judge stated that Williams had "invoked" a "Neil-Slappy" inquiry. See Tr. at 204.

[30] "Of course, a court may find intent to discriminate when the reason provided for striking a juror applies with equal force to a juror that the same party declined to strike, who is outside the protected group of the stricken juror." United States v. Hughes, 840 F.3d at 1382 (citing Parker v. Allen, 565 F.3d 1258, 1271 (11th Cir. 2009)).

of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this substantial showing, Williams "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)).

Where a district court has rejected a petitioner's constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. See Slack, 529 U.S. at 484. However, when the district court has rejected a claim on procedural grounds, the petitioner must show 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." Id. Upon consideration of the record as a whole, this Court will deny a certificate of appealability.

Therefore, it is now

ORDERED AND ADJUDGED:

1. The Petition (Doc. 1) is **DENIED**, and this action is **DISMISSED WITH PREJUDICE.**

2. The Clerk of the Court shall enter judgment denying the Petition and dismissing this case with prejudice.

3. If Williams appeals the denial of the Petition, the Court denies a certificate of appealability. Because this Court has determined that a certificate of appealability is not warranted, the Clerk shall terminate from the pending motions report any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial of the motion.

4. The Clerk of the Court is directed to close this case and terminate any pending motions.

DONE AND ORDERED at Jacksonville, Florida, this 3rd day of July, 2017.

Marcia Morales Howard

MARCIA MORALES HOWARD
United States District Judge

sc 6/30
c:
Adrian Francis Williams
Counsel of Record

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