§APPENDIX

A

IN THE UNITED STATES DISTRICT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

William Snowden, Jr., Case No.: 4:17CV208

Petitioner,

v. ORDER

Charmaine Bracy

Respondent

This is a timely habeas corpus case in which, after referral, the Hon. William H. Baughman Jr., United States Magistrate Judge, has filed his Report & Recommendation (Doc. 20). Petitioner has filed objections (Doc. 21), the respondent has filed a

response thereto (Doc. 22), and the petitioner filed a reply (Doc. 24). The petitioner has also filed a motion to apply the "legal innocence" (sic: actual innocence) standard (Doc. 23).

Finding on *de novo* review of the Report & Recommendation and after due consideration, no merit to petitioner's objection or his motion, I adopt the Report & Recommendation as the order of this court, deny the motion as moot, and dismiss the petition with prejudice.

In addition, I decline to grant Certificate of Appealability, as jurists of reason could not reasonably disagree with either the result or rationale of the decision to dismiss the petition for habeas corpus relief.

Background

In the early morning hours of July 20, 2013, a police officer arrested the petitioner after the officer saw the petitioner crossing the center line. In due course the petitioner plead no contest to two of the four ensuing charges of operating a vehicle while impaired (OVI). As a repeat offender with multiple OVI convictions over twenty years, the petitioners received two consecutive one-year sentences.

In the instant proceeding petitioner claims that the sentence he received does not exit under state law and the sentencing court lacked jurisdiction, so that his sentence was void *abinitio.* As is pertinent here, his direct appeal challenged his sentence as a violation of equal protection. That appeal included none of the additional claims he brings in this habeas corpus case. Nor did his subsequent appeal to the Ohio Supreme Court, which the immediate appellate court facilitated by certifying a conflict as

to its rejection of petitioner's constitutional challenge to his sentence. The Ohio Supreme Court affirmed the appellate court's rejection of petitioner's challenge.

Petitioner first raised his present claims in a state habeas corpus petition in the Ohio Supreme Court. That Court summarily dismissed that petition.

Petitioner asserts four grounds for relief:

1. My 5th and 14th Amendment constitutional rights were violated. I was imprisoned on a void on its face judgment. The sentence imposed upon me does not exit in the Ohio Revised Code for 4th degree felony OVI. The court sentence me to two, one year mandatory prison terms to be served consecutive [sic]. The sentence is illegal and void.

2. The Court violated my 5th and 14th Amendment rights to due process and equal protection [when] the court convicted without jurisdiction. The state erroneously charged [sic] the indictment, to charge and convict a repeat felony OVI offender. This error removed jurisdiction from the court because it was without the legal authority to act. If the court would have followed the letter of the law at sentencing my conviction would have been impossible.
3. My 5th and 14th Amendment constitutional rights were violated when the court failed to make findings for [a] prison term. Before the court can impose a prison term for a non-violent 4th or 5th degree felony in the state of Ohio, the court must make a mandatory finding contained in 2929.13(B)(1)(a) or

(B)(1)(b). If the court cannot make a finding, community control [sic] sanctions are mandatory.

4. My 6th Amendment rights were violated when I was convicted without the effective assistance of counsel. The Court, the Prosecutor and my own attorney did not know the penalties that I faced as a Defendant, I was threatened with a ten year mandatory prison term if I went to trial. I was given and illegal two-year mandatory prison term. My attorney never objected. He waived my pre-sentence investigation that would have stopped the prison term.(Doc. 20 at 4-5 (quoting Doc. 1 at 5-10)).

Discussion

First: as to all petitioner's contentions about ineffective assistance of counsel (IAC), except for what he raised (only in the Court of Appeals), *see Ohio v. Snowden,* 11th Dist. Trumbull No. 2014-T-0092, 2015-Ohio-2611, 2015 WL 3964670, *3, *aff d mem., Ohio v. Snowden,* 60 N.E.3d 1252 (Ohio 2016), petitioner has presented none of the IAC grounds in the state courts. Thus, whether due to procedural bar or otherwise, the IAC claims are not properly before me. There was no error in denying relief as to any and all IAC claims.

Petitioner's challenges to his sentence are likewise unavailing. Those challenges, such as his claim that his no contest plea was coerced, have never been raised in state court and thus are not properly before me.

His challenges to his sentence, whether based alleged lack of jurisdiction, defects in cumulative punishment provisions, or due process and equal protection likewise do not merit relief.

He has not challenged the trial court's jurisdiction in state courts; thus, he cannot do so here. In any event, such challenges are not cognizable in a habeas proceeding: "A determination of whether a state court is vested with jurisdiction under state law is a function of the state courts, not federal judiciary. "*Wills v. Egeler,* 532 F 2d 1058, 1059 (6th Cir. 1976)(*per curiam).*

The Court of Appeals, with the Ohio Supreme Court affirming, resolved petitioner's challenge to the lawfulness of his sentence under state law. *Snowden, Supra,* 2015 WL 3964670 *aff'dmen,* 60 N.E.3d 1252. As a state court interpretation of the

legality of a sentence under state law, that decision is not cognizable of federal habeas corpus review. *E.g.,Walden v. Huss,* 2019 WL 2996187, at *2 (E.D.Mich.).

To the extent that petitioner seeks to assert other non-constitutional challenges to his sentence, his claims collide head-on with fundamental procedural principles: "[R]es judicate will apply when a defendant raises piecemeal claims...that could have been raised on direct appeal...."*Ohio v. Rangel,* 11th Dist. Lake No. 2018-L-102, 2019-Ohio-1845, 2019 WL 2085824, More specifically, "res judicata applies to bar raising piecemeal claims in successive postconviction relief conviction relief petition... that could have been raised, but were not, in the first post-conviction relief petition..."*Ohio v. McCain,* 2d Dist. Montgomery No. 27195, 2017-Ohio-7518, 2017 WL 3971656, *5 (citations omitted).

In light of state law prohibition against piecemeal presentation of claims, the state courts would deny relief on the basis of procedural default. Such denial would, and does, given petitioner's failure to enunciate adequate cause resulting prejudice, bar review in this proceeding. The Magistrate Judge thus correctly applied *res judicia* principles to find that, under state law, petitioner, due to his procedural default, cannot bring claims he asserts for the first time here. It is indisputable that petitioner's default (failing to assert all his challenges on direct appeal), being unexplained or excused on a showing of cause, is precluded from federal habeas review.

Finally, the decision in *Snowden, Supra,* 2015 WL 3964670, cut the constitutional underpinning out from underneath the petitioner's renewed constitutional claims. He bottoms his claims of equal

protection and due process violations of the contentions that the OVI repeat offender provisions did not, by their own terms, require cumulative sentences. As a result, the door was open to unlimited discretion, thereby, petitioner postulates, allowing discriminatory sentencing.

In *Snowden supra,* 2015 WL 3964670 AT *3 (*quoting Ohio v. Hartsook,* 21 N.E. 3d 617, 631 (Ohio App. 2014)), the court stated : "the language of the respective [OVI repeat offender] statues clearly indicates the General Assembly intended R.C. 4511.19 and R.C. 2941.1413 to authorize cumulative punishments for a single OVI offense by a repeat offender"

This determination of the meaning of a state statue is conclusive, and not subject to federal court second-guessing: "[W]hen a federal habeas court

determines," as I have here,"...a state legislative intended to authorize separate, cumulative punishments under the circumstances presented, the [Federal] Court 'must accept the states court's interpretation of the legislative intent for the imposition of multiple punishments.'" *Nelson v. Trierweiler,* 2019 WL 1977422, *6 (E.D.Mich.)(citing *Brimmage v. Summner,* 793 F.2d 1014, 1015 (9th Cir. 1986)).

Conclusion

I overrule the petitioner's objections to Magistrate Judge's Report & Recommendation, though, to some extent, I take somewhat different pathway to reach the same conclusions that he did. In the end, in any event, the results are the same.

It is, accordingly hereby

ORDERED THAT:

1. The Magistrate Judge's Report& Recommendation (Doc. 20) be, and the same hereby is adopted as supplemented herein;
2. Petitioner's objections to the Magistrate Judge's Report& Recommendation (Doc. 21) be, and the same hereby are overruled.
3. The petition for habeas corpus relief (Doc. 1) be, and the same hereby is denied and dismissed, with prejudice, and
4. Petitioner's motion to apple "legal innocence" standard (Doc. 23) be, and the same is hereby denied.

Jurists of reason could not reasonably dispute the result reached herein or its rationale. I decline, therefore, to issue a Certificate of Appealability.

So ordered.

/s/ James G. Carr
Sr.U.S. District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

William Snowden Jr., CASE NO. 19-3739

Petitioner-Appellant

216 Churchill Road

V.

Charmaine Bracy, Warden

Appellant Motion For COA

Assistant Ohio Attorney General

Stephanie L. Watson

150 Gay street

Columbus, Ohio 43215

Attorney for Appellee

MOTION FOR CERTIFICATE OF APPEALABILITY

Northern District of Ohio Eastern Division

Snowden v. Bracy

Originating Case No: 4:17-CV-00208

Comes now the Appellant William Snowden Jr. Pro Se litigant and moves this Honorable Court to issue a Certificate of Appealability on all four grounds contained in this Petitioner's Federal Habeas Corpus petition. The four grounds stated in the petition contain significant Federal Constitution violations and according to the United States Supreme Court a hearing is mandated where the petitioner is innocent of the aggravated felony.

This is a case where a Prosecutor in Trumbull County, Ohio is unlawfully applying a 4th degree felony OVI statue to first time offenders to convict defendants of an aggravated felony and illegally sending them to prison. This statue was written in four different sections of the Ohio Revised Code, it is confusing and constitutionally vague. The statue is ORC 4511.19, ORC 2929.13, ORC 2929.14 and ORC 2941.1413. If this Honorable Court would look to this

Appellants habeas corpus DOCKET #13 Page ID #352-364 this court will this court will see Appellants petition filed at Ohio Supreme Court. In that petition the Appellant shows the proper application of the 4th degree felony OVI statue to square with the constitution. The ORC 2941.1413 repeat felony OVI offender specification was written so vague the prosecutor is charging it in indictments to first time 4th degree felony OVI offenders so that he can coerced a guilty plea. The most disturbing part is, if a defendant goes to trial the state can get a jury guilty verdict by proving the exact same prior misdemeanor convictions elements needed to prove the basic 4th degree felony OVI, ORC 4511.19(G)(1)(d). The penalties for first time 4th degree OVI offenders ORC 2929.13 (G)(1) are 60 or 120 days in local incarceration, mandatory treatment and probation or ORC 2929.13(G)(2) 60 or

120 days in prison, mandatory treatment and probation.

When the prosecutor charges the aggravated felony ORC 4511.19(G)(1)(d) and 2941.1413 the penalties jump to 71/2 years in prison with 5 years mandatory. If this Honorable Court will look at this Appellants Federal Habeas Corpus DOCKET #13, PAGE ID #124-128, the court will see that the elements for the 4th degree felony OVI and the specification in the indictment are identical word for word. Jurys are finding innocent defendant's guilty of aggravated felonies; the judge is not making any findings and the defendant's is being sent to serve an illegal prison term. If this Honorable Court would look at the Appellant's plea agreement contained in DOCKET #13, PAGE ID#150-158, THIS Honorable Court will see this Appellant was threatened with a 10-year mandatory prison term. This Appellant was

informed by his attorney that if he lost at trial, he would be given most is not all the 10-year mandatory prison term. Under Ohio Law this Appellant was not eligible one day in prison. If this Appellant would have went to trial and lost, he would still be sitting in prison. The miscarriage of Justice that has occurred in my case seems to be falling on deaf' ears in all courts. This Appellant could show this Honorable Court that any appeal in these types of cases would be futile in Ohio Courts. First time offenders have file Double Jeopardy, Equal Protection, Cruel and Unusual Punishment and Ohio Court's allow these violations with one generic statement, Ohio Court's rule that the Ohio OVI statues does not violate the Constitutional Protections. Ohio Courts could have easily put and end to these unlawful convictions by stopping the

unlawful application for first time 4th degree felony OVI offenders.

The District Court should have ordered an evidentiary hearing in this Appellants case. If a hearing would be ordered the Ohio Attorney General would have no choice but to admit to one of two things:

1. This Appellant is innocent of the aggravated felony and was illegally sent to prison.
2. If the statue is applied in the manner to first time 4th degree felony OVI offender's, the State of Ohio has an illegal unconstitutional law.

Whichever admission the Ohio Attorney General chooses, this Appellant's conviction must be overturned. Ohio Court's are giving Trumbull County Prosecutor's a green light to commit

whatever unlawful acts he wishes against OVI defendants. There are many Constitutional violations committed in this one case. The evidence shows that if Ohio felony OVI Defendants Constitutional Rights are to be protected it will have to come by way of the Federal Courts.

Lonchar v. Thomas 517 U.S. 314, 324 (1996). Dismissal of a first Federal Habeas Corpus petition is a particularly serious matter, for that dismissal denies the petitioner of the great Writ entirely, risking injury to an important interest in human liberty, *Carrier* 477 U.S. AT 515 (*Stevens J. concurring)* stressing that appellate procedural default should not foreclose Habeas Corpus review of a meritorious Constitutional claim that may establish the prisoners innocence. In *Keeney v. Tamayo Reyes* 504 U.S. 1(1992). The Supreme Court held that failure to develop a claim in state

court proceedings will be excused and an evidentiary hearing mandated if a petitioner can show that fundamental miscarriage of justice would result from failure to hold a federal evidentiary hearing.

This matter involves a case where a complete miscarriage of justice has taken place The Appellant was charged and convicted of a crime he did not commit and illegally sentenced to a prison term. If this Honorable Court would review the plea the Appellant has made to the District Court throughout this Habeas action. This Court will see the Appellant has made claims of miscarriage of justice, not guilty and innocent of the crime the Appellant was convicted of. After making all these claims throughout Appellant's habeas, The State of Ohio has not taken any opposition to any of these claims *(emphasis added).* If an evidentiary hearing

would be ordered, one simple fact would resolve this matter. The Appellant would prove beyond a reasonable doubt that this was a first time 4th degree felony and the Appellant is innocent of the crime and relief must be granted.

This would not be in front of this Honorable Court if it weren't for *Almendarez Torres v. United States* 523 U.S.224(1998). Where the Court ruled that when charged with aggravated felony other than the fact of a prior conviction, any fact that increases the penalty beyond minimum or maximum, should the fact be element of the offense to be charged in the indictment and proven to a jury beyond reasonable doubt or should the judge make the findings the judge make the findings by a preponderance of the evidence in sentencing. The United States Supreme Court ruled the judge could make the findings. The United States Supreme has

since ruled on several occasions theCourt reserves the right to revisit that ruling. The *Almendarez Torres* ruling created situations in the State of Ohio where miscarriages of justice are taking place and innocent defendants are being convicted and sent to prison. These cases are brought where overzealous prosecutors are withholding evidence of innocence from grand juries and the courts to charge and convict innocent defendants such as this Appellant. Without the decision in *Almendarez Torres* this could not go on. Clearly the United States Supreme Court should revisit this, to stop innocent defendants from being convicted and sent to prison.

In the Appellant's case the District Court ruled to dismiss the petition on a procedural default. The United States Supreme Court does not agree with the District Court's ruling as this Appellant will

show throughout this plea, *see McQuiggin v. Perkins* 569 U.S. 383.

HISTORY

This case originated in Trumbull County, Ohio where the Appellant was stopped for a traffic offense which resulted in his arrest for OVI. The fact that the Appellant had prior misdemeanor convictions for OVI he could face a first time 4th degree felony OVI charge. Before the Prosecutor could present the case to the grand jury, an investigation had to take place to show the Prosecutor what charges he could bring.

There are several errors in District Court's ruling, the District Judge stated the Appellant pled no contest of two of four charges. That is incorrect, in Ohio if you get an OVI the prosecutor always brings two charges. At no time did the Appellant

face four charges, this was one OVI stop. The Prosecutor brought two aggravated OVI charges against the Appellant, he was innocent of both aggravated charges. There was no legal way the Court could convict. This Appellant could have been convicted of a simple 4th degree OVI, ORC 45.11.19(G)(1)(d). When the Prosecutor brought the charge ORC 4511.19(G)(1)(d) and 2941.1413 that was an aggravated count and carries up to 71/2 years in prison, 5 of those mandatory. That charge is for offenders that have been previously been convicted two times of 4th degree felony OVI and this is the offenders third 4th degree felony allowing for multiple enhancements. This Appellant is innocent of that charge and I also withstand ORC 2929.13(A)to(E), which makes it mandatory I be sentenced under ORC 2929.13(G)(1). The Judge's hands were tied in this matter. He could only

sentence this Appellant to 120 days in local incarceration, mandatory alcohol treatment and probation.

If the judge does anything other than that, specific findings must be entered into the record. When the Prosecutor charged the aggravated count, the court could not legally convict the Appellant. The Court without authority ignored making the findings and sentenced the Appellant to a two-year mandatory prison term. The Appellant was innocent of the crime and the sentence, without the mandatory findings in the record to allow this, the judgment remains void.

The State does not deny I am innocent and served a 2 year mandatory prison term. The State's only defense is a procedural defense. This defense does not apply here, *see Harrera v. Collins* 506 U.S.

390 113 S. C.T.853, 122 L. ED. 2d 203(1993). Federal Courts have always ruled innocence trumps all.

This Appellant has in his possession the report prepared for the Prosecutor before he went to the grand jury. That report proves the Appellants innocence beyond a reasonable doubt. I challenge whether a case will come before this Court where innocence is so easily proven. The District Judge states that an ineffective assistance counsel claim would be procedurally defaulted here. The United State Supreme Court disagrees. A very similar case to this Appellant's case was addressed by the United States Supreme Court *see Dretke v. Haley* 541 U.S. 389 (2004).

The District Judge in his ruling states this Appellant did not raise jurisdiction in the state

courts. The Appellant collaterally attacked it to the Trial Court and the Ohio Supreme Court which is the proper way attack a void judgement. The Ohio Court's dismissed without commit. The United States Supreme Court has always ruled that "when a defendant has been convicted of a crime the defendant did not commit and illegally sentenced to prison; relief must be granted". The Justices make it clear in *Dretke v. Haley*. If not for the fact this Appellant had incompetent counsel and the court ignored statutory protections, this Appellant could not have been convicted *see Strickland v. Washington* 466 U.S. 668 (1984).

The District Judge also ruled the Appellant is arguing cumulative punishment, that is incorrect. This Appellant is arguing I could not be given any prison term, see ORC 2929.13 (B). The Prosecutor charged the Appellant as having two prior felony

OVI convictions, this was Appellant's first felony offense. This Appellant is innocent of the crime and sentence. I have put this in front of the trial court and the Ohio Supreme Court and Ohio courts choose to look the other way and not address the issue. When the State of Ohio courts know that a man was illegally convicted and illegally sentenced to a mandatory two-year prison term and refuse to address the matter and release him the Federal Courts have a duty to step in, *see Dretke v. Haley* 541 U.S. 386 (2004).

The fact the Petition was dismissed on procedural grounds, the Appellant must satisfy a two-prong test as required under *Slack v. McDaniel* 529 U.S. 473, 484 (2000). A COA will issue when jurists of reason would find it debatable whether the Appellant 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. This Appellant satisfies both prongs:

GROUND 1

My 5th and 14th Amendment Constitutional rights were violated; I was imprisoned on a void on its face judgment. The sentence imposed upon me does not exist in the Ohio Revised Code for 4th degree felony OVI . The court sentenced me to two, one-year mandatory prison terms to be served consecutive, this sentence is illegal and void.

This ground meets prong one and two; because this sentence does not exit for any OVI even for any aggravated OVI and more particular in this Appellants case, I could not be given any prison sentence. The judgment and sentence are void on their face. This violates my 5th Amendment, due

process and 14th Amendment, equal protection. The Appellant is innocent of this sentence and procedural bar is debatable.

GROUND 2

The court violated my 5th and 14th Amendment rights to due process and equal protection, when the court convicted without jurisdiction. The state erroneously charged the indictment, to charge and convict a repeat felony OVI offender. This error removed jurisdiction from the court because it was without legal authority to act. If the court would have followed the letter of the law at sentencing my conviction would have been impossible.

This ground meets prong one and two, because the Prosecutor charged Appellant as a third time 4th degree felony OVI offender. This was the Appellants first time 4th degree felony OVI offense,

the court could not convict me of an aggravated felony. I had protections in the statute because I am innocent. The Prosecutor cannot charge me with a crime the Court cannot convict me of. When the Court convicted me ignoring my statutory protections, this violates my due process and equal protection rights. Reasonable jurists would debate procedural default. The judgment is void and I am innocent.

GROUND 3

My 5th and 14th Amendment Constitutional rights were violated when the court failed to make findings for a prison term. Before the court can impose a prison term for a non-violent 4th or 5th degree felony in the State of Ohio, the court must make mandatory findings contained in ORC 2929.13(B)(1)(a) or (B)(1)(b). If the court cannot

make a finding, community control sanctions are mandatory.

This ground meets prong one and two, because it proves I am innocent of the aggravated felony, if I were guilty the court could make plenty of findings the fact the court cannot make the findings, proves I am innocent, and the Trial Court lacked jurisdiction to convict. Reasonable jurist would debate procedural bar.

GROUND 4

My 6th Amendment rights were violated when I was convicted without effective assistance of counsel. The Court, the Prosecutor and my own attorney did not know the penalties that I faced as a defendant. I was threatened with a ten-year mandatory prison term if I went to trial. I was given an illegal two-year mandatory prison term .

My attorney never objected. He wavwd my pre-sentence investigation that would have stopped the prison term .

This ground meets prong one and two, because had my attorney told the court this was my first offense and this Appellant withstands (A) to (E) 2929.13 of the Ohio Revised Code, this Appellant could not have been convicted or sentenced to any aggravated charges or any prison term. If he would have ordered a presentence investigation I could not have been convicted. The jurist of the United States Supreme Court has already addressed this in *Dretke v. Haley* 541 U.S. 386(2004). The attorney's ineffectiveness of counsel where the Defendant is innocent of an aggravated felony meets cause and prejudice to overcome procedural default.

The last and most important issue that overrules the District Court is miscarriage of justice where the Petitioner is innocent. The State takes no opposition to the fact I am innocent because they could not in good faith stand before the Court and say I am guilty.

QUESTION FOR REVIEW

1. When a Habeas Corpus Petitioner is innocent of the crime and conviction occurred because of ineffective assistance of counsel should a District Court dismiss the petition without an evidentiary hearing?

This Petitioner respectfully requests this Honorable Court to grant the following relief:

1. Issue a COA on grounds 1,2,3 and 4.
2. Order an evidentiary hearing in that the Petitioner can prove his innocence.

3. Any other relief this Honorable Court could issue to address the miscarriage of justice.

Respectfully Submitted,
/s/William Snowden Jr.

APPENDIX C

No. 19-3739

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

WILLIAM SNOWDEN, JR.,

Petitioner-Appellant,

v. ORDER

CHARMAINE BRACY, Warden,

Respondent-Appellee.

William Snowden, Jr., a former Ohio prisoner proceeding pro se, appeals a district court judgment denying his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254

and moves this court for a certificate of appealability ("COA").[1]

In 2014, Snowden pleaded no contest to two counts of operating a vehicle while impaired, each with a repeat offender specification. The trial court merged the two convictions and sentenced Snowden to two years in prison. The Ohio Court of Appeals affirmed. *State v. Snowden,* No. 2014-T-0092, 2015 WL 3964670 (Ohio Ct. App. June 30, 2015). The state court of appeals then granted Snowden's motion to certify a conflict between it's decision affirming Snowden's conviction and a decision of another state court of appeals in a different district. *See State v. Snowden,* 39 N.E.3d 1268 (Ohio 2015)

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[1] Snowden was incarcerated when he filed his habeas petition, " which is all the 'in custody' provision of 28 U.S.C. § 2254 requires." *Spencer v. Kenna,* 523 U.S. 1,7(1998).

(table). After resolving the conflict, the Ohio Supreme Court affirmed Snowden's conviction. *State v. Snowden,* 60 N.E.3d 1252 (Ohio 2016) (mem.).

Meanwhile, Snowden had filed a motion to vacate his sentence. The trial court determined that, because Snowden's direct appeal was then pending in the Ohio Supreme, it lacked jurisdiction to address the motion.

After the Ohio Supreme Court affirmed Snowden's conviction, he filed a petition for habeas corpus in the Ohio Supreme Court which was denied. *Snowden v. Bracy,* 67 N.E.3d 822 (Ohio 2017) (table).

Snowden then filed the present § 2254 petition, claiming that: (1) the judgment is void because his two-year sentence for a fourth-

degree felony for operating a vehicle while impaired "does not exist in the Ohio Revised Code"; (2) the trial court lacked jurisdiction to convict him; (3) the trial court failed to make the requisite findings before sentencing him for a non-violent fourth-degree felony; and, (4) his trial counsel was ineffective for failing to object to his allegedly illegal sentence and for waiving his presentence investigation, which would have "stopped" the allegedly illegal sentence.

A magistrate judge issued a report and recommendation, in which he recommended that Snowden's petition be denied on the ground that all his claims are procedurally defaulted. The district court agreed, denied the petition, and declined to issue a COA. The district court added that Snowden's procedurally defaulted claims, to the extent that they sought to

challenge the lawfulness of his sentence under state law, also are not cognizable on federal habeas review. Snowden now seeks a COA from this court.

This court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court "denies a habeas petition on procedural grounds without reaching the prisoner's constitutional claim" the petitioner can satisfy § 2253 (c)(2) by establishing 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, 484 (2000).

Reasonable jurists could not debate the district court's determination that Snowden's claims are procedurally defaulted because they were not fairly presented to the Ohio Courts. *See Pudelski v. Wilson,* 576 F.3d 595, 605 (6th Cir. 2009). To obtain relief under § 2254 a prisoner must first exhaust his state remedies by "giv[ing] the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." *O'Sullivan v. Boerckel,* 526 U.S. 838,845 (1999); *see* 28 U.S.C. § 2254(b)(1). When a petitioner has failed to exhaust his state remedies, and when he can no longer do so under state law, his habeas claim is procedurally defaulted. *O'Sullivan,* 526 U.S. at 848.

Snowden did not raise any of his claims in the Ohio Court of Appeals or the Ohio Supreme Court during his direct appeal. He therefore failed to invoke one complete round of Ohio's appellate review process. *See id.* at 845. Because Snowden can no longer present his claims to the Ohio courts under Ohio res judicata rule, *Gray v. Netherland,* 518 U.S. 152, 161-62 (1996); *Hanna v. Ishee,* 694 f.3d 596, 614 (6th Cir. 2012), reasonable jurists could not disagree with the district court's conclusion that Snowden's claims are procedurally defaulted.

A federal habeas court is barred from reviewing a procedurally defaulted claim unless the petitioner can show either cause for the default and actual prejudice from the alleged constitutional violation, or that failure to consider the claim would result in a

"fundamental miscarriage of justice," *Coleman v. Thompson,* 501 U.S. 722, 750-51 (1991), which can be demonstrated only by presenting new evidence showing actual innocence, *Hodges v. Colson,* 727 F.3d 517, 530 (6th Cir. 2013).

Snowden argues that procedural default is excused by the ineffective assistance of his trial counsel. But this argument cannot provide cause to excuse Snowden's procedural default because he procedurally defaulted this ineffective-assistance claim, too, by failing to litigate it through one complete round of state-court review. *See Edwards v. Carpenter,* 529 U.S. 466, 453 (2000). And Snowden does not argue that cause and prejudice excuse the default of ineffective-assistance claim. Reasonable jurists therefore would agree that

the alleged ineffective assistance of trial counsel does not excuse his procedural default.

Reasonable jurists would also agree that Snowden's procedural default is not excused by a credible showing of actual innocence. Snowden maintains that he is "100 percent innocent" but he presents no new evidence in support of that claim.

Because no reasonable jurists could debate the district court's denial of Snowden's petition on the ground that he claims are procedurally defaulted, this court need not address the district court's supplemental findings that Snowden's claims, to the extent that they challenge his sentence under state law, are not cognizable on federal habeas review.

Finally, Snowden maintains that the district court should have held an evidentiary hearing. But because his claims could be rejected on the basis of the existing record, reasonable jurists could not debate the district court's decision not to hold an evidentiary hearing. *See Muniz v. Smith,* 647 F.3d 619, 625 (6th Cir. 2011) ("A district court is not required to hold an evidentiary hearing if the record 'precludes habeas relief.'" (quoting *Schriro v. Landrigan,* 550 U.S. 465, 474 (2007)))/

According, the court DENIES the motion for a COA.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt, Clerk