

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13879-A

EDDIE MATTHEW AMOS,

Petitioner-Appellant,

versus

TOMMY BOWEN,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ORDER:

To merit a certificate of appealability, appellant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Appellant's motion for a certificate of appealability is DENIED because he failed to make the requisite showing. Appellant's motion for leave to proceed on appeal *in forma pauperis* is DENIED AS MOOT. Appellant's motion for appointment of counsel is DENIED AS MOOT.


UNITED STATES DISTRICT JUDGE

APPENDIX A

FILED IN CHAMBERS

U.S.D.C. - Atlanta

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AUG 30 2019

James M. Martin, Clerk

By Amica De la Cruz

EDWARD MATTHEW AMOS,
Petitioner,

CIVIL ACTION NO.
1:18-CV-4334-ODE

v.

TOMMY BOWEN,
Respondent.

ORDER

Presently before the Court is the Magistrate Judge's Report and Recommendation (R&R) recommending that the instant habeas corpus petition brought pursuant to 28 U.S.C. § 2254 be denied and the case dismissed. [Doc. 10]. Petitioner has filed his objections in response to the R&R. [Doc. 12].

A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report and Recommendation that is the subject of a proper objection on a *de novo* basis and any non-objected portion under a "clearly erroneous" standard. "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court." Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988).

APPENDIX B

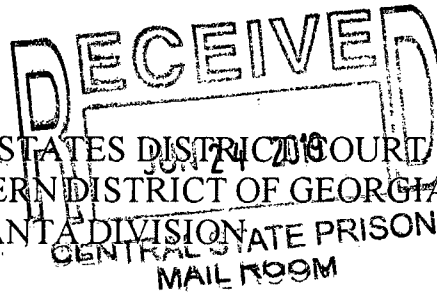
With respect to his first claim that he should have been sentenced for voluntary manslaughter, the Magistrate Judge concluded that the claim raises an issue of state law, and, as a result, Petitioner fails to state a claim under § 2254 which provides relief only for constitutional violations.

In response to his claim of insufficiency of the evidence, the Magistrate Judge noted that in Petitioner's appeal, the Georgia Supreme Court determined that the evidence was sufficient. After finding that the state court's conclusion was properly based on the United States Supreme Court's opinion in Jackson v. Virginia, 443 U.S. 307, 319 (1979), and was a reasonable determination of the facts in the record, the Magistrate Judge concluded that this Court must defer to the state court under § 2254(d).

In determining that Petitioner is not entitled to relief with respect to his claims of ineffective assistance, the Magistrate Judge noted that Petitioner raised these claims in his state habeas corpus petition. The Magistrate Judge found that the state court applied the correct standard as described by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984), and reasonably interpreted the facts to conclude that Petitioner was not entitled to relief. Accordingly, the Magistrate Judge determined that the state habeas corpus's determination is likewise entitled to deference under § 2254(d).

As the issue discussed by the Georgia Supreme Court (and apparently raised by Petitioner) turned solely on a question of state law, this Court agrees with the Magistrate Judge that § 2254 provides no basis for relief. Moreover, to the degree that Petitioner now raises a due process violation, it appears that such a claim would be procedurally barred as unexhausted because Petitioner failed to raise the claim in state court. See 28 U.S.C. § 2254(b)(1)(A) (requiring exhaustion of state court remedies). To the degree that Petitioner did raise his due process claim in his appeal and the Georgia Supreme Court ignored the issue, this Court nonetheless concludes that Petitioner cannot demonstrate that he is entitled to relief. As was noted by the Georgia Supreme Court, Petitioner's felony murder conviction was predicated on his possession of a firearm as a convicted felon in conjunction with the murder, which is clearly sufficient to support his felony murder conviction, and Petitioner thus has no viable due process claim.

Petitioner further objects to the Magistrate Judge's determination as to the remainder of his claims that this Court must defer under § 2254(d) to the Georgia Supreme Court's and the state habeas corpus court's conclusions that he is not entitled to relief. However, Petitioner's arguments are entirely conclusory in that he asserts that the state courts' conclusions were contrary to Supreme Court law and based on an unreasonable determination of the facts, but he fails to (1) explain how he contends



EDWARD MATTHEW AMOS, : PRISONER HABEAS CORPUS
Petitioner, : 28 U.S.C. § 2254
v. :
TOMMY BOWEN, : CIVIL ACTION NO.
Respondent. : 1:18-CV-4334-ODE-LTW

FINAL REPORT AND RECOMMENDATION

Petitioner Edward Matthew Amos, presently confined in Central State Prison in Macon, Georgia, has filed this 28 U.S.C. § 2254 petition to challenge his May 2011 convictions in the Superior Court of Cobb County. This matter is currently before the Court on the petition (Doc. 1), the answer-response (Doc. 7), and petitioner's supporting brief (Doc. 9). For the reasons that follow, the undersigned **RECOMMENDS** that the petition be **DENIED**.

I. Procedural History

A Cobb County grand jury indicted petitioner for "one count of malice murder, one count of felony murder predicated on aggravated assault, one count of felony murder predicated on unlawful possession of a firearm by a convicted felon, one count of aggravated assault, and one count of unlawful possession of a firearm by a convicted felon." *Amos v. State*, 778 S.E.2d 203, n.1 (Ga. 2015). Petitioner

APPENDIX C

pled guilty to the firearm charge and proceeded to trial on the remaining counts. *Id.* A jury convicted petitioner on all counts. *Id.* “The trial court sentenced [petitioner] to life imprisonment for felony murder predicated on the unlawful possession of a firearm and merged all the remaining counts.” *Id.* Attorney Jimmy Berry represented petitioner at trial. (Doc. 8-7 at 38.)

Represented by new counsel, Mitch Durham, petitioner appealed, arguing that the trial court should have sentenced him for voluntary manslaughter instead of felony murder. Br. of Appellant, *Amos*, 778 S.E.2d 203 (S15A1143), 2015 WL 2439219 (May 15, 2015). The Georgia Supreme Court summarized the evidence presented at trial, which it viewed “in the light most favorable to the verdict” and found sufficient to support petitioner’s conviction, as follows:

... [Petitioner] drove his van on the morning of August 7, 2007 to the auto repair shop at which [Robin] Crankshaw worked, where [petitioner] fatally shot Crankshaw in the chest. A responding officer found Crankshaw’s body lying face down on top of a baseball bat, and two .32 caliber shell casings were found about 35 feet away. Crankshaw’s employer saw [petitioner] drive off in an older-model white van and remembered the first three letters on the van’s license plate.

After a couple of years passed, investigators were able to locate and interview [petitioner], with whom they had connected the van. Although [petitioner] initially denied any involvement in the killing of Crankshaw, he eventually admitted that he shot Crankshaw, but [petitioner] claimed that he did so in self-defense. According to [petitioner], Crankshaw’s vehicle had bumped into his van, but

Crankshaw drove away while [petitioner] was inspecting his van for damage. [Petitioner] said that he pursued Crankshaw to obtain insurance information, and after they arrived at Crankshaw's workplace, [petitioner] claimed, Crankshaw came at him with a baseball bat and attacked him. [Petitioner] acknowledged that he then retrieved a .32 caliber firearm from his van and fired two shots. [Petitioner] explained that he fled because, as a convicted felon, he feared explaining the situation to police officers.

Amos, 778 S.E.2d at 204. On October 5, 2015, the Georgia Supreme Court affirmed the trial court's judgment, concluding that petitioner was properly sentenced for felony murder, not voluntary manslaughter, "[b]ecause the felony murder in this case was predicated on unlawful possession of a firearm by a convicted felon—a crime that is (on the facts of this case) independent of, and not integral to, the killing of Crankshaw." *Id.* at 205.

On October 13, 2016, petitioner filed a *pro se* habeas corpus petition in the Superior Court of Bibb County, arguing that appellate counsel should have alleged that trial counsel was ineffective for (1) failing to request a jury charge about a felon being justified in possessing a firearm when he fears for his life and (2) advising and allowing petitioner to plead guilty to the firearm charge before standing trial on the felony murder charge predicated on the firearm charge. (Doc. 8-1 at 1, 6-10.) Following a December 13, 2016, evidentiary hearing at which appellate counsel testified (Doc. 8-6 at 1-34), the state habeas court entered a

written order denying the petition (Doc. 8-2). On August 2, 2018, the Georgia Supreme Court denied petitioner a certificate of probable cause to appeal that ruling. (Doc. 8-4.)

Petitioner timely filed this § 2254 petition, arguing that: (1) the trial court erred by sentencing him to felony murder instead of voluntary manslaughter; (2) there was insufficient evidence to support his conviction; and (3)-(4) Durham should have alleged that Berry was ineffective for failing to request a jury charge about a felon being justified in possessing a firearm when he fears for his life and for advising and allowing petitioner to plead guilty to the firearm charge before standing trial on the felony murder charge. (Doc. 1 at 6-14; Doc. 9.) Respondent argues that ground one does not state a federal claim for relief and that the state courts' rejection of his remaining grounds warrants deference. (Doc. 7-1 at 6-14.)

II. Discussion

A. 28 U.S.C. § 2254 Standards

Under 28 U.S.C. § 2254, a federal court may issue a writ of habeas corpus on behalf of a person being held in custody pursuant to a judgment of a state court if that person is held in violation of his rights under federal law. 28 U.S.C. § 2254(a). In general, a state prisoner who seeks federal habeas corpus relief may not obtain that relief unless he first exhausts his available remedies in state court or

shows that a state remedial process is unavailable or ineffective. *Id.* § 2254(b)(1). A federal court may not grant habeas corpus relief for claims previously adjudicated on the merits by a state court unless the state court adjudication resulted in a decision that (1) “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States”; or (2) “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” *Id.* § 2254(d). “This is a difficult to meet and highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt.” *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (citations and quotation marks omitted).

In applying § 2254(d), a federal court first determines the “clearly established federal law” based on “the holdings, as opposed to the dicta, of [the Supreme Court’s] decisions as of the time of the relevant state-court decision.” *Williams v. Taylor*, 529 U.S. 362, 412 (2000). The court then determines whether the state court decision is “contrary to” that clearly established federal law, i.e., whether the state court “applies a rule that contradicts the governing law set forth” in Supreme Court cases, or “confronts a set of facts that are materially indistinguishable” from a Supreme Court decision “and nevertheless arrives at a [different] result.” *Id.* at 405-06.

If the federal court determines that the state court decision is not contrary to clearly established federal law, it then determines whether the decision is an “unreasonable application” of that law, i.e., whether “the state court identifies the correct governing legal principle” from the Supreme Court’s decisions “but unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* at 413. A federal court may not grant habeas relief “simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be [objectively] unreasonable.” *Id.* at 409, 411; *see Harrington v. Richter*, 562 U.S. 86, 101 (2011) (“For purposes of § 2254(d)(1), an *unreasonable* application of federal law is different from an *incorrect* application of federal law.” (quotations omitted)). In short, when a state court applies clearly established federal law to a claim, federal habeas relief is not available unless the petitioner shows that the state court’s ruling “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.

Additionally, the state court’s determinations of factual issues are presumed correct. 28 U.S.C. § 2254(e)(1). A petitioner can overcome this presumption only

by presenting “clear and convincing evidence” that the state court’s findings of fact were erroneous. *Id.*

B. Ground One: Felony Murder Sentence

Petitioner’s first claim that the trial court should have sentenced him to voluntary manslaughter instead of felony murder does not allege a violation of federal law, but rests on the alleged violation of state law.¹ “The habeas statute unambiguously provides that a federal court may issue the writ to a state prisoner ‘only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.’” *Wilson v. Corcoran*, 562 U.S. 1, 5 (2010) (per curiam) (quoting 28 U.S.C. § 2254(a)). “[F]ederal habeas corpus relief does not lie for errors of state law.” *Id.* (citation omitted). Therefore, ground one fails to state a claim for relief.

C. Ground Two: Sufficiency of the Evidence

When reviewing a challenge to the sufficiency of the evidence, a court must determine “whether, after viewing the evidence in the light most favorable to the

¹ In support of this claim, petitioner cites *Blakely v. Washington*, 542 U.S. 296, 303-04 (2004), which held that a judge may not impose an enhanced sentence based on facts not found by the jury. (Doc. 9 at 1-2.) However, *Blakely* does not apply to petitioner’s ground one because the jury found him guilty of both felony murder and voluntary manslaughter.

prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). “When the record reflects facts that support conflicting inferences, there is a presumption that the jury resolved those conflicts in favor of the prosecution and against the defendant.” *Johnson v. Alabama*, 256 F.3d 1156, 1172 (11th Cir. 2001). “In other words, federal courts must defer to the judgment of the jury in assigning credibility to the witnesses and in weighing the evidence.” *Id.*

Under Georgia law, a person commits the offense of felony murder when, during “the commission of a felony, he or she causes the death of another human being irrespective of malice.” O.C.G.A. § 16-5-1(c). Petitioner admitted that he fatally shot Crankshaw with a firearm he, as a convicted felon, unlawfully possessed, but “claimed that he did so in self defense.” *Amos*, 778 S.E.2d at 204. The Georgia Supreme Court, citing *Jackson*, reasonably found this evidence sufficient to support petitioner’s felony murder conviction and correctly noted that the jury was free to reject petitioner’s claim that he acted in self defense. The state court’s decision is therefore entitled to deference pursuant to § 2254(d). *See Harrington*, 562 U.S. at 101; *Williams*, 529 U.S. at 404-05, 412-13.

D. Grounds Three and Four: Assistance of Appellate Counsel

In this Court's review of the state courts' denial of petitioner's ineffective assistance of counsel claims, "the relevant clearly established law [for purposes of 28 U.S.C. § 2254(d)] derives from *Strickland v. Washington*, 466 U.S. 668 (1984), which provides the standard for inadequate assistance of counsel under the Sixth Amendment." *Premo v. Moore*, 562 U.S. 115, 118 (2011); *see also Eagle v. Linahan*, 279 F.3d 926, 938 (11th Cir. 2001) (applying *Strickland* to allegations of ineffective assistance of appellate counsel). "The pivotal question" before this Court "is whether the state court's application of the *Strickland* standard was unreasonable." *Harrington*, 562 U.S. at 101. "This is different from asking whether defense counsel's performance fell below *Strickland's* standard." *Id.*

The *Strickland* analysis is two-pronged, but a court need not address both prongs "if the defendant makes an insufficient showing on one." *Strickland*, 466 U.S. at 697. First, a convicted defendant asserting a claim of ineffective assistance of counsel must show that "in light of all the circumstances, the identified acts or omissions [of counsel] were outside the wide range of professionally competent assistance." *Id.* at 690. A court analyzing *Strickland's* first prong must be "highly deferential" and must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689; *Atkins v.*

Singletary, 965 F.2d 952, 958 (11th Cir. 1992) (“We also should always presume strongly that counsel’s performance was reasonable and adequate.”); *see also Harrington*, 562 U.S. at 105 (“‘Surmounting *Strickland*’s high bar is never an easy task.” (quoting *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010))).

In order to meet the second prong of *Strickland*, a petitioner must demonstrate that counsel’s unreasonable acts or omissions prejudiced him. “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 U.S. at 691. In order to demonstrate prejudice, a petitioner “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*; *see also Eagle*, 279 F.3d at 943 (“To determine whether the [unreasonable] failure to raise a claim on appeal resulted in prejudice, we review the merits of the omitted claim.”).

When this deferential *Strickland* standard is “combined with the extra layer of deference that § 2254 provides, the result is double deference and the question becomes whether ‘there is any reasonable argument that counsel satisfied *Strickland*’s deferential standard.’” *Johnson v. Sec’y, DOC*, 643 F.3d 907, 910-11

(11th Cir. 2011) (quoting *Harrington*, 562 U.S. at 105). “Double deference is doubly difficult for a petitioner to overcome, and it will be a rare case in which an ineffective assistance of counsel claim that was denied on the merits in state court is found to merit relief in a federal habeas proceeding.” *Id.* at 911.

Petitioner raised grounds three and four, asserting that Durham should have alleged that Berry was ineffective for failing to request a jury charge about a felon being justified in possessing a firearm when he fears for his life and for advising and allowing petitioner to plead guilty to the firearm charge before standing trial on the felony murder charge, in his state habeas petition. (Doc. 8-1 at 6-10.) The state habeas court made the following pertinent findings of fact, which are supported by the record as indicated:

. . . [Mr. Durham] learned that trial counsel strategically – against the State’s wishes – had petitioner plead guilty to [the firearm charge] to keep the State from being able to admit evidence of a prior gun charge of [p]etitioner’s from Tennessee. [(Doc. 8-6 at 26)]. Mr. Durham assessed that trial counsel believed that this was in [p]etitioner’s best interest, a decision which Mr. Durham believed to be “well founded.” [(*Id.*)]. Hence, Mr. Durham [elected not to challenge trial counsel’s effectiveness on this basis. (*Id.*)].

(Doc. 8-2 at 4.) The state court further noted Durham’s testimony that, due to an intervening change in the law, he abandoned on appeal an argument that Berry should have requested a more tailored justification charge. (*Id.*; Doc. 8-6 at 22.)

Before Durham filed petitioner's appellate brief, the Georgia Supreme Court held that "a defendant cannot assert self-defense if he used deadly force while 'committing . . . a felony,'" even if that felony is possession of a firearm by a convicted felon. *Woodard v. State*, 771 S.E.2d 803, 810-14 (Ga. 2015). Accordingly, Durham chose not to argue that Berry was ineffective based on the justification defense, explained that decision to petitioner, and ultimately "raised on appeal the lone issue which he believed had merit." (Doc. 8-2 at 5-6; Doc. 8-6 at 10-12, 21-22.) The state habeas court then correctly set forth the *Strickland* standard and found that petitioner had "not carried his burden under *Strickland*," reasoning that:

Mr. Durham intentionally abandoned the argument on appeal that trial counsel was ineffective for not seeking a more tailored instruction on justification because such instruction was no longer supported by the governing law . . . a point which he explained to [p]etitioner. Petitioner has demonstrated neither that Mr. Durham performed deficiently by not raising this issue, nor a reasonable probability of a different result had counsel raised the issue. . . .

Mr. Durham also intentionally declined to assert that trial counsel was ineffective for "allowing" [p]etitioner to plead guilty to his possession charge because his discussion with trial counsel and the prosecutor revealed that counsel did this to keep out of evidence – and away from the jury – evidence of a prior gun charge of [p]etitioner's. Petitioner has not demonstrated that Mr. Durham's intentional decision was unreasonable. . . . Additionally, in light of the apparent Tennessee weapons charge, and [p]etitioner also being found guilty of his separate felony murder count and its predicate felony of

aggravated assault, [p]etitioner also has not demonstrated a reasonable probability of a different result had this issue been raised. . . .

(Doc. 8-2 at 6-8.)

Petitioner has not met his burden to show that the state habeas court's decision was based on an unreasonable determination of the facts or that its rejection of petitioner's ineffective assistance of counsel claims was contrary to, or involved an unreasonable application of, *Strickland*. *Argo v. Sec'y, Dep't of Corr.*, 465 F. App'x 871, 874-75 (11th Cir. 2012) (per curiam) ("We presume the state court's determination of the facts is correct, and the petitioner bears the burden of rebutting this presumption by clear and convincing evidence.") (citing 28 U.S.C. § 2254(e)(1)); *Pair v. Cummins*, 373 F. App'x 979, 981 (11th Cir. 2010) (per curiam) ("[T]he habeas petitioner bears the burden 'to show that the state court applied [the applicable clearly established federal law] to the facts of the case in an objectively unreasonable manner.'"). Durham provided reasonable grounds for his decision not to raise Berry's alleged ineffectiveness on appeal, and "winnowing out weaker arguments on appeal and focusing on those more likely to prevail . . . is the hallmark of effective appellate advocacy." *Smith v. Murray*, 477 U.S. 527, 536 (1986) (internal quotation marks and citation omitted); see also *Johnson v. Nagle*, 58 F. Supp. 2d 1303, 1361 (N.D. Ala. 1999) (concluding that appellate counsel's

testimony that “he discussed the issues in the case with trial counsel, carefully studied the trial record, researched the issues, and elected to argue on appeal those that in his judgment offered the greatest opportunities for success” demonstrated that counsel “engaged in the kind of considered decision making that the courts have said is virtually unassailable”). Moreover, petitioner has not shown that the outcome of his appeal would have been different had these issues been raised. *See Smith v. Robbins*, 528 U.S. 259, 285-86 (2000) (In order to meet the prejudice prong of *Strickland*, petitioner “must show a reasonable probability that, but for his counsel’s [unprofessional errors], he would have prevailed on his appeal.”) (citing *Strickland*, 466 U.S. at 694). Therefore, the state habeas court’s rejection of grounds three and four is entitled to deference pursuant to § 2254(d). *See Harrington*, 562 U.S. at 101; *Williams*, 529 U.S. at 404-05, 412-13; *Johnson*, 643 F.3d at 911.

III. Certificate of Appealability

Under Rule 22(b)(1) of the Federal Rules of Appellate Procedure, “the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability [“COA”] under 28 U.S.C. § 2253(c).” Rule 11 of the Rules Governing Section 2254 Cases “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”

A COA 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). A substantial showing of the denial of a constitutional right “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (citations and quotation marks omitted). Where a habeas petition is denied on procedural grounds without reaching the prisoner’s underlying constitutional claim, “a certificate of appealability should issue only when the prisoner shows both 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.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 n.3 (2009) (internal quotations marks omitted) (citing *Slack*, 529 U.S. at 484).

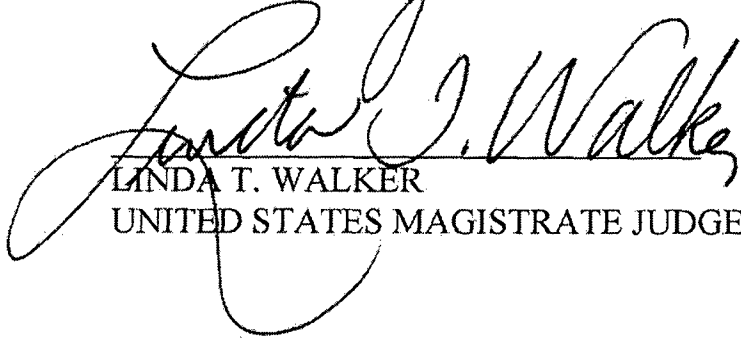
Based on the foregoing discussion of petitioner’s grounds for relief, the resolution of the issues presented is not debatable by jurists of reason, and a COA is not warranted here.

IV. Conclusion

For the foregoing reasons, the undersigned **RECOMMENDS** that the petition and a COA be **DENIED**.

The Clerk is **DIRECTED** to terminate the referral to the Magistrate Judge.

SO RECOMMENDED, this 18 day of June, 2019.


LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE

In the Supreme Court of Georgia

Decided: October 5, 2015

S15A1143. AMOS v. THE STATE.

BLACKWELL, Justice.

Eddie Matthew Amos was tried by a Cobb County jury, which found him guilty of voluntary manslaughter and felony murder, both in connection with the killing of Robin Crankshaw. The trial court merged the voluntary manslaughter into the felony murder, and it sentenced Amos for the murder. Amos appeals, contending only that the trial court should have sentenced him instead for voluntary manslaughter. We find no merit in this claim of error, and we affirm the judgment below.¹

¹ The crimes were committed on August 7, 2007. Amos was indicted on November 19, 2009 and charged with one count of malice murder, one count of felony murder predicated on aggravated assault, one count of felony murder predicated on unlawful possession of a firearm by a convicted felon, one count of aggravated assault, and one count of unlawful possession of a firearm by a convicted felon. On November 19, 2009, Amos pled guilty to unlawful possession of a firearm by a convicted felon. His trial on the remaining charges commenced on May 2, 2011, and the jury returned its verdict three days later, finding him guilty of both counts of felony murder and one count of aggravated assault. As to the count of malice murder, the jury found Amos guilty of the lesser offense of voluntary manslaughter. The trial court sentenced Amos to life imprisonment for felony murder predicated on the unlawful possession of a firearm and merged all the remaining counts. See

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1. Viewed in the light most favorable to the verdict, the evidence shows that Amos drove his van on the morning of August 7, 2007 to the auto repair shop at which Crankshaw worked, where Amos fatally shot Crankshaw in the chest. A responding officer found Crankshaw's body lying face down on top of a baseball bat, and two .32 caliber shell casings were found about 35 feet away. Crankshaw's employer saw Amos drive off in an older-model white van and remembered the first three letters on the van's license plate.

After a couple of years passed, investigators were able to locate and interview Amos, with whom they had connected the van. Although Amos initially denied any involvement in the killing of Crankshaw, he eventually admitted that he shot Crankshaw, but Amos claimed that he did so in self-defense. According to Amos, Crankshaw's vehicle had bumped into his van, but Crankshaw drove away while Amos was inspecting his van for damage.

Malcolm v. State, 263 Ga. 369, 371-374 (4), (5) (434 SE2d 479) (1993); see also Smith v. State, 272 Ga. 874, 880 (6) (c) (536 SE2d 514) (2000) (“[b]ecause there is only one victim, to convict and sentence Smith for both voluntary manslaughter and felony murder would improperly subject Smith to multiple convictions and punishments for one crime”). Amos timely filed a motion for a new trial on May 17, 2011, and he amended it on December 6, 2013. The trial court denied his motion on March 31, 2014, and Amos timely filed a notice of direct appeal on April 28, 2014. The case was docketed in this Court for the April 2015 term and submitted for decision on the briefs.

Amos said that he pursued Crankshaw to obtain insurance information, and after they arrived at Crankshaw's workplace, Amos claimed, Crankshaw came at him with a baseball bat and attacked him. Amos acknowledged that he then retrieved a .32 caliber firearm from his van and fired two shots. Amos explained that he fled because, as a convicted felon, he feared explaining the situation to police officers. The evidence adduced at trial was legally sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Amos was guilty of murder in the commission of a felony, the unlawful possession of a firearm by a convicted felon. Jackson v. Virginia, 443 U. S. 307, 319 (III) (B) (99 SCt 2781, 61 LE2d 560) (1979); see also Shaw v. State, 292 Ga. 871, 872 (1) (742 SE2d 707) (2013) ("jury is free to reject a defendant's claim that he acted in self-defense") (citation omitted).

2. Because the jury found Amos guilty of both felony murder and voluntary manslaughter, Amos contends, the trial court should have merged the felony murder into the voluntary manslaughter and sentenced him only for voluntary manslaughter. We disagree. In Edge v. State, 261 Ga. 865, 866-867 (2) (414 SE2d 463) (1992), this Court adopted what has become known as the "modified merger rule," concluding that, when a defendant is found guilty of

both voluntary manslaughter and felony murder predicated on aggravated assault, the trial court should sentence the defendant only for voluntary manslaughter. Otherwise, we reasoned, almost every voluntary manslaughter would amount to a felony murder (predicated on a felonious assault), and such a rule “would eliminate voluntary manslaughter as a separate form of homicide.” *Id.* at 866 (2). Since Edge, however, we have consistently held that this “modified merger rule” is limited to cases in which the felony murder is predicated on a felony that itself is integral to the homicide, such as aggravated assault. See Kipp v. State, 296 Ga. 250, 252 (765 SE2d 924) (2014); Wallace v. State, 294 Ga. 257, 258-259 (2) (754 SE2d 5) (2013) (Edge rule does not apply where felony murder was predicated on unlawful possession of a firearm by a convicted felon); Lawson v. State, 280 Ga. 881, 883 (3) (635 SE2d 134) (2006) (same); Sims v. State, 265 Ga. 35, 36 (3) (453 SE2d 33) (1995) (same); see also Grimes v. State, 293 Ga. 559, 561 (2) (748 SE2d 441) (2013); Smith v. State, 272 Ga. 874, 879-880 (5) (a) (536 SE2d 514) (2000). Because the felony murder in this case was predicated on unlawful possession of a firearm by a convicted felon — a crime that is (on the facts of this case) independent of, and not

integral to, the killing of Crankshaw² — the Edge rule does not apply, and the trial court properly sentenced Amos for felony murder, not voluntary manslaughter.³

Judgment affirmed. All the Justices concur.

² The evidence in this case shows that Amos pursued Crankshaw to the auto repair shop while in possession of a .32 caliber firearm in his van. This is not a case in which the defendant first came into unlawful possession of a firearm by virtue of a passion to which he was provoked. Cf. Wallace, 294 Ga. at 262-263 (Melton, J., concurring).

³ Although Amos urges us to overrule the precedents that have limited Edge and to extend the “modified merger rule” to the circumstances presented here, we see no compelling reason to do so. We continue to adhere to those precedents, and under those precedents, the trial court in this case did not err.