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In the

SUPREME COURT OF THE UNITED STATES

October Term 2020

LAWRENCE JOEY SMITH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeal
for the Eleventh Circuit

APPENDIX TO PETITION FOR WRIT OF
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APPENDIX 1: 11th United States Circuit Court of
Appeal order denying certificate of appealability

Lawrence Joey SMITH, Petitioner-Appellant,
v.
SECRETARY, FLORIDA DEPARTMENT OF
CORRECTIONS, Attorney General, State of Florida,
Respondents-Appellees.
No. 20-11369-A
Filed: 11/20/2020

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

Attorneys and Law Firms

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Tallahassee, FL, for Petitioner-Appellant.

Lawrence Joey Smith, Mayo, FL, Pro Se.

Tonja Vickers Rook, Ashley Moody, Attorney
General's Office, Tampa, FL, for Respondents-
Appellees.

Opinion

Adalberto Jordan, UNITED STATES CIRCUIT
JUDGE

ORDER:

Lawrence Smith is a Florida prisoner serving
life imprisonment after a jury convicted him for first-
degree murder and attempted first-degree murder.

Through counsel, he seeks a certificate of appealability ("COA") in order to appeal the denial of his 28 U.S.C. § 2254 petition, in which he alleged that trial counsel was ineffective for failing to object to the state prosecutor's improper statements during closing argument regarding the jury's consideration of the evidence, or the lack thereof, in reaching its verdict.¹ He also seeks leave to proceed in forma pauperis ("IFP").

In order to obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (stating that, where a district court has rejected a constitutional claim on the merits, the petitioner must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further").

Here, reasonable jurists would not debate the denial of Smith's claim. Trial counsel had no basis to object to the prosecutor's statement that the jury should not speculate but instead base its verdict on the evidence, particularly when it was in response to trial counsel's prior statement that Smith's gunshot

¹ Although Smith's § 2254 petition raised additional claims, his counseled motion for a COA only addresses his one claim of ineffective assistance of counsel for failing to object to the prosecutor's statements during closing argument. Because this Court "will not entertain the possibility of granting a [COA]" on an issue as to which the petitioner "does not provide facts, legal arguments, or citations of authority that explain why he is entitled to a certificate," Smith has abandoned his other claims. *Jones v. Sec'y, Dep't of Corrs.*, 607 F.3d 1346, 1349-50, 1353-54 (11th Cir. 2010).

residue test must have been negative because the state never presented the results at trial. In any event, the trial court properly instructed the jury that its verdict must be based solely on the evidence, the conflict in evidence, or the lack of evidence, which the jury is presumed to have followed. See *United States v. Wilson*, 149 F.3d 1298, 1302 (11th Cir. 1998) (stating that a jury is presumed to have followed a court's jury instructions).

Accordingly, Smith's motion for a COA is DENIED, and his motion for leave to proceed IFP is DENIED AS MOOT.

All Citations

Not Reported in Fed. Rptr., 2020 WL 9258458

APPENDIX 2: 11th United States Circuit Court of
Appeal order denying motion for reconsideration.

Lawrence Joey SMITH, Petitioner-Appellant,
v.
SECRETARY, FLORIDA DEPARTMENT OF
CORRECTIONS, Attorney General, State of Florida,
Respondents-Appellees.
No. 20-11369-A
Filed: 11/20/2020

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

Before: Jordan and Newsome, Circuit Judges.

BY THE COURT:

Lawrence Smith, through counsel, has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2 and 22-1(c), of this Court's November 20, 2020 order deny a certificate of appeal and leave to proceed on appeal in forma pauperis. Upon review, motion for reconsideration is DENIED because he has offered no new evidence arguments of merit to warrant relief.

January 7, 2021.

Respectfully submitted:



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