769 Fed.Appx. 803
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial
decisions issued on or after Jan. 1, 2007.
See also U.S. Ct. of App. 11th Cir. Rule 36-2.
United States Court of Appeals, Eleventh Circuit.

Antonio Lebaron MELTON, Petitioner - Appellant,
v.
ATTORNEY GENERAL, State of Florida,
Secretary, Florida Department of
Corrections, Respondents - Appellees.

No. 15-12396
|
(April 22, 2019)

Synopsis

Background: After affirmance of defendant's murder conviction and death sentence, 638 So.2d 927, affirmance of denial of postconviction relief and denial of petition for habeas corpus relief, 193 So.3d 881, denial of successive petition for habeas relief, 2018 WL 566451, and affirmance of denial of motion for collateral relief, 236 So.3d 234, state prisoner filed petition for federal habeas corpus relief. The United States District Court for the Northern District of Florida, No. 3:06-cv-00384-RS, denied petition. Prisoner appealed.

[Holding:] The Court of Appeals, Martin, Circuit Judge, held that Florida state court reasonably applied *Strickland* when it determined counsel's failure to investigate police officer's notes regarding conversation with inmate regarding murder did not constitute constitutionally deficient performance.

Affirmed.

West Headnotes (1)

[1] Habeas Corpus
Evidence; procurement, presentation, and objection

Florida state court reasonably applied *Strickland* when it determined counsel was not ineffective for failure to investigate police officer's notes regarding conversation with inmate regarding murder, and thus habeas relief was not warranted; officer's notes about conversation with inmate revealed only that there was nothing in the notes to suggest that inmate possessed information that would have been beneficial to defendant. U.S. Const. Amend. 6; 28 U.S.C.A. § 2254.

Cases that cite this headnote

Attorneys and Law Firms

Linda McDermott, McClain & McDermott, PA, Wilton Manors, FL, for Petitioner-Appellant

Pam Bondi, Charmaine Mary Millsaps, Attorney General's Office, Tallahassee, FL, for Respondents-Appellees

Appeal from the United States District Court for the Northern District of Florida, D.C. Docket No. 3:06-cv-00384-RS

Before MARTIN, JILL PRYOR, and JULIE CARNES, Circuit Judges.

Opinion

MARTIN, Circuit Judge:

***804** Antonio Lebaron Melton, a Florida prisoner on death row, appeals the District Court's denial of his 28 U.S.C. § 2254 habeas petition. Mr. Melton obtained a certificate of appealability on one issue: whether the state court reasonably determined that trial counsel's truncated investigation of Melton's case did not constitute ineffective assistance of counsel. After careful review and with the benefit of oral argument, we affirm.

I.

Close to midnight on November 17, 1990, a cab driver named Ricky Saylor was robbed, shot in the head, and killed. The case turned up few leads and quickly went cold. Two months later, a pawnshop owner by the name of George Carter was similarly shot in the head and killed in his store as part of an attempted robbery. Melton v. State, 638 So.2d 927, 928–29

(Fla. 1994) (per curiam). Police officers arrested Mr. Melton and his friend, Bendleon Lewis, at the scene of the crime. Id. at 929.

While Mr. Lewis and Mr. Melton were awaiting trial for robbing and murdering Mr. Carver, the state learned that Lewis had some information about Mr. Saylor's murder. The state subpoenaed Mr. Lewis, who said that Mr. Melton and another mutual friend, Tony Houston, were responsible for robbing and killing Mr. Saylor. Although Mr. Lewis admitted taking a cut of the $ 150 stolen from Mr. Saylor, he claimed he wasn't involved in the crime or even present for it. The only physical evidence linking any of the three men with Mr. Saylor's death was a single fingerprint belonging to Mr. Houston, which officers found on the back passenger's door of Mr. Saylor's cab.

The state eventually charged Mr. Melton and Mr. Houston with the murder and robbery of Mr. Saylor. The state did not charge Mr. Lewis. Terry Terrell, then the Chief Assistant Public Defender for the First Judicial Circuit of Florida, and Samuel Hall, a lawyer in the same office, were appointed to represent Mr. Melton. Although the two attorneys worked as a team, the more experienced Mr. Terrell was "ultimately responsible for all tactical and strategical decisions" in Mr. Melton's case.

Trial for Mr. Saylor's murder began in September 1991. Mr. Houston was the star witness for the state and testified that although Mr. Melton made the decision to rob Mr. Saylor at gunpoint and shoot him, both he and Mr. Lewis took part in the robbery. The three of them later met up to split the money.

The state did not call Mr. Lewis, having determined that his various inconsistent statements about the murder would make him a poor witness. Sensing an opportunity to discredit Mr. Lewis and by extension, Mr. Houston, the defense called Lewis during their case-in-chief. Although Mr. Lewis testified that Mr. Melton confessed to shooting Mr. Saylor in the head, Lewis admitted that he had repeatedly lied to the prosecution about his actions on the night of Saylor's murder. Mr. Lewis also testified that he hoped his testimony at trial would help him "gain a favorable sentence" in the pawnshop killing, for which he had been charged with capital murder.

***805** The jury ultimately found Mr. Melton guilty of robbery and first-degree felony murder. The judge sentenced Mr. Melton to life imprisonment for each offense, and the convictions were upheld on direct review. [1] See Melton v. State, 611 So.2d 116 (Fla. 1st DCA 1993) (per curiam).

1 Mr. Melton was separately convicted and sentenced to death for Mr. Carter's murder. See Melton v. State, 638 So.2d 927, 928 (Fla. 1994) (per curiam). The judge relied in part on Mr. Melton's conviction for killing Mr. Saylor to impose the death sentence. See id. at 929. That case is not before us.

In July 1995, Mr. Melton filed a Florida Rule of Criminal Procedure 3.850 motion to vacate his judgment and sentence for Mr. Saylor's murder. Over six years later, he filed a second amended Rule 3.850 motion adding an ineffective assistance of trial counsel claim based on Mr. Terrell's failure to investigate. Mr. Melton claimed that by failing to interview some of Mr. Lewis's cellmates, Mr. Terrell missed out on exculpatory evidence that would have showed Melton wasn't present for the shooting and that Lewis was framing Melton in order to avoid the death penalty in the Carter case. The state postconviction court scheduled the claim for an evidentiary hearing.

During the hearing, it emerged that Mr. Terrell was aware before trial that an inmate named Bruce Frazier claimed Mr. Lewis was talking about the Saylor case. Mr. Terrell also possessed a copy of Officer Thomas O'Neal's notes from a conversation the officer had with an inmate named David Sumler months before trial. [2] According to these notes, Mr. Lewis told Mr. Sumler that Lewis's "partner shot [the] cabbie [Mr. Saylor]" and that "Lewis was going to talk to LE if not freed on pawn killing." Although Officer O'Neal originally wrote that Mr. Lewis told Mr. Sumler Mr. Melton killed Mr. Saylor, he later crossed out Melton's name and replaced it with the word "partner" when he realized Sumler never mentioned Melton by name.

2 No one disputes that Officer O'Neal misspelled David Sumler's name in his notes as David Summerlin.

Mr. Terrell testified that he attempted to investigate these potential lines of inquiry. He explained that he sought out Mr. Frazier and Frazier's brother, Darrell, to discuss what Mr. Lewis may have told them about the Saylor murder. From them, he learned that Mr. Lewis said "Melton was the same boy" who killed Mr. Saylor and Mr. Carter. Concluding that neither brother would be helpful at trial, he abandoned this line of inquiry. Indeed, Mr. Terrell testified that it appeared to him the more he spoke with inmates the more information he had against Mr. Melton.

As for Officer O'Neal's notes about Mr. Sumler, Mr. Terrell testified that he should have attempted to find and interview Sumler and that the notes "should have been worthy of further investigation and explanation." He could not remember why he didn't pursue this lead but observed that "[t]h[e]se kinds of inquiries [i.e., interviewing jail inmates] ha[d] almost uniformly been unproductive" in the past. He also explained that his strategy at trial, given Mr. Houston's credible testimony, was to call Mr. Lewis and hope the jury would think Lewis and Houston "were making things up about Mr. Melton."

In addition to Mr. Terrell, Mr. Melton's postconviction counsel called six inmate witnesses who claimed to have spoken with Mr. Lewis in the months leading up to trial. Five of the six witnesses said Mr. Lewis specifically mentioned the Saylor ***806** murder. Of these, two said Mr. Lewis confessed to shooting Mr. Saylor himself and three said Lewis did not specify whether he or Mr. Houston pulled the trigger. However, all five witnesses agreed that Mr. Lewis said Mr. Melton was either absent during the shooting or implied as much. All told, it took Mr. Melton's postconviction investigator four years to find these witnesses. Beyond that, Mr. Melton's postconviction investigator testified that Escambia County Jail, where Mr. Lewis was held before trial, could hold over 100 inmates at a time and that it was not feasible to interview all of them.

The state postconviction court denied Mr. Melton's Rule 3.850 motion on March 23, 2004. Addressing Mr. Melton's ineffective assistance claim based on counsel's failure to investigate, the court found "there would have been no reason for [Terrell] to believe ... that David Sumler's testimony would be beneficial to his client." Although Mr. Terrell testified he should have done more to investigate, the court "reject[ed] that type of hindsight since further investigation would have to be premised on [Terrell] receiving some indication that Ben Lewis had told David Sumler something of benefit to his client," evidence of which there was none. The court therefore found that Mr. Terrell was neither deficient nor ineffective in his representation of Mr. Melton. The First District Court of Appeals of Florida summarily affirmed the denial of postconviction relief, see Melton v. State, 909 So.2d 865 (Fla. 1st DCA 2005) (unpublished table decision), and Mr. Melton filed the instant habeas petition in federal district court under 28 U.S.C. § 2254 on September 8, 2006.

The District Court denied Mr. Melton's petition for habeas relief on March 18, 2015, concluding that the state court's rejection of Melton's ineffective assistance of counsel claim was objectively reasonable.[3] Mr. Melton timely appealed. This Court granted him a certificate of appealability on one claim: whether the state court unreasonably applied Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), or based its decision on an unreasonable determination of the facts, when it concluded Mr. Terrell did not provide ineffective assistance of counsel by failing to investigate Officer O'Neal's notes and locate Mr. Sumler.[4] It is to this claim we now turn.

3 Proceedings in federal court were stayed for years pending additional litigation around a newly discovered evidence claim in state court. During the second evidentiary hearing, Mr. Houston's younger brother testified that Houston confessed to shooting Mr. Saylor and admitted planning with Mr. Lewis to pin the murder on Mr. Melton. Mr. Houston's other brother also testified that Houston confessed to knowing what it felt like to take a man's life—a remark the brother interpreted to refer to Mr. Saylor's murder. Adrian Brooks, Mr. Houston's former cellmate, also testified that Houston confessed that he—not Mr. Melton—killed Mr. Saylor. The trial court denied the successive 3.850 motion, and the First District affirmed. This issue is not before us on appeal.

4 The certificate of appealability also included ineffective assistance of counsel based on Mr. Terrell's "decision as to which witnesses to call or not call." Mr. Melton's opening brief, however, addresses only Mr. Terrell's failure to investigate.

II.

We review de novo a district court's denial of a 28 U.S.C. § 2254 habeas petition. Johnson v. Sec'y, DOC, 643 F.3d 907, 929 (11th Cir. 2011). Under the Antiterrorism and Effective Death Penalty Act of 1996, we may not grant a § 2254 petition unless the state court's adjudication of the claim "resulted in a decision that was contrary to, or involved an unreasonable application ***807** of, clearly established Federal law, as determined by the Supreme Court of the United States" or "resulted in a decision that 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). As the Supreme Court has explained, § 2254(d)'s "highly deferential" standards are "difficult to meet" and

"demand[ ] that state-court decisions be given the benefit of the doubt." Cullen v. Pinholster, 563 U.S. 170, 181, 131 S.Ct. 1388, 1398, 179 L.Ed.2d 557 (2011) (quotation marks omitted).

Where, as here, a petitioner raises an ineffective assistance of counsel claim under Strickland, his burden of proof is heavy indeed. Strickland requires that a petitioner prove first, that trial counsel's performance was constitutionally deficient, and second, that counsel's deficient performance prejudiced the defense. 466 U.S. at 687, 104 S.Ct. at 2064. Because "[j]udicial scrutiny of counsel's performance must be highly deferential," id. at 689, 104 S.Ct. at 2065, this Court's review of the first Strickland prong under § 2254's requirements is doubly deferential. See Johnson, 643 F.3d at 929. We must ask ourselves not whether trial counsel rendered effective assistance but whether the state court's determination that counsel did was reasonable. See Morton v. Sec'y, Fla. Dep't of Corr., 684 F.3d 1157, 1167 (11th Cir. 2012). Only an unreasonable state court determination will entitle a petitioner to habeas relief under § 2254. Finally, when the most recent state-court decision on the merits does not explain its rationale for affirming the petitioner's conviction and sentence, federal courts must "look through the unexplained decision to the last related state-court decision that does provide a relevant rationale" and "presume that the unexplained decision adopted the same reasoning," absent a showing by the state that the presumption does not apply. Wilson v. Sellers, 584 U.S. ——, 138 S.Ct. 1188, 1192, 200 L.Ed.2d 530 (2018) (quotation marks omitted). [5]

5 This Court has cautioned before that when § 2254 applies, the real question is "whether there is any reasonable argument that counsel satisfied Strickland's deferential standard." Morton, 684 F.3d at 1167 (quoting Harrington v. Richter, 562 U.S. 86, 105, 131 S.Ct. 770, 788, 178 L.Ed.2d 624 (2011)). In light of the Supreme Court's decision in Wilson, however, the more precise question may be whether there is any reasonable argument that counsel satisfied Strickland's deferential standard under the state court's reasoning. 138 S.Ct. at 1191–92 ("Deciding whether a state court's decision 'involved' an unreasonable application of federal law ... requires the federal habeas court to train its attention on the particular reasons—both legal and factual—why state courts rejected a state prisoner's federal claims." (quotation marks omitted)). We leave that question for another day.

III.

With these standards in mind, we conclude the state court reasonably applied Strickland when it determined Mr. Terrell's performance was not constitutionally deficient. Because the Florida First District Court of Appeal summarily affirmed the state postconviction court's decision on this issue, see Melton, 909 So.2d 865, we will "look through the unexplained decision" to the state postconviction court's order for the relevant rationale. See Wilson, 138 S.Ct. at 1192 (quotation marks omitted).

Here, the state postconviction court set out several reasons why Mr. Terrell's performance was not deficient. First, Officer O'Neal's notes about his conversation with Mr. Sumler revealed only that Mr. Lewis said his "partner" shot Mr. Saylor. The state court observed that by itself, the note wouldn't have given Mr. Terrell any reasons "to believe during the course of his ***808** representation of Mr. Melton that David Sumler's testimony would be beneficial to [Melton]." Given Mr. Terrell's testimony it was his experience that "interviewing other residents of the jail[ ] [is] almost uniformly unproductive," the court further opined that it would be "unreasonable to suggest that in order to be effective a trial defense counsel has an obligation to utilize their finite time and resources to search out un-named individuals simply because they are located in jail with a witness or potential witness." Last, the court observed that Mr. Terrell "did take the deposition of both Frazier brothers and did not learn anything from their testimony that would be of benefit to his client nor anything suggesting that trial counsel needed to go forward and interview any other inmates that might be potential witnesses to statements made by Lewis." For these reasons, the court found "no deficiencies or ineffectiveness" in Mr. Terrell's performance.

The postconviction court reasonably applied Strickland in coming to its decision. As the court noted, there was nothing about the note to suggest Mr. Sumler possessed information that would be beneficial to Mr. Melton. If anything, the more natural reading of "D [Lewis] ... said partner shot cabbie" would be that Mr. Lewis's partner in the pawnshop killing (i.e. Mr. Carter's murder) also shot the cabbie, Mr. Saylor. Mr. Lewis's partner in the pawnshop killing was Mr. Melton. Beyond that, Mr. Terrell spoke to two inmates, the Frazier brothers, one of whom informed him that Mr. Lewis named Mr. Melton as the shooter in Mr. Saylor's murder.

"In assessing the reasonableness of an attorney's investigation, ... a court must consider ... whether the known evidence would lead a reasonable attorney to investigate further." Wiggins v. Smith, 539 U.S. 510, 527, 123 S.Ct. 2527, 2538, 156 L.Ed.2d 471 (2003). None of the record evidence Mr. Melton relies on would have led a reasonable attorney to investigate further. Indeed, some of the evidence pointed to Mr. Melton's guilt, such that a reasonable attorney might have thought it prudent to abandon this line of inquiry. The state postconviction court therefore did not unreasonably apply Strickland when it determined that Mr. Terrell did not render ineffective assistance.

To the extent Mr. Melton argues the state postconviction court erred by rejecting his argument that Mr. Terrell was ineffective for failing to independently seek out and speak with more of Mr. Lewis's cellmates about the case, that argument is without merit. The jail where Mr. Lewis was held could hold over one hundred inmates at a time. What's more, Mr. Terrell specifically testified at the postconviction evidentiary hearing that in his experience, pursuing jailhouse testimony was almost "uniformly unproductive." In light of his limited time and resources and his interview with the Frazier brothers, Mr. Terrell's decision not to seek out jail inmates based on past experience is the kind of reasonable strategic choice that we have said is entitled to "great deference" on judicial review. Dingle v. Sec'y for the Dep't of Corrs., 480 F.3d 1092, 1099 (11th Cir. 2007); see also Wiggins, 539 U.S. at 528, 123 S.Ct. at 2527 ("[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation."). As a result, the state postconviction court did not unreasonably apply Strickland when it rejected his ineffective assistance ***809** of counsel claim. [6]

6 Mr. Melton briefly argues on a single page that Mr. Terrell was also ineffective for failing to question Latasha Dobbins, Mr. Houston's girlfriend, about her conversation with Houston while he was in jail. To the extent Mr. Melton frames this as a failure to investigate claim, it is without merit. As Mr. Terrell testified at the post-conviction hearing, he deposed Ms. Dobbins before trial and learned about the phone call then. To the extent this is a failure to cross-examine claim, it falls outside the scope of the certificate of appealability, which extended only to Mr. Terrell's alleged failure to investigate possible defense witnesses and select effective witnesses for trial.

AFFIRMED.

All Citations

769 Fed.Appx. 803