No.

IN THE SUPREME COURT OF THE UNITED STATES

ALAN STRATTAN,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a petitioner seeking the issuance of a certificate of appealability under 28 U.S.C. § 2253 is required to demonstrate that jurists of reason would find the merits of his claims debatable, or, instead, to demonstrate only that jurists of reason would find the basis for denying relief itself debatable?

PARTIES TO THE PROCEEDING

Parties to the proceeding include Alan Strattan (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), and Ashley Moody (Attorney General, State of Florida).

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PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The decision of the Eleventh Circuit Court of Appeals *infra*, was not selected for publication. The decision is attached as Appendix B.

JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeals, which had jurisdiction under Title 28 U.S.C. § 1291, was entered on July 30, 2019. However, a timely motion for reconsideration was filed and not denied until October 28, 2019. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> **(a)** In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
>
> **(b)** There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
>
> **(c)(1)** Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> > **(A)** the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
> >
> > **(B)** the final order in a proceeding under section 2255.

> **(2)** A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> **(3)** The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253.

STATEMENT OF FACTS

On September 15, 2016, Mr. Strattan filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 in the Middle District of Florida, Jacksonville Division, arguing he was entitled to federal relief from the Judgment and Sentence entered against him in the matter of *State of Florida v. Alan Strattan*, Case No. 11-CF- 00083, in the Third Judicial Circuit in and for Columbia County, State of Florida. In his state court proceedings, Mr. Strattan pled guilty to three (3) counts of first degree murder and one (1) count of first degree murder of an unborn child. In his state collateral proceedings, Mr. Strattan argued he was deprived of his right to the effective assistance of counsel by his trial counsel's failure to advise him of the existence of a state of mind defense prior to the entry of his guilty pleas. However, the state courts tasked with reviewing the claim denied relief. Accordingly, in his federal habeas proceeding, Mr. Strattan argued the state courts' denial of relief on this claim was contrary to and/or constituted an unreasonable application of clearly established federal law, and, as such, he was entitled to federal relief. The district court denied Mr. Strattan's claim and likewise denied to grant him a certificate of appealability.

Mr. Strattan then filed a Notice of Appeal and thereafter filed a Motion for

Certificate of Appealability in the 11th Circuit Court of Appeal, Atlanta, Georgia. On July 30, 2019, a single United States Circuit Court Judge denied the motion, finding:

> Alan Strattan moves for a certificate of appealability ("COA"), in order to appeal the denial of his 28 U.S.C. § 2254 petition for habeas corpus. To merit a COA, Strattan must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Strattan' s motion for a COA is DENIED because he failed to make the requisite showing.

(Order Denying COA, Appendix A).

Thereafter, Mr. Strattan filed a Motion for Reconsideration which was likewise denied.

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO ESTABLISH THAT A CIRCUIT COURT RULING ON A MOTION FOR CERTIFICATE OF APPEALABILITY MUST LIMIT ITS REVIEW TO WHETHER REASONABLE JURISTS WOULD FIND THE DISTRICT COURT'S BASIS FOR DENYING HABEAS RELIEF DEBATABLE OR WRONG.

At issue in this Petition is the appropriate scope of a circuit court's review while ruling on a motion for certificate of appealability under 28 U.S.C. § 2253. This Court should accept jurisdiction to establish that a circuit court's review is limited to the question of whether reasonable jurists would find the district court's basis for denying the petitioner's habeas claim debatable or wrong – not whether the issues raised by the petitioner debatably entitle him to relief.

A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not have an absolute right to appeal and, instead, must first obtain a certificate of appealability ("COA") from a circuit court judge. 28 U.S.C. § 2253(c)(1). This Court has explained the requirements for obtaining a COA as follows:

> To obtain a COA under § 2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were " 'adequate to deserve encouragement to proceed further.' " *Barefoot*, supra, at 893, and n. 4, 103 S.Ct. 3383 ("sum[ming] up" the " 'substantial showing' " standard).
>
> Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find **the district court's assessment** of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated

> where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (emphasis added). This Court has further explained that "[a] 'court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims,' and **ask '<u>only</u> if the District Court's <u>decision</u> was debatable.'"** *Buck v. Davis*, 137 S. Ct. 759, 774, 197 L. Ed. 2d 1 (2017) (quoting, *Miller-El v. Cockrell*, 537 U.S. 322, 327, 348, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003))(emphasis added). Read naturally, the foregoing precedent makes clear that the <u>only</u> question for a reviewing court considering a motion for a certificate of appealability is whether the district court's assessment or resolution of the claim, *i.e.*, its decision, was debatable. *See, Id.*; *Slack*, 529 U.S. at 483-84; *see also, Miller-El*, 537 U.S. at 336, 123 S. Ct.at 1039 ("We look to the District Court's application of AEDPA to petitioner's constitutional claims and **ask whether that <u>resolution</u>** was debatable amongst jurists of reason.")(emphasis added). Nonetheless, the circuit courts, including the court in Mr. Strattan's case, have misinterpreted the foregoing precedent and read it to mean that, as a threshold matter, the court should examine whether the claims themselves have merit, then, only if they do, consider whether the district court's denial of relief was debatable – which is precisely the opposite of what this Court has instructed them to

do. *See, e.g., Raby v. Davis,* 907 F.3d 880, 883 (5th Cir. 2018), *cert. denied,* 139 S. Ct. 2693, 204 L. Ed. 2d 1093 (2019), *reh'g denied,* 140 S. Ct. 19, 204 L. Ed. 2d 1175 (2019)("The court limits its examination at the COA stage to a threshold inquiry into the underlying merit of [the] claims.")(citations and quotations omitted). For instance, in Mr. Strattan's case, the circuit court denied Mr. Strattan a certificate of appealability because he had not demonstrated his claims had merit, and made no finding with respect to whether the district court's basis for denying relief was debatable. The problem with determining whether a certificate of appealability should issue by examining the merits of the underlying claim first is threefold. First, as this Court explained in *Buck,* when the reviewing court "'first decid[es] the merits of an appeal, ... then justif[ies] its denial of a COA based on its adjudication of the actual merits,' it has placed too heavy a burden on the prisoner *at the COA stage.*" *Buck* , 137 S. Ct. at 774 (quoting, *Miller–El,* 537 U.S., at 336–337, 123 S.Ct. 1029)(emphasis in original). Second, by doing so the court has "in essence decid[ed] an appeal without jurisdiction," as "[u]ntil the prisoner secures a COA, the Court of Appeals may not rule on the merits of his case." *Buck,* 137 S. Ct. at 773 (quoting, *Miller–El,* 537 U.S., at 336–337, 123 S.Ct. 1029). Third, it creates the possibility that a single circuit judge could find the petitioner's claims lack merit and that denial of relief is appropriate *for entirely different reasons* than those of the district court and, in effect, foreclose the petitioner from even the modest review provided for under 28 U.S.C. § 2253.

More specifically, by examining the merits of the claims themselves, a circuit court judge could find that the reasons stated in a district court's order denying relief

were debatably wrong, but nonetheless deny relief because in the opinion of the circuit court judge, for reasons other than those stated in the district court's order, the petitioner's claims lacked merit. In such a situation a petitioner has effectively been denied relief by a circuit court judge sitting as a district court judge, and is foreclosed from the review process provided for under 28 U.S.C. § 2253 concerning the new basis for denying his petition – and as explained in *Buck* and *Miller-El*, has been denied relief by a circuit court judge who decided his claim without jurisdiction to do so.

Accordingly, to insure that to heavy of a burden is not placed on a prisoner at the COA stage, that circuit court judges are not deciding appeals without jurisdiction, and to prevent circuit court judges from foreclosing habeas petitioners from review of the ultimate basis upon which their habeas petitions are decided, this Court should accept jurisdiction and make clear that the only consideration for a circuit court judge ruling on a certificate of appealability is whether the basis for the district court's decision to deny relief was itself debatable or wrong. *See, Buck*, 137 S. Ct. at 774; *Miller-El*, 537 U.S. at 327, 348, 123 S.Ct. 1029; *Slack*, 529 U.S. at 483-84.

Consequently, this Court should accept jurisdiction and ultimately reverse the order denying Mr. Strattan a certificate of appealability, and remand his case to the circuit court with instructions that it conduct a new review of Mr. Strattan's motion for a certificate of appealability under the appropriate standard. *See, Id.*

CONCLUSION

For the reasons stated above, this Court should grant Mr. Strattan's Petition for Writ of Certiorari, and establish that the only consideration for a circuit court judge ruling on a certificate of appealability under 28 U.S.C. § 2253 is whether the District Court's decision was debatable.

Respectfully Submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ALAN STRATTAN,

Petitioner,

v. Case No. 3:16-cv-1174-J-32JBT

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

ORDER

I. Status

Petitioner Alan Strattan, an inmate of the Florida penal system, initiated this action with the assistance of counsel by filing a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. 1) on September 15, 2016. Strattan is proceeding on an Amended Petition filed by counsel on September 22, 2016. See Doc. 4 (Petition). Strattan challenges a 2012 state court (Columbia County, Florida) judgment of conviction for which he is serving a life term of incarceration. Respondents filed a Response to the Petition. See Doc. 13 (Resp.) with exhibits (Resp. Ex.). Strattan, through counsel, filed a Reply. See Doc. 14 (Reply). This case is ripe for review.

II. Procedural History

On March 28, 2012, Strattan entered a negotiated plea of guilty to three counts of "first degree murder while armed" (counts one, three, and four) and "killing of

unborn quick child" (count two). Resp. Ex. M. That same day, the trial court sentenced Strattan in conformance with his negotiated disposition to a term of life on each count, with all counts to run consecutive. Id. Strattan did not seek a direct appeal of his judgment and sentences.

Strattan filed a Florida Rule of Criminal Procedure 3.850 motion for postconviction relief on March 21, 2013. Resp. Ex. B at 1-38. On December 15, 2015, the trial court entered an order summarily denying Strattan's Rule 3.850 motion. Id. at 107-25. The First District Court of Appeal per curiam affirmed the trial court's order of denial without a written opinion on June 27, 2016. Resp. Ex. E. The mandate was issued on August 17, 2016. Resp. Ex. H. This action followed.

III. Governing Legal Principals

A. Standard Under AEDPA

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governs a state prisoner's federal habeas corpus petition. 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)).

The first task of the federal habeas court is to identify the last state court decision, if any, that adjudicated the petitioner's claims on the merits. See Marshall v. Sec'y Fla. Dep't of Corr., 828 F.3d 1277, 1285 (11th Cir. 2016). 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 Harrington v. Richter, 562 U.S. 86, 100 (2011). Where the state court's adjudication on the merits is unaccompanied by an explanation,

> the federal court should "look through" the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning. But the State may rebut the presumption by showing that the unexplained affirmance relied or most likely did rely on different grounds than the lower state court's decision, such as alternative grounds for affirmance that were briefed or argued to the state supreme court or obvious in the record it reviewed.

Wilson v. Sellers, 138 S. Ct. 1188, 1192 (2018).

When a state court has adjudicated a petitioner's claims on the merits, a federal court cannot grant habeas relief unless the state court's adjudication of the claim was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "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)(1), (2). A state court's factual findings are "presumed to be correct" unless rebutted "by clear and convincing evidence." Id. § 2254(e)(1).

> AEDPA "imposes a highly deferential standard for evaluating state court rulings" and "demands that state-court decisions be given the benefit of the doubt." Renico v. Lett, 559 U.S. 766, 773 (2010) (internal quotation marks omitted). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision." Harrington v. Richter, 562 U.S. 86, 101 (2011) (internal quotation marks omitted). "It bears repeating that

> even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." Id. [at 102] (citing Lockyer v. Andrade, 538 U.S. 63, 75 (2003)). The Supreme Court has repeatedly instructed lower federal courts that an unreasonable application of law requires more than mere error or even clear error. See, e.g., Mitchell v. Esparza, 540 U.S. 12, 18 (2003); Lockyer, 538 U.S. at 75 ("The gloss of clear error fails to give proper deference to state courts by conflating error (even clear error) with unreasonableness."); Williams v. Taylor, 529 U.S. 362, 410 (2000) ("[A]n unreasonable application of federal law is different from an incorrect application of federal law.").

Bishop v. Warden, GDCP, 726 F.3d 1243, 1253-54 (11th Cir. 2013) (internal citations modified).

B. Ineffective Assistance of Counsel

"The Sixth Amendment guarantees criminal defendants effective assistance of counsel. That right is denied when a defense counsel'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)). To establish ineffective assistance, a person must show that: (1) counsel's performance was outside the wide range of reasonable, professional assistance; and (2) counsel's deficient performance prejudiced the challenger in that there is a reasonable probability that the outcome of the proceeding would have been different absent counsel's deficient performance. Strickland, 466 U.S. at 687.

Notably, there is no "iron-clad rule requiring a court to tackle one prong of the Strickland test before the other." Ward v. Hall, 592 F.3d 1144, 1163 (11th Cir. 2010). Since both prongs of the two-part Strickland test must be satisfied to show a Sixth

Amendment violation, "a court need not address the performance prong if the petitioner cannot meet the prejudice prong, and vice-versa." Id. (citing Holladay v. Haley, 209 F.3d 1243, 1248 (11th Cir. 2000)). As stated in Strickland: "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." 466 U.S. at 697.

"The question is not whether a federal court believes the state court's determination under the Strickland standard was incorrect but whether that determination was unreasonable - a substantially higher threshold." Knowles v. Mirzayance, 556 U.S. 111, 123 (2009) (quotation marks omitted). If there is "any reasonable argument that counsel satisfied Strickland's deferential standard," then a federal court may not disturb a state-court decision denying the claim. Richter, 562 U.S. at 105. As such, "[s]urmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). "Reviewing courts apply a 'strong presumption' that counsel's representation was 'within the wide range of reasonable professional assistance.'" Daniel v. Comm'r, Ala. Dep't of Corr., 822 F.3d 1248, 1262 (11th Cir. 2016) (quoting Strickland, 466 U.S. at 689). "When this presumption is combined with § 2254(d), the result is double deference to the state court ruling on counsel's performance." Id. (citing Richter, 562 U.S. at 105); see also Evans v. Sec'y, Dep't of Corr., 703 F.3d 1316, 1333-35 (11th Cir. 2013) (en banc) (Jordan, J., concurring); Rutherford v. Crosby, 385 F.3d 1300, 1309 (11th Cir. 2004).

IV. Analysis

Strattan raises one ground for relief. He claims that trial counsel was ineffective for failing to advise him of a viable "state of mind defense" prior to his pleas of guilty. Doc. 4 at 5. Strattan contends that he did not commit the murders with "aforethought," but instead committed the murders because he believed the victims were robbing him and that shooting them was necessary to defend himself and his property. Id. at 19. According to Strattan, had he known his conduct only amounted to a lesser included offense of first degree murder, he would not have entered pleas of guilty and would have insisted on going to trial. Id.

Strattan raised this claim in his Rule 3.850 motion. Resp. Ex. B at 1-10. The trial court summarily denied the claim, finding in pertinent part:

> The Defendant argues that, had he gone to trial, first degree murder would have been difficult for the State to prove. The Defendant goes on to raise a highly speculative argument that, in the scenario in which a jury may have found the Defendant guilty of a lesser included offense, the Defendant would have then had the opportunity to present mitigating factors whereby the Defendant could possibly have received some punishment less than life in prison. The Defendant also argues that his counsel should have informed Defendant about the rare, and in this case, especially unlikely event of a jury pardon.
>
> As explained, the Defendant in this case entered a plea agreement with the State whereby the Defendant would plead guilty to the crimes as charged, and in exchange, the Defendant would avoid the death penalty for murdering three individuals and an unborn child. As a part of entering a plea agreement, in order for that plea to be voluntary, an attorney must adequately advise a defendant of certain things. However, that advice does not include an explanation of lesser included offenses, mitigating factors, or the chance of receiving a jury pardon. In Bolware v. State,

the Florida Supreme Court held that "[a] voluntary plea requires that the defendant be told only of consequences that affect the range of criminal punishment and those other subjects specifically listed in rule 3.172(c)." 995 So. 2d 268, 275 (Fla. 2008). Rule 3.172(c) does not require that an attorney explain lesser included offenses, or the potential opportunity to argue mitigating factors on the off chance that a jury finds the Defendant guilty of a lesser included offense. The rule also gives no instruction to advise a defendant of jury pardon. Finally, as to the consequences of the range of criminal punishment, this applies to the charges against the Defendant, and not some speculative chance that a finding could be made of a different crime from that which is charged and tried. As such, the Defendant's counsel in this case had no duty to advise the Defendant of these things.

The Defendant concludes Ground One by arguing that his counsel in some way did not adequately represent the Defendant and did not spend adequate time in preparing for the Defendant's case. The record reflects that the Defendant's counsel spent a great deal of time on the Defendant's case by the high number of motions filed by counsel, as well as the many subpoenas executed and depositions taken. The Defendant also mentions later in the instant motion that his counsel sought to have the Defendant mentally evaluated. And finally, the Defendant testified, while under oath at the plea hearing as follows:

THE COURT:	Did you read each of the two documents styled offer of plea carefully?
THE DEFENDANT:	Yes, Your Honor.
THE COURT:	Did you understand everything that was contained in each of those two documents?
THE DEFENDANT:	I did.
THE COURT:	Did you go over them carefully with your attorney?

THE DEFENDANT:	Yes, sir.
THE COURT:	Have you had sufficient time to discuss the terms and conditions of the agreement that was contained in the offer of plea with you lawyer?
THE DEFENDANT:	Yes, You Honor.
THE COURT:	Was your lawyer able to answer any questions that you might have concerning what's contained in the plea agreement in each and both cases?[1]
THE DEFENDANT:	Yes, sir.
THE COURT:	Do you remain well-satisfied with the services your lawyer has provided to you in both of these matters?
THE DEFENDANT:	Yes, sir.
THE COURT:	That includes the investigation of the case and completing any discovery that might have taken place as well. Are you satisfied?
THE DEFENDANT:	Yes, Your Honor.
THE COURT:	Do you feel as though he has done a competent job representing you?
THE DEFENDANT:	Yes, sir.
THE COURT:	Do you have any issues at all with the services that Mr. Payne had provided to you?

[1] Strattan also pled guilty to violation of probation charged in a separate case. Resp. Ex. B at 65.

> THE DEFENDANT: No, Your Honor.
>
> As such, the Defendant's sworn testimony refutes the Defendant's current claim that his counsel performed inadequately or that the Defendant was displeased with the time and effort that his counsel put into the case.

Resp. Ex. B at 108-10 (record citations omitted). The First DCA per curiam affirmed the trial court's denial without a written opinion. Resp. Exs. E; H.

To the extent that the First DCA affirmed the circuit court's denial on the merits,[2] the Court will address the 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 the 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, Strattan is not entitled to relief on the basis of this claim.

Nevertheless, assuming the state court's adjudication is not entitled to deference, Strattan's claim is still without merit. Indeed, even if trial counsel was deficient for failing to advise Strattan of a viable defense regarding a lack of premeditation, Strattan cannot demonstrate "a reasonable probability that, but for counsel's errors, [he] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985). Specifically, "where the alleged error

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[2] In looking through the appellate court's per curiam affirmance to the circuit court's "relevant rationale," the Court presumes that the appellate court "adopted the same reasoning." Wilson, 138 S. Ct. at 1194.

of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the 'prejudice' inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." Id. at 59-60.

As Strattan details in his Petition, see Doc. 4 at 17-19, during the plea colloquy, the state presented a factual basis for Strattan's pleas of guilty, see Resp. Ex. B at 74-76. The state attorney provided in pertinent part:

> The evening of February 2, 2011, Mr. Strattan was at the residence of his parents with Monica B. Hudson. Also present were Nichole Marie Cervantez and Michael Kevin Tucker and a small child of Ms. Cervantez.
>
> While there, the parties – they were essentially planning their evening and Mr. Tucker – excuse me, Mr. Strattan left to go grab some alcohol. And when he came back, after returning to the residence, he and Ms. Cervantez got into a verbal altercation, which led at some point to Mr. Strattan producing a .40 caliber Springfield Armory handgun and putting five rounds into Ms. Cervantez. He then turns to Ms. Hudson, he puts five rounds into Ms. Hudson. Both of those ladies go down.
>
> Mr. Tucker, who was downstairs with the small child, heard gunfire and came running up the steps. Mr. Strattan then turns and puts three rounds into Mr. Tucker.
>
> He walks over – his gun is now empty, he has to obtain anther magazine. He reloads the weapon, puts a fourth round, a coup de grace, into Mr. Tucker.
>
> He then walks over to Monica Hudson, sees her looking up at the floor from him and he shoots her one more time in the head to go ahead and put her out of her misery.
>
> He then goes and turns to leave the residence and then remembers the small child downstairs. He goes back in the residence, he retrieves the child, takes her through the room where these people are, but he allegedly covered her eyes so she could not see what was there, and he leaves the

> residence, puts the child in the car and he starts driving away.
>
> Then he's not sure what to do with the child, so he decides probably the safest thing for the child is to leave her at the Lake City Police Department.
>
> It was while he was there that officers discovered that something had taken place.
>
> . . . .
>
> The two officers who were then on the scene went into the residence where they discovered these three bodies on the floor. They did a protective sweep of the house to make certain there were no other victims or perpetrators in the house.
>
> Mr. Strattan was ultimately – custody was transferred to the sheriff's office, where an interview was taken by two officers . . . on a videotaped statement. Mr. Strattan laid everything out that happened during the period of time that this – the killings went down.
>
> . . . .
>
> Ms. Cervantez was with child. The autopsy revealed that. . . . Doctor Randell Alexander from Jacksonville went back and reviewed the autopsy information and has determined the child would have been viable with reasonable medical care available to it.
>
> . . .
>
> I will make the Court aware that one of the rounds actually went through the child.

Resp. Ex. B at 74-77. Contrary to Strattan's current claim, the factual basis, read into the record and which Strattan agreed to under oath, demonstrates conduct that is both premediated and deliberate. Thus, Strattan has failed to show that his "state of mind" or lack of "aforethought" defense would likely succeed at trial.

Further, Strattan's own statements at the plea hearing confirm the intent behind his actions and the voluntary nature of his decision to plea. See Resp. Ex. B at 96. Indeed, Strattan testified in pertinent part:

> There's no way to measure my regret and sorrow. Words will never be enough to explain how sorry I am and my apology will never be enough. I'm always going to be filled with anguish and remorse and not a single moment goes by that I'm not haunted by the pain and loss and what I've done.
>
> The person that I am is not the person I was that night. I wasn't on drugs and I wasn't drunk. I was overcome by evil, an[ ] evil so strong that I couldn't control it and I was weak.
>
> I'm taking this plea so you won't have to go through any more pain of a long trial and appeals. I'm taking responsibility. It is done. There will be no appeals.

Resp. Ex. B at 96. In exchange for Strattan's pleas of guilty, the state agreed to not seek the death penalty for Strattan's crimes. Resp. Ex. B at 66. Accordingly, Strattan cannot demonstrate that but for counsel's alleged error, he would not have pled guilty and would have instead proceeded to trial. Strattan cannot show prejudice under Strickland, and this claim is denied.

Therefore, it is **ORDERED AND ADJUDGED**:

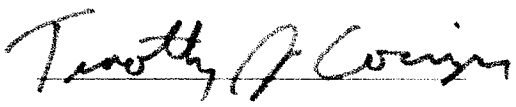
1. The Amended Petition (Doc. 4) is **DENIED** and this case is **DISMISSED WITH PREJUDICE**.

2. The **Clerk of Court** shall enter judgment accordingly, terminate any pending motions, and close this case.

3. If Petitioner appeals this Order, the Court denies a certificate of appealability. Because the 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.[3]

DONE AND ORDERED at Jacksonville, Florida, this 2nd day of January 2019.



TIMOTHY J. CORRIGAN
United States District Judge

Jax-7
C: Alan Strattan, #I12015
Counsel of record

[3] The Court should issue a certificate of appealability only if the Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this substantial showing, Petitioner "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)). Here, after consideration of the record as a whole, the Court will deny a certificate of appealability.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10417-H

ALAN STRATTAN,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Alan Strattan moves for a certificate of appealability ("COA"), in order to appeal the denial of his 28 U.S.C. § 2254 petition for habeas corpus. To merit a COA, Strattan must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Strattan's motion for a COA is DENIED because he failed to make the requisite showing.

Strattan's motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.

/s/ Gerald B. Tjoflat
UNITED STATES CIRCUIT JUDGE

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10417-H

ALAN STRATTAN,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: TJOFLAT and GRANT, Circuit Judges.

BY THE COURT:

Allan Strattan, through counsel, has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's July 30, 2019, order denying his *pro se* motions for a certificate of appealability and leave to proceed *in forma pauperis* to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition. Upon review, Strattan's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.