APPENDIX A

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 4, 2019
Decided September 10, 2019

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 19-1364

RONALD O'ROURKE,
Petitioner-Appellant,

v.

JACQUELINE LASHBROOK,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:15cv3709

Elaine E. Bucklo,
Judge.

ORDER

Ronald O'Rourke has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. Having reviewed the final order of the district court and the record on appeal, we find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is denied. O'Rourke's motion to proceed in forma pauperis also is denied.

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Ronald O'Rourke
United States of America, ex rel.,

Plaintiff(s),

v.

Kimberly Butler,

Defendant(s).

Case No. 1:15cv3709
Judge James B. Zagel

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: Petitioner's 28 U.S.C. § 2254 habeas petition is denied, and the Court declines to issue a certificate of appealability.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Elaine E. Bucklo on a motion habeas petition [26].

Date: 2/6/2019

Thomas G. Bruton, Clerk of Court

Maria G. Hernandez , Deputy Clerk

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Ronald O'Rourke, Petitioner, v. Jacqueline Lashbrook, Warden, Menard Correctional Center, Respondent.	)	No. 15-cv-3709

Order

In 2010, a jury in the Circuit Court of DuPage County found petitioner Ronald O'Rourke guilty of first-degree murder, home invasion, and residential burglary in connection with the stabbing death of his ex-girlfriend Pamela Howat. The trial judge sentenced O'Rourke to 120 years of imprisonment,[1] and the state appellate court affirmed his sentence with certain modifications not relevant here.[2] Following two unsuccessful attempts to secure post-conviction relief in state court, O'Rourke filed this pro se

[1] Petitioner was sentenced to 100 years of imprisonment for first-degree murder, 20 years for home invasion, and 15 years for residential burglary. The home invasion and burglary charges were to be served concurrently to each other but consecutively to the first-degree murder charge.

[2] The appellate court vacated a separate count for first-degree felony murder under the "one-act, one-crime" doctrine, *see People v. Nunez*, 925 N.E.2d 1083, 1086 (Ill. 2010), and vacated and modified some fees the trial court imposed.

Appendix B

petition for a writ of habeas corpus under 28 U.S.C. § 2254. I deny his petition for the following reasons.

O'Rourke advances two categories of claims in his habeas petition. First, he argues that the trial court violated his right to due process guaranteed under the Fourteenth Amendment by allowing the prosecution to impeach him with two prior felony convictions. Second, O'Rourke contends that his trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments by failing to object to the prosecution's use of O'Rourke's past convictions for impeachment, by failing to move to suppress O'Rourke's recorded police interviews where he confessed to killing Howat, and by failing to object to the admission of an abridged version[3] of the recorded interviews under the completeness doctrine.

(1) O'Rourke's due process claim fails because it is procedurally defaulted under the independent and adequate state ground doctrine. *See Coleman v. Thompson*, 501 U.S. 722, 729-31 (1991). In Illinois, a criminal defendant's failure to raise on direct appeal a claim that could have been addressed "is a procedural default which results in a bar to consideration of the claim's merits in a post-conviction proceeding." *People v. Erickson*, 641 N.E.2d 455,

[3] The tape submitted to the jury consisted of three-and-a-half hours of footage from O'Rourke's police interviews, which lasted about nine hours in total.

458 (Ill. 1994). O'Rourke did not raise his due process claim in his direct appeal, and the state appellate court reviewing his first post-conviction petition accordingly found the claim forfeited.[4] That determination bars its consideration here. *Smith v. McKee*, 598 F.3d 374, 383, 386 (7th Cir. 2010) (treating forfeiture as an independent and adequate state ground); *Sturgeon v. Chandler*, 552 F.3d 604, 611 (7th Cir. 2009) ("A finding of waiver by the state postconviction court is enough to establish an adequate and independent state ground." (citation omitted)).

O'Rourke's ineffective assistance claims do not fare any better. First, his assertion that his trial counsel failed to object to the prosecution's impeachment evidence is procedurally defaulted because the argument was never raised in state court. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999). But the claim also fails on the merits because it is plainly contradicted by the record, which reveals that trial counsel filed motions in limine to bar the prior convictions and further objected to their introduction at trial.

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[4] O'Rourke appears to blame his appellate counsel for this forfeiture, but he does not assert an ineffective assistance claim against her in his petition. He does appear to argue ineffective assistance of appellate counsel in his reply brief, but this claim came to late. *Amerson v. Farrey*, 492 F.3d 848, 852 (7th Cir. 2007) ("Arguments raised for the first time in a reply brief are waived.").

O'Rourke's other ineffective assistance claims, which concern the recording presented to the jury of his interviews with police, are similarly meritless. O'Rourke contends, as he did in his state post-conviction proceedings, that his trial counsel should have moved to suppress the recording in its entirety and should have objected to the introduction of an abridged version of the recording at trial. To prevail on these ineffective assistance claims, O'Rourke must show that his trial counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The Illinois appellate court reviewing O'Rourke's first state post-conviction petition was not convinced. It held that O'Rourke had not established prejudice because his "taped statements to the police were cumulative of his taped statements to his friends and family," which were also introduced at trial, and because he offered nothing but speculation that introduction of the complete interview recordings would have helped him at trial. O'Rourke now asserts that the complete interview recordings would have revealed that he had requested a lawyer at some unspecified point in the interviews. Because I do not have the recording before me, I cannot test the veracity of this claim. But even assuming it were true, O'Rourke does not explain how putting this detail along with the additional hours of interview footage before the jury, or conversely how withholding

the recorded interviews from the jury entirely, could have reasonably yielded a different result in his case given the other evidence submitted at trial of him voluntarily admitting that he killed Howat—namely in his recorded phone calls to family and friends. *See id.* at 694. The state appellate court's conclusion that O'Rourke had not shown prejudice is therefore reasonable and not subject to re-litigation in federal habeas proceedings. *See* 28 U.S.C. § 2254(d) (federal habeas petitions shall not be granted with respect to any claims adjudicated on the merits in state court proceedings unless the relevant state court decision is "contrary to, or involved an unreasonable application of, clearly established Federal law" or is "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding").

Because O'Rourke cannot prevail on any of his claims, his habeas petition fails. O'Rourke has not made "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and no reasonable jurist could conclude that dismissal of his petition is erroneous. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). I will therefore not issue a certificate of appealability. The petition is denied.

ENTER ORDER:

Elaine E. Bucklo

Elaine E. Bucklo
United States District Judge

Dated: February 6, 2019

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Appendix B

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

CERTIFIED COPY
A True Copy
Teste:
Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

November 12, 2019

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 19-1364

RONALD O'ROURKE,
Petitioner-Appellant,

v.

JACQUELINE LASHBROOK,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 1:15-cv-03709

Elaine E. Bucklo,
Judge.

ORDER

Petitioner-Appellant filed on October 28, 2019 what was construed as a petition for rehearing or rehearing en banc of a certificate of appealability and motion for leave to proceed in forma pauperis. No judge in regular active service has requested a vote on the petition for rehearing en banc, and the judges on the panel have voted to deny rehearing. Accordingly,

IT IS ORDERED that the petition for rehearing is **DENIED**.

APPENDIX D