[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12037
Non-Argument Calendar

D.C. Docket No. 1:16-cv-24758-MGC

FREDDIE LEE WILSON,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

(April 23, 2019)

Before WILSON, NEWSOM, and HULL, Circuit Judges.

PER CURIAM:

Freddie Lee Wilson, a Florida state prisoner proceeding *pro se*, appeals the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition challenging his conviction for second-degree murder and sentence of 35 years' imprisonment. Wilson's § 2254 petition states four grounds for relief, alleging that his trial counsel provided ineffective representation in failing to: (1) obtain a second medical examiner's opinion regarding the victim's cause of death; (2) inform Wilson of defenses to the charge against him, rendering his guilty plea involuntary; (3) argue any defenses on Wilson's behalf; and (4) argue that, because the killing occurred in the "heat of passion," Wilson was guilty only of manslaughter.

When reviewing a district court's denial of a § 2254 petition, we review *de novo* mixed questions of law and fact—including claims of ineffective assistance of counsel. *Pardo v. Sec'y, Fla. Dep't of Corr.*, 587 F.3d 1093, 1098 (11th Cir. 2009) (citations omitted). But *de novo* does not mean without deference. For one thing, as explained in *Strickland v. Washington*, our analysis of Wilson's ineffectiveness claim is "highly deferential" and includes a "strong presumption" that counsel provided reasonable professional assistance. 466 U.S. 668, 689 (1984). For another, because the Antiterrorism and Effective Death Penalty Act of 1996 applies to Wilson's petition, we may not grant relief unless the state court's conclusions (1) were contrary to or involved an unreasonable application of clearly established federal law or (2) resulted in a decision based on an unreasonable

determination of the facts given the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d). Here as well, our review is "highly deferential." *Lindh v. Murphy*, 521 U.S. 320, 333 n.7 (1997). Thus, the Supreme Court has said that when a *Strickland* claim is part of a dispute subject to the AEDPA, our review is "doubly" deferential. *Harrington v. Richter*, 562 U.S. 86, 105 (2011). It will therefore be a "rare case" in which an ineffective-assistance claim, denied on the merits in state court, is found to warrant relief in a federal habeas proceeding. *Gissendaner v. Seabolt*, 735 F.3d 1311, 1323 (11th Cir. 2013) (citations omitted).

This is not such a case. To prove ineffective assistance of counsel, Williams must show not only that his attorney made errors so serious that she ceased to function as the counsel that the Sixth Amendment guarantees, but also that the errors prejudiced his defense. *Hill v. Lockhart,* 474 U.S. 52, 58 (1985); *Strickland*, 466 U.S. at 687.[1]

One last point before turning to the merits: because the final state court opinion does not explain that court's rationale for affirming the prior opinion, we "look through" its decision to the "last reasoned opinion" and assume that the final state court adopted the lower court's reasoning. *Wilson v. Sellers*, 138 S. Ct. 1188, 1192, 1194 (2018). When we do so, we conclude that the state court reasonably

[1] If Williams makes an insufficient showing on the prejudice prong, we need not address the performance prong, and vice versa. *Holladay v. Haley*, 209 F.3d 1243, 1248 (11th Cir. 2000) (citations omitted).

assessed the facts relating to each of Wilson's ineffectiveness of assistance claims and reasonably applied federal law in deciding that Williams failed to carry his burden of proof. *See* 28 U.S.C. § 2254(d).

I

Addressing Wilson's first claim—that his attorney was ineffective in failing to obtain the testimony of another medical examiner—the state court found that Wilson did not indicate *how* a second medical examiner's testimony would have demonstrated that he was guilty of manslaughter rather than second-degree murder. This determination was reasonable in light of the facts before the court; it was also consistent with federal law. Although Wilson gestures toward the possibility of his victim having a pre-existing condition, he offered the state court no evidence showing why another medical examiner would review the evidence from the incident—which indicated that the victim had been kicked and punched in the chest, bled out internally, and been left dead for several days—and reach a different conclusion than the first medical examiner. As for federal law, ineffective assistance of counsel cannot be proven via conclusory assertion—*see, e.g.*, *Boyd v. Comm'r, Ala. Dep't of Corr.*, 697 F.3d 1320, 1333–34 (11th Cir. 2012)—but that is all Wilson offered. The federal district court was therefore correct in upholding the state court's determination.

The state court consolidated its discussion of Wilson's second and third claims. This was reasonable, because both claims argued that Wilson's counsel was ineffective for failing to reveal to him, or raise at trial, various defenses to Wilson's charge of second-degree murder. Wilson asserts that had he known of these defenses, he would not have pleaded guilty.

The state court responded that it was incumbent on Wilson to provide his attorney with adequate information to enable her to identify feasible defenses. On the one hand, this is not necessarily how we would have chosen to address Wilson's claims. After all, Wilson has also stated that counsel told him that none of his possible defenses would be meritorious—indicating that his attorney did not stonewall Wilson so much as recognize and communicate to him the likely futility of any defenses. On the other hand, and more importantly, our preferred approach is just that—a preference. Wilson must show that the state court made an error that "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103. And a difference in approach hardly amounts to an indisputable error. In addition, and in any case, Wilson's second and third claims are as conclusory as the first. Wilson does not indicate how or why these defenses could have weakened the evidence against him—we are simply told that they would. Therefore, even if we were to agree that his counsel was

insufficiently communicative, Wilson will still have failed to meet his burden of demonstrating prejudice. *Strickland*, 466 U.S. at 687. The district court was again correct to uphold the state court's decision.

Finally, Wilson's fourth claim concentrates on the particular defense of "heat of passion." Wilson contends that his counsel was ineffective in failing to raise this mitigating defense. The state court rejected this claim because, during Wilson's plea colloquy, he stated that he had adequate time to discuss his case with his attorney and understood the nature and consequences of the plea agreement. The state court also noted that Wilson faced life imprisonment as a Prison Release Reoffender when he chose to accept the plea agreement.

Wilson has not shown why the "heat of passion" defense would have been viable given the evidence before the state court, or why the state court's determination was contrary to federal law. He identifies cases in which we have found that a counsel's poor advice amounted to deficient performance, but does not provide adequate facts to support the contention that his counsel's advice was similarly lacking. We do not doubt, for example, that Wilson and the victim had a "turbulent relationship," Doc. 13 at 23, but that fact alone does not demonstrate the viability of a "heat of passion" defense, and Wilson provides no further information that would suggest his counsel erred in recommending he avoid risking life imprisonment. The state court's decision was therefore neither

contrary to federal law nor an unreasonable application of that law in light of the evidence presented, as the district court correctly concluded.

II

The district court here correctly determined that Wilson was not eligible for habeas relief because the state court reasonably assessed the facts, and reasonably applied federal law applicable to Wilson's ineffective assistance claims. Under AEDPA, the district court's denial of Wilson's petition was therefore proper. *See* 28 U.S.C. § 2254(d). Accordingly, we affirm.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12037-HH

FREDDIE LEE WILSON,

Petitioner - Appellant,

versus

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

Respondents - Appellees.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, NEWSOM, and HULL, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

ORD-42

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 16-24758-Civ-COOKE/WHITE

FREDDIE LEE WILSON,

Petitioner

vs.

JULIE L. JONES,

Respondent.
_____/

ORDER ADOPTING IN PART REPORT OF MAGISTRATE JUDGE

THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, pursuant to Administrative Order 2003-19 of this Court, for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. *See* ECF No. 3. On March 26, 2018, Judge White issued a Report of Magistrate Judge ("Report") (ECF No. 26) recommending that (i) Mr. Wilson's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) be denied, (ii) a certificate of appealability be denied, and (iii) this case be closed. Petitioner filed objections to the Report. *See* ECF No. 27. I have considered Judge White's Report, as well as the objections thereto, and have made a *de novo* review of the record. I find Judge White's Report clear, cogent, and compelling.

It is **ORDERED and ADJUDGED** that Judge White's Report of Magistrate Judge (ECF No. 26) is **AFFIRMED and ADOPTED *in part***. Mr. Wilson's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DENIED**. The Clerk is directed to **CLOSE** this case.

It is **FURTHER ORDERED and ADJUDGED** that, pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, and in an abundance of caution, a Certificate of Appealability shall issue as to claims 1–4 (as numbered in Judge White's Report). As to these issues, Petitioner has demonstrated that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003); *accord Lott v. Attorney Gen., Fla.*, 594 F.3d 1296, 1301 (11th Cir. 2010) (explaining

that a "petitioner need not show he will ultimately succeed on appeal" in order to warrant a certificate of appealability).

DONE and ORDERED in chambers, at Miami, Florida, this 30th day of April 2018.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
Patrick A. White, U.S. Magistrate Judge
Freddie Lee Wilson, pro se
Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 16-24758-CIV-COOKE
MAGISTRATE JUDGE P.A. WHITE

FREDDIE LEE WILSON, :

Petitioner, :

v. : REPORT OF MAGISTRATE JUDGE

JULIE L. JONES, :

Respondent. :

I. Introduction

Petitioner, Freddie Lee Wilson, while confined at Calhoun Correctional Institution, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges his conviction arising out of the Eleventh Judicial Circuit in and for **Miami-Dade County** in **case number F10-018682** . This cause was referred to the undersigned for consideration and a report pursuant to 28 U.S.C. § 636(b)(1)(B) and Rules 8(b) and 10 of the Rules Governing Section 2254 Cases in the United States District Courts.

For its consideration of the Petition (DE#1), this Court reviewed Respondent's Response to the Order to Show Cause, (DE#17), with supporting appendix containing copies of relevant state court records and transcripts. (DE#17-1 through 17-2). This Court also considered Petitioner's Reply to Response to Order to Show Cause. (DE#19).

II. Claims

1. Trial counsel was ineffective for not obtaining a second medical examiner's opinion.

2. Trial counsel was ineffective for omitting possible defenses, which rendered the guilty plea unintelligent and involuntary.

3. Trial counsel was ineffective for not revealing any defense, which rendered the guilty plea unintelligent and involuntary.

4. Trial counsel was ineffective for not arguing that the homicide was committed in the "heat of passion."

III. Statement of Facts and Procedural History

A. Statement of Facts

Upon discovering that his wife had been using illegal drugs, Petitioner and his wife began arguing. (DE#17-2 at 1). The argument escalated into a fight in which Petitioner and his wife hit each other. (DE#17-2 at 1). In a post-Miranda statement, Petitioner admitted to punching, kicking, and slapping his wife in the midsection of her body. (DE#17-1 at 64). The arrest affidavit states that Petitioner's wife sustained injuries, collapsed on the floor, and subsequently died.[1]

Rather than call police or an ambulance, Petitioner dragged

[1] In post-Miranda statements, Petitioner said that his wife took a shower after the fight. (DE#17-1 at 64). When she came out of the shower, according to his post-Miranda statements, the victim held onto her stomach and moaned in pain. (DE#17-1 at 64). Some time after, the victim became unconscious. Petitioner did not call an ambulance because, according to him, he believed the victim was already dead. (DE#17-1 at 65).

his wife's corpse from the living room into a bedroom. (DE#17-2 at 1). Six days later, police responded to an anonymous tip that there was a dead body in the home. (DE#17-2 at 1). Therein, police found Petitioner's wife in a state of decomposition. (DE#17-2 at 1). The following day, Petitioner voluntarily turned himself into police and provided post-Miranda statements. (DE#17-2 at 1-2). Petitioner admitted to causing his wife's death by beating her. (DE#17-2 at 1-2). During pre-trial, a deposition was taken in which a medical examiner opined that liver lacerations, along with rib fractures, likely caused the victim to die of internal bleeding and a compromised ability to breathe. (DE#17-1 at 125).

B. Procedural History

On November 11, 2014, Petitioner pled guilty to second degree murder in exchange for a plea deal of thirty-five years and with a designation as a felony offender. (DE#17-1 at 167, 171-73). Petitioner's conviction and sentence was imposed on **November 17, 2014**. (DE#17-1 at 171-73).

On **May 18, 2015**, Petitioner filed a petition seeking a belated direct appeal. (DE#17-1 at 177-85). The Third District Court of Appeal granted the petition. (DE#17-1 at 187). Appointed counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) and moved to withdraw. (DE#17-1 at 189, 192-96). A supplemental *pro se* statement of points was not filed. (DE#17-1 at 190). On **November 12, 2015**, the Third District Court of Appeal *per curiam* affirmed Petitioner's conviction and sentence and granted appellate counsel's motion to withdraw. (DE#17-1 at 190, 198).

On **February 22, 2016**, Petitioner filed a motion for

postconviction relief pursuant to Fla. R. Crim. P. 3.850 by mail.[2] (DE#17-1 at 202-28). On **May 17, 2016,** the trial court denied relief. (DE#17-1 at 273-80). Relief was denied purely on the merits. (DE#17-1 at 273-80).

On **July 14, 2016,** a notice of appeal was filed. (DE#17-2 at 8). In appellate case number 3D16-1666, the Third District Court of appeal *per curiam* affirmed without a reasoned opinion on **August 3, 2016.** (DE#17-2 at 25). On **August 17, 2016,** Petitioner filed a motion for rehearing, for written opinion, and for certification by mail. (DE#17-2 at 27-34). **On August 25, 2016,** the Third District Court of Appeal denied the motion for rehearing, for written opinion, and for certification. (DE#17-2 at 36). The mandate issued on **September 12, 2016.** (DE#17-2 at 38). The instant Petition was filed on **November 15, 2016.**

IV. Threshold Issues

A. Mootness

"The doctrine of mootness derives directly from the case or controversy limitation [of Article III]." Soliman v. United States ex rel. INS, 296 F. 3d 1237, 1242 (11th Cir. 2002). "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Id. (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)). Thus, if an event occurring after the filing of the lawsuit deprives "the court of

[2] "Absent evidence to the contrary in the form of prison logs or other records," a prisoner's filings are presumed and "deemed filed the date [they] are delivered to prison authorities for mailing." Washington v. United States, 243 F. 3d 1299, 1301 (11th Cir. 2001). See also Houston v. Lack, 487 U.S. 266, 270-71 (1988)(extending the federal "prison mailbox rule" to persons in state custody filing in federal court).

the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed." Soliman, 296 F. 3d at 1242 (quoting Al Najjar v. Ashcroft, 273 F. 3d 1330, 1336 (11th Cir. 2001)). As Petitioner remains incarcerated on the convictions and sentences at issue, this case is **not moot.**

B. Timeliness

The Petition was filed after April 24, 1996, which is the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub.L. No. 104-132, 110 Stat. 1214 (1996). Consequently, post-AEDPA law governs this action. See, e.g., Abdul-Kabir v. Quarterman, 550 U.S. 233, 246 (2007); Penry v. Johnson, 532 U.S. 782, 792 (2001). In general, a petition under § 2254 must be filed within one year. Calculating when that year begins, ends, and pauses is typically the challenge.

A properly filed application for state postconviction relief stops the AEDPA clock and tolls the limitations period. See 28 U.S.C. § §2244(d)(2).[3] The AEDPA clock and limitations period then resumes running again when the state's highest court issues its mandate disposing of a motion for postconviction relief. Lawrence v. Florida, 549 U.S. 327, 331-32 (2007). Of course, in order to toll the limitations period, the state motion for postconviction relief must be filed before the limitations period expires. See Tinker v. Moore, 255 F. 3d 1331, 1332 (11th Cir. 2001). Thus, assuming no tolling occurred, petitioners have one year to file a § 2254 petition.

[3] A properly filed application is defined as one whose "delivery and acceptance are in compliance with the applicable laws and rules governing filings," which generally govern such matters as the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee. Artuz v. Bennett, 531 U.S. 4, 8 (2000)(overruling Weekley v. Moore, 204 F.3d 1083 (11th Cir. 2000)).

In this case, the time limitations period began to run from the date when Petitioner's judgment of convictions and sentences became final.[4] Under the AEDPA, the date of finality is set as of "'the conclusion of direct review or the expiration of the time for seeking such review[.]'" Gonzalez v. Thaler, 565 U.S. 134, 137 (2012) (quoting 28 U.S.C. § 2244(d)). If a criminal defendant pursues direct review to the Supreme Court, judgment becomes final when the Supreme Court affirms the conviction on the merits or denies the petition for certiorari. Id. at 149. In all other cases, the judgment becomes final when the time for pursuing direct review in the Supreme Court, or in state court,[5] expires. Id. at 154.

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[4] The statute provides that the limitations period shall run from the latest of –

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1).

[5] With respect to determining if the date of finality for the purposes of § 2244(d) is the date that direct review concluded in state court, as opposed to the date when direct review expired in the Supreme Court, the inquiry turns on whether the Supreme Court would have had jurisdiction over the judgment. If a defendant's direct appeal does not involve (1) a judgment of a "state court of last resort" or (2) a judgment of a lower state court and the "state court of last resort" denied discretionary review, then the finality date is marked as the

In this case, both parties agree that this Petition is well within the time limitations period. After reviewing the record, this Court agrees.[6]

C. Exhaustion

It is well-settled that issues raised in a federal habeas corpus petition must have been fairly presented to the state courts and thereby exhausted prior to their consideration on the merits. Anderson v. Harless, 459 U.S. 4, 6 (1982); Hutchins v. Wainwright, 715 F. 2d 512, 518-19 (11th Cir. 1983). Exhaustion requires that a claim be pursued in the state courts through the appellate process. Leonard v. Wainwright, 601 F. 2d 807, 808 (5th Cir. 1979). After all, states have long been recognized as the "primary authority" defining and enforcing criminal laws as well as the "primary protectors" of constitutional rights. Cabana v. Bullock, 474 U.S. 376, 391 (1986); Hutchins, 175 F. 2d at 519. See also Thompson v. Wainwright, 714 F. 2d 1495, 1503-04 (11th Cir. 1983); Jimenez v. Quarterman, 555 U.S. 113, 120-21 (2009) (explaining the AEDPA promotes comity, finality, and federalism by giving states courts the first opportunity to correct constitutional violations).

To exhaust, both the factual substance of a claim and the federal constitutional issue itself must have been expressly presented to the state courts to achieve exhaustion for purposes of

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date direct review concluded in state court. See Gonzalez, 565 U.S. at 154. If the Supreme Court would have had jurisdiction, and a petition for writ of certiorari was not filed in the Supreme Court, then the finality date is ninety days from the judgment a defendant could have challenged on direct review. See id.

[6] A significant factor that likely impacted the instant Petition's timeliness is the fact that Petitioner was granted a belated direct appeal. Jimenez v. Quarterman, 555 U.S. 113, 120-21 (2009) (explaining that an appellate court's order granting a petition for a belated direct appeal resets the date for the purposes of finality under 28 U.S.C. § 2254(d)).

federal habeas corpus review. See e.g., Baldwin v. Reese, 541 U.S. 27, 28 (2004). Exhaustion requires the petitioners to "fairly present" federal claims to the state courts in a manner that alerts them that the ruling under review violated a federal constitutional right. Duncan v. Henry, 513 U.S. 364, 365-66 (1995)[7] (quoting Picard v. Connor, 404 U.S. 270, 275 (1971)); Lamarca v. Sec'y, Fla. Dep't of Corr., 568 F. 3d 929, 936 (11th Cir. 2009)(citations omitted). Exhaustion is not satisfied "merely" if the petitioner presents the state court with "all the facts necessary to support the claim" or even if a "somewhat similar state-law claim was made." Kelley v. Sec'y, Fla. Dept. of Corr., 377 F. 3d 1317, 1344-45 (11th Cir. 2004)(citation omitted). The petitioner must instead "present his claims to the state courts such that they are permitted the 'opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim.'" Id. (quoting Picard, 404 U.S. at 277).

"'Thus, to exhaust state remedies fully[,] the petitioner must make the state court aware that the claims asserted present **federal constitutional issues**.'" Jimenez v. Sec'y, Fla. Dep't of Corr., 481 F. 3d 1337, 1342 (11th Cir. 2007)(quoting Snowden v. Singletary, 135 F. 3d 732, 735 (11th Cir. 1998)) (emphasis added). Identifying the federal law basis for a federal claim in a state court petition or brief is quite simple, as litigants can cite the federal source of law on which they rely on or label the claim as "federal." Baldwin, 541 U.S. at 28.

Although "a verbatim restatement of the claims brought in state court" is not required to exhaust, see McNair v. Campbell,

[7] The petitioner in Duncan raised a federal due process claim in his habeas petition, but had raised only a state constitutional claim in his state appeal. Presented with a state constitutional claim, the state court applied state law in resolving the appeal. 513 U.S. at 366.

416 F. 3d 1291, 1302 (11th Cir. 2005), the Eleventh Circuit has explained the standard:

> If read in a vacuum, this dicta might be thought to create a low floor indeed for petitioners seeking to establish exhaustion. However, we agree with the district court that this language must be "applied with common sense and in light of the purpose underlying the exhaustion requirement[:] 'to afford the state courts a meaningful opportunity to consider allegations of legal error without interference from the federal judiciary.'" McNair [v. Campbell], 315 F. Supp. 2d at 1184 (quoting Vasquez v. Hillery, 474 U.S. 254, 257, 106 S. Ct. 617, 620, 88 L. Ed.2d 598 (1986)). This is consistent with settled law established by the Supreme Court .... We therefore hold that "'[t]he exhaustion doctrine requires a habeas applicant to do more than scatter some makeshift needles in the haystack of the state court record.'"

McNair, 416 F. 3d at 1302-03 (citations omitted).[8] Put succinctly, the standard assesses whether a reasonable reader would be able to understand the factual and legal bases for the federal claim. McNair, 416 F. 3d at 1302-03.

Here, Respondent dedicates a significant portion of its Response to assert that certain operable facts were not fairly presented to the state courts to argue that the claims were not

[8] In his initial brief before the Court of Criminal Appeals, McNair cited one federal case in a string citation containing other state cases, and in a closing paragraph in his argument stated that there was a violation of his rights "protected by the Fifth, Sixth, Eighth[,] and Fourteenth Amendments to the United States Constitution, the Alabama Constitution[,] and Alabama law." McNair v. Campbell, 416 F. 3d 1291, 1303 (11th Cir. 2005). The Eleventh Circuit found that these references to federal law were not sufficient to meet the fair presentment requirement and noted that it was important that the petitioner had never mentioned the federal standards regarding extraneous materials in his brief, but relied on state law for those arguments. Id.

properly exhausted for federal habeas review.

Under 28 U.S.C. § 2254(b)(2), as amended by the AEDPA, federal courts may nevertheless deny on the merits a habeas corpus application containing unexhausted claims. Even before the AEDPA's enactment, when it was "perfectly clear" that the petitioner failed to state "a colorable federal claim," the competing policy considerations underlying the exhaustion requirement were best served by the district court denying the petition on the merits. See, e.g., Atkins v. Singletary, 965 F. 2d 952, 957 (11th Cir. 1992 (applying Granberry v. Greer, 481 U.S. 129, 134-35 (1987)).[9]

Indeed, although a state's procedural rules ordinally should be reviewed, where the merits of the claims may be reached and readily disposed of, judicial economy sometimes dictates reaching the merits if the merits are easily resolvable against a petitioner and the procedural bar issues are complicated. See, e.g., Lambrix v. Singletary, 520 U.S. 518, 525 (1997). See also Jones v. McNeil, 776 F. Supp. 1323, 1365-66 (S.D. Fla. Mar. 7, 2011) (relying on 28 U.S.C. § 2254(b)(2)). Accordingly, consistent with principles of judicial economy, this Court declines to provide a lengthy analysis as to whether the crucial facts were omitted at any stage during the state court litigation. Instead, this Court proceeds on the merits because the merits reveal Petitioner's claims are based on optimistic assumptions, contradictions, or conclusory allegations.

[9] This Court acknowledges that § 2254(b)(3) supersedes the portion of Granberry that holds that States may be deemed to have waived the exhaustion requirement by omission, as an express waiver is now necessary under 28 U.S.C. § 2254(b)(3). However, Granberry's language regarding a district court's ability to discard unexhausted claims on the merits remains good law and is entirely consistent with § 2254(b)(2).

V. Discussion

A. Legal Principles

I. Guilty Plea Principles

A defendant's plea of guilty made knowingly, voluntarily, and with the benefit of competent counsel waives all non-jurisdictional defects up to that point in the proceedings. Tollett v. Henderson, 411 U.S. 258, 267 (1973)(noting that a guilty plea represents a break in the chain of events which had preceded it in the criminal process). The waiver also extends to claims of ineffective assistance of counsel that do not attack the voluntariness of the guilty plea. See Bradbury v. Wainwright, 658 F. 2d 1083, 1087 (5th Cir. 1981), cert. denied, 456 U.S. 992 (1982). See also Wilson v. United States, 962 F. 2d 996, 997 (11th Cir. 1992)(per curiam).

Because a guilty plea is a waiver of substantial constitutional rights, it must be a voluntary, knowing, and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences. Brady v. United States, 397 U.S. 742, 748 (1970).

Under federal law, to determine that a guilty plea is knowing and voluntary, a district court must comply with Rule 11 and address its three core concerns: "ensuring that a defendant (1) enters his guilty plea free from coercion, (2) understands the nature of the charges, and (3) understands the consequences of his plea." United States v. Moriarty, 429 F. 3d 1012, 1019 (11th Cir. 2005). A voluntary and intelligent plea of guilty made by an accused person who has been advised by competent counsel may not be collaterally attacked. Mabry v. Johnson, 467 U.S. 504, 508 (1984).

A guilty plea is, however, open to attack on the ground that counsel did not provide reasonably competent advice. Cuyler v. Sullivan, 446 U.S. 335, 344 (1980) (citations omitted). See also Bradbury v. Wainwright, 658 F. 2d 1083, 1087 (5th Cir. 1981), *cert. denied*, 456 U.S. 992 (1982). A habeas petitioner can overcome the otherwise voluntary and intelligent character of his or her guilty plea only if he or she can establish that the legal advice was not "within the range of competence demanded of attorneys in criminal cases." McMann v. Richardson, 397 U.S. 759, 771 (1970).

ii. The Sixth Amendment and Ineffective Assistance of Counsel

The Sixth Amendment affords a criminal defendant the right to "the Assistance of Counsel for his defen[s]e." U.S. Const. amend. VI. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produce a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). To prevail on a claim of ineffective assistance of counsel, a habeas petitioner must demonstrate both (1) that his counsel's performance was deficient, and (2) a reasonable probability that the deficient performance prejudiced the defense. Strickland, 466 U.S. at 687.

In assessing whether a particular counsel's performance was constitutionally deficient, courts indulge a strong presumption that counsel's conduct falls within the wide range of reasonable assistance. Id. at 689. The deference afforded to trial counsel's performance is doubly so when a Petitioner raises an ineffective assistance of trial counsel claim under § 2254. Rutherford v. Crosby, 385 F. 3d 1300, 1309 (11th Cir. 2004)("In addition to the deference to counsel's performance mandated by Strickland, the

AEDPA adds another layer of deference-this one to a state court's decision-when we are considering whether to grant federal habeas relief from a state court's decision."). Put simply, trial counsel is deficient only if no reasonable lawyer as trial counsel did, meaning it is not enough that most good lawyers would have acted differently. See White v. Singletary, 972 F. 2d 1218, 1220 (11th Cir. 1992).

More specific to this case, a criminal defendant is entitled to the effective assistance of competent counsel before deciding whether to plead guilty. Padilla v. Kentucky, 559 U.S. 356, 364-65 (2010). It is, therefore, beyond dispute that an attorney has a duty to advise a defendant who is considering a guilty plea of the available options and possible consequences. See e.g., Brady v. United States, 397 U.S. 742, 748 n.6 (1970). See also Von Moltke v. Gillies, 332 U.S. 708, 721 (1948)("Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered. Determining whether an accused is guilty or innocent of the charges in a complex legal indictment is seldom a simple and easy task for a layman ...."). The law requires counsel to research the relevant law and facts and to make informed decisions regarding the fruitfulness of various avenues. United States v. Grammas, 376 F. 3d 433, 436 (5th Cir. 2004).

In the context of a guilty plea, the first prong of Strickland requires petitioner to show his plea was not voluntary because he received advice from counsel that was not within the range of competence demanded of attorneys in criminal cases. Padilla, 559 U.S. at 384-85 (internal quotations and citations omitted). The second prong requires petitioner to show a reasonable probability

that, but for counsel's errors, he would have gone to trial and not pled guilty. Hill v. Lockhart, 474 U.S. 52, 56-59 (1985).

To demonstrate prejudice, petitioners must show that 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. A probability that is reasonable is defined as "a probability sufficient to undermine confidence in the outcome." Id.

"Surmounting Strickland's high bar is never an easy task." Padilla, 559 U.S. at 371.

> The standards created by Strickland and §2254(d) are both 'highly deferential,' [Strickland], at 689, 104 S. Ct. 2052; Lindh v. Murphy, 521 U.S. 320, 333, n.7, 117 S.Ct. 2059, 138 L. Ed. 2d 481 (1997), and when the two apply in tandem, review is 'doubly' so, Knowles[10], 556 U.S., at ___, 129 S. Ct. at 1420.

Harrington v. Richter, 562 U.S. 86, 105 (2011). 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." Schriro v. Landrigan, 550 U.S. 465, 474 (2007). Significantly, if the petitioner cannot meet one of Strickland's prongs, the court does not need to address the other prong. E.g., Dingle v. Sec'y, Fla. Dep't of Corr., 480 F. 3d 1092, 1100 (11th Cir. 2007).

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[10] Knowles v. Mirzayance, 556 U.S. 111 (2009).

B. Merits Analysis of Voluntariness of Guilty Plea

The trial court's order made a finding that Petitioner had sufficient time to discuss his case and plea offer with his attorney by relying upon Petitioner's statements during the colloquy. (DE#17-1 at 275). The trial court also found that Petitioner was satisfied with his attorney's performance by relying upon Petitioner's statements during the colloquy. (DE#17-1 at 275). Of course, the trial court's finding that Petitioner had adequate time to discuss his case and was satisfied with his attorney's performance is entitled to substantial deference that it is correct. Maharaj v. Sec'y, Fla. Dep't of Corr., 432 F. 3d 1292, 1315 (11th Cir. 2005) (citing 28 U.S.C. § 2254(e)(1), noting that "a determination of a factual issue made by a state court shall be presumed to be correct"). See also Renico, 559 U.S. at 779 (explaining the AEDPA prevents defendants and federal habeas courts from second-guessing the reasonable decisions of state courts). Thus, unless Petitioner can prevail on his claims of ineffective assistance of counsel in this Court, the correctness of the state court's determination that his plea was voluntary remains intact. See, e.g., Hill v. Lockhart, 474 U.S. 52, 56-59 (1985).

C. Merits Analysis of Ineffective Assistance of Counsel Claims

I. Claim One

In Claim One, Petitioner argues that trial counsel was ineffective because she told him that she would consult with a second medical examiner in order to determine the victim's cause of death but did not do so. (DE#1 at 5). According to Petitioner, had a second medical examiner been consulted, he would have been able to show that the victim's death was the result of culpable

negligence, which would suggest that manslaughter[11] was the proper charge as opposed to second degree murder. In short, Petitioner avers that he would have gone to trial with a second medical examiner's assessment to pursue the lesser included offense of manslaughter.

The trial court reasoned that Petitioner's claim of ineffective assistance should be denied because Petitioner did not show how a second medical examiner would change the victim's manner and cause of death. In addition, the trial court reasoned that Petitioner's claim of ineffective assistance for failure to procure a second medical examiner does not point at any evidence that could have supported an alternate opinion of the medical evaluation that is currently part of the record. Further, the Third District Court of Appeal *per curiam* affirmed. As a result, § 2254 deference applies, as the state courts presumptively adjudicated this claim on the merits. See Harrington, 562 U.S. at 99-100 (discussing presumption that a merits ruling was reached even without a state court providing reasons for its denial).

Ineffective assistance of counsel claims cannot be founded upon conclusory allegations. See, e.g., Boyd v. Comm'r, Ala. Dep't of Corr., 697 F. 3d 1320, 1333-34 (11th Cir. 2012) (failing to sufficiently explain how the allegations would change the outcome amounts to conclusory allegations incapable of satisfying either prong of Strickland). There must be something that can be relied upon to support a petitioner's theory that counsel provided

[11] Under Fla. Stat. § 782.07(1), manslaughter is defined as "the killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification..." Second degree murder is defined as "the unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life" without any premeditated design to effectuate the death of an individual. Fla. Stat. § 782.04(2)

deficient performance that prejudiced him, and that evidence must also be explained. See, e.g., Insignares v. Sec'y, Fla. Dep't of Corr., 755 F. 3d 1273, 1282-83 (11th Cir. 2014).

Without Petitioner explaining to the state courts how the manner and cause of death might have been different in his postconviction motion, Petitioner did not demonstrate how a second medical examiner's opinion would have been favorable to him. Instead, Petitioner asked the state courts to assume, as he has, that a second medical examiner would testify favorably. See Insignares, 755 F. 3d at 1282-83 (failing to explain why a potential witness was important and why counsel was deficient amounted to conclusory allegations).

Review under § 2254(d) is "limited to the record that was before the state court that adjudicated the claim on the merits." Cullen v. Pinholster, 563 U.S. 170, 181 (2011). Given the record that was before the state trial court at the time that it reviewed petitioner's motion for postconviction relief, Petitioner plainly failed to explain how a second medical examiner would have provided favorable evidence. (DE#17-1 at 212-13).

Thus, Petitioner has not shown how any case supports his proposition that the state courts made an error "so lacking in justification that [it] was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." See Harrington, 562 U.S. at 103. Consequently, this claim should be denied.

In fact, the state trial court's reasoning was entirely consistent with federal constitutional principles because Petitioner's failure to explain how a second medical examiner would

testify and how that would have changed the outcome exposes that his claim of prejudice amounts to optimistic speculation. See Insignares, 755 F. 3d at 1282-83 (requiring petitioners to point at evidence and sufficiently explain its significance). As the state trial court was entirely consistent with federal constitutional principles, Petitioner cannot show that the adjudication of his claim was contrary to or an unreasonable application of clearly established federal law. See Smithers v. Sec'y, Fla. Dep't of Corr., 501 Fed. App'x 906, 908 n. 1 (11th Cir. 2012) (reasoning that even under *de novo* review Petitioner would fail therefore Smithers was unable to prevail under § 2254). This Court need not address whether trial counsel provided deficient performance. See id. at 907-08 (relying upon Strickland, 466 U.S. at 697).

ii. Claim Two

In Claim Two, Petitioner contends that his trial counsel was ineffective for purposefully not disclosing all "possible" defenses before he entered his plea. (DE#1 at 8); (DE#17-1 at 213-14). The trial court denied Claim Two by reasoning as follows:

> An attorney does not magically come up with a defense. Instead, they rely on information from their client in order to determine what defenses are available to him. The Defendant has not suggested any defenses that were available **to him**.

(DE#17-1 at 275) (emphasis added).

Petitioner asserts that his motion for postconviction relief pursuant to Fla. R. Crim. P. 3.850 identified "crime of passion," "heat of passion," "emotional insanity," and "partial insanity" thereby refuting the finding that he failed to suggest any defenses

that were available to him. (DE#19 at 17). To his credit, Petitioner listed those defenses. (DE#17-1 at 214). However, merely listing defenses that theoretically apply to second degree murder cases is not the same as showing that any of those defenses are actually applicable or available to him. In his motion for postconviction relief before the trial court, Petitioner did not provide any analysis as to why the identified claims applied to his case. (DE#17-1 at 214). He merely avers that he had "numerous defenses to choose from[.]" (DE#17-1 at 214).

Because the trial court made a finding that Petitioner failed to show what defenses were specifically available to him, that finding is presumed correct under 28 U.S.C. § 2254(e). Maharaj v. Sec'y, Fla. Dep't of Corr., 432 F. 3d 1292, 1315 (11th Cir. 2005) (citing 28 U.S.C. § 2254(e)(1), noting that "a determination of a factual issue made by a state court shall be presumed to be correct") In this Court, Petitioner has again failed to explain how those defenses apply to him, meaning he has not rebutted the trial court's finding with clear and convincing evidence. 28 U.S.C. § 2254(e). Petitioner's contention that he demonstrated which defenses were "available to him" is, therefore, incorrect because he merely recited Florida's defenses to second degree murder.

Significantly, the Third District Court of Appeal *per curiam* affirmed the trial court's merits analysis as to this claim. As a result, § 2254 deference applies, as the state courts presumptively adjudicated this claim on the merits. See Harrington, 562 U.S. at 99-100 (discussing presumption that a merits ruling was reached even without a state court providing reasons for its denial).

In the instant Petition, Petitioner failed to rely upon a case that shows the state court made an error that "was so lacking in

justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." See Harrington, 562 U.S. at 103. This claim should, therefore, be denied. See id.

Moreover, because Petitioner never provided an analysis as to why any of those listed defenses applied to his case, and that finding is presumed correct under § 2254(e), Petitioner's claim required the state courts to entertain conclusory allegations. See, e.g., Boyd, 697 F. 3d at 1333-34 (failing to sufficiently explain how the allegations would change the outcome or how it renders trial counsel's performance deficient amounts to conclusory allegations incapable of satisfying either prong of Strickland).

Accordingly, because the trial court's reasoning was consistent with federal constitutional principles, Petitioner could never show that the trial court's holding is contrary to or an unreasonable application of clearly established federal law.[12] See Smithers, 501 Fed. App'x at 908 n. 1. This Court need not address whether Petitioner's trial counsel provided deficient performance. See id. at 907-08 (relying upon Strickland, 466 U.S. at 697).

[12] Curiously, Petitioner also alleged that his trial attorney expressed her belief that none of the "possible" defenses to second degree murder "would work." (DE#17-1 at 213). Of course, this means that Petitioner undermined Claim Two by including the latter allegation. Put contextually, because counsel told Petitioner that none of the recognized defenses to second degree murder "would work," Petitioner was informed of the exact number of defenses counsel believed were applicable to his case—zero. As counsel conveyed every defense she believed was viable to his case, Claim Two should also fail because Petitioner made contradictory allegations (i.e. counsel omitted viable defenses and counsel told him there were no viable defenses).

iii. Claim Three

Nearly identical to Claim Two, Claim Three argues that trial counsel was ineffective for not revealing any defense to Petitioner thereby showing Petitioner's plea was unintelligent and involuntary. (DE#1 at 9-10). The trial court denied what is essentially Claim Two and Claim Three simultaneously. Specifically, the trial court concluded that "[t]he Defendant has not suggested any defenses that were available to him." (DE#17-1 at 275). The Third District Court of Appeal *per curiam* affirmed the trial court's merits analysis as to this claim. As a result, § 2254 deference applies, as the state courts presumptively adjudicated this claim on the merits. See Harrington, 562 U.S. at 99-100 (discussing presumption that a merits ruling was reached even without a state court providing reasons for its denial).

In his motion for postconviction relief in the trial court, Claim Three asserts that the defenses of "crime of passion," "heat of passion," "emotional insanity," and "partial insanity" were viable. (DE#17-1 at 215-16). In this Claim, Petitioner contends that trial counsel was ineffective for not informing him of "any" defense, as opposed to "possible" defenses as argued in Claim Two. In addition, in Petitioner's state court motion for postconviction relief, Petitioner attempted to point at other evidence. (DE#17-1 at 216). He averred that "criminal history" would have supported any of those defenses. The state court motion for postconviction relief states that counsel should have obtained records from the Department of Children and Families, Broward Sheriff's Office, and Fort Lauderdale Police Department to craft a viable trial defense. (DE#17-1 at 216).

In this claim, Petitioner did not explain what these relied-upon records would uncover. Consequently, Petitioner failed to convey what those records might reveal in state court. In this Court, he failed to rely upon a case that shows the state court made an error that "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." See Harrington, 562 U.S. at 103. This claim should, therefore, be denied. See id.

Moreover, in this case, the trial court's reasoning was entirely consistent with clearly established federal law because prejudice cannot be established through conclusory allegations or speculation. See, e.g., Boyd, 697 F. 3d at 1332-34 (reasoning that failure to sufficiently detail or explain significance of evidence amounts to conclusory allegations incapable of satisfying Strickland). Accordingly, even if this Court were to review this claim under *de novo* review, Petitioner cannot show a constitutional violation occurred. Smithers, 501 Fed. App'x at 908 n. 1.

iv. Claim Four

Claim Four is similar to Claims Two and Three. In Claim Four, Petitioner argues that trial counsel was ineffective for not arguing that the homicide was committed in the "heat of passion."

With regard to this claim, the trial court denied relief by relying upon Petitioner's plea colloquy in which he expressed that he had adequate time to converse with his attorney about his case and the plea deal. (DE#17-1 at 275-76). The trial court also considered the claim to be without merit because this claim amounted to "conclusory" allegations. Again, the Third District Court of Appeal *per curiam* affirmed the trial court's merits

analysis as to this claim. Accordingly, § 2254 deference applies, as the state courts presumptively adjudicated this claim on the merits. See Harrington, 562 U.S. at 99-100 (discussing presumption that a merits ruling was reached even without a state court providing reasons for its denial).

Petitioner has not cited to any case that supports his proposition that the adjudication of his claim was an unreasonable application of or contrary to clearly established federal law. Thus, he has not shown that the denial of his claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." See Harrington, 562 U.S. at 103. This claim should be denied.

In fact, without an analysis as to why the "heat of passion" passion defense would have been applicable to his case, the trial court's reasoning was consistent with the federal principle that prejudice cannot be established via conclusory allegations. See, e.g., Boyd, 697 F. 3d at 1332-34. The trial court, therefore, did not adjudicate this claim in a manner that was contrary to or an unreasonable application of clearly established federal law because Petitioner would have failed even if this Court were to review his claim *de novo*. Smithers, 501 Fed. App'x at 908 n. 1. This Court need not address whether counsel afforded deficient performance. See id. at 907-08 (relying upon Strickland, 466 U.S. at 697).[13]

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[13] There is an overarching fact that shows Petitioner was not prejudiced. The trial prosecutor pursued sentencing enhancements. One of which was the prison releasee reoffender provision, an enhancement that obligates a trial court to impose a life sentence for any felony punishable by life. See Fla. Stat. § 775.082(9)(a)(3). Second degree murder is punishable by life in Florida. Fla. Sta. 782.04(2). Petitioner, therefore, faced a real risk of having a life sentence imposed. Under the prison releasee reoffender enhancement, Petitioner also would not have been eligible for early releasee or gain time. See Fla. Stat. § 775.082(9)(b). In exchange for his plea of guilty, Petitioner avoided the

VII. Evidentiary Hearing

Petitioner's request for an evidentiary hearing should be denied. As the Supreme Court held in Cullen v. Pinholster, 563 U.S. 170, 181-82 (2011), "review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits." Because the instant Petition can be resolved by simply referring to the state record for all pertinent facts, an evidentiary hearing in federal court is not needed.[14] See Schiro v. Landrigan, 550 U.S. 550 U.S. 465, 474 (2007) ("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."). See also 28 U.S.C. § 2254(e)(2) (stating federal courts "shall **not** hold an evidentiary hearing" "unless the application shows" circumstances that are inapplicable to the instant Petition) (emphasis added).

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prison release reoffender enhancement and the mandatory life sentence that came with it. Given the facts of his case, Petitioner was fortunate to dodge this tremendous risk. After all, his proposed trial strategy would have required him to concede that he beat the victim, stayed with her decomposing corpse, did not call police or an ambulance, and confessed to police. See Battle v. State, 911 So. 2d 85, 92 (Fla. 2005) (explaining one element of second degree murder requires "a person of ordinary judgment would know that it is reasonably certain" that **"an act" will** " kill or **do serious bodily injury to another... and the act itself indicates an indifference to human life.**") (emphasis added). Consequently, Petitioner cannot show that he was prejudiced.

[14] This Court observes that there is a factual dispute between Petitioner and Respondent as to whether Petitioner requested an evidentiary hearing at the trial court level. Compare (DE#17 at 21), with (DE#19 at 19). However, this Court has no authority to grant an evidentiary hearing, as Petitioner failed to develop the factual basis of his claims due to his own lack of due diligence in conveying the information he relied upon and that he purportedly knew about to the trial court. See 28 U.S.C. § 2254(e)(2)(a)(ii) (providing that evidentiary hearings are inappropriate when an applicant failed to develop a factual basis for his claim and the claim's factual predicate could have been previously discovered through due diligence). Additionally, even if it were an error under state law, this Court has no authority to intervene. See, e.g., Carroll v. Sec'y, Fla. Dep't of Corr., 574 F. 3d 1354, 1365-66 (11th Cir. 2009) ("[A] state court's failure to conduct an evidentiary hearing cannot form the basis for habeas relief because such an error does not 'undermine the validity of petitioner's conviction' and is 'unrelated to the cause of petitioner's detention.'") (relying upon Spradley v. Dugger, 825 F. 2d 1566,1567-68 (11th Cir. 1987) (per curiam)).

VII. Certificate of Appealability

As amended effective December 1, 2009, § 2254 Rule 11(a) provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant," and if a certificate is issued "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." A timely notice of appeal must still be filed, even if the court issues a certificate of appealability. Rules Governing Section 2254 Proceedings, Rule 11(b), 28 U.S.C. foll. § 2254.

"A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To merit a certificate of appealability, Petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues she seeks to raise. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). See also Eagle v. Linahan, 279 F. 3d 926, 935-36 (11th Cir. 2001). Thus, a petitioner need not show that an appeal would succeed among some jurists. Miller-El v. Cockrell, 537 U.S. 322, 337 (2003). After all, "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Id. at 338.

Petitioner's confession was voluntary. Further, Petitioner failed to show that the state courts adjudicated his claim in a manner that was contrary to or an unreasonable application of clearly established federal law. In fact, the trial court's denial of relief was entirely consistent with federal constitutional principles in that conclusory allegations and broad assumptions are

inadequate to show that a Petitioner was prejudiced under Strickland. Thus, no reasonable jurists would find it debatable that there was an adjudication by the state courts that was contrary to or an unreasonable application of clearly established federal law. Nor would reasonable jurists find that an unreasonable determination of fact exists. Accordingly, a certificate of appealability may not issue in this case.

VII. Conclusion and Recommendations

Based upon the foregoing, it is recommended that this Petition for Writ of Habeas Corpus be DENIED, that a certificate of appealability be DENIED, and the case be CLOSED. All other pending motions should be denied as moot. Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

SIGNED this 26th day of March, 2018.

UNITED STATES MAGISTRATE JUDGE

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