UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Filed: February 11, 2020

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Re: Case No. 19-2197, *Kenneth Bluew v. Connie Horton*
Originating Case No. : 2:16-cv-11992

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/C. Anthony Milton
Case Manager
Direct Dial No. 513-564-7026

cc: Mr. David J. Weaver

Enclosure

No mandate to issue

No. 19-2197

UNITED STATES COURT OF APPEALS
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KENNETH T. BLUEW,

Petitioner-Appellant,

v.

CONNIE HORTON, Warden,

Respondent-Appellee.

O R D E R

Before: SUTTON, Circuit Judge.

Kenneth T. Bluew, a Michigan prisoner proceeding with counsel, appeals a district court judgment denying his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Bluew has filed an application for a certificate of appealability.

Bluew was sentenced to life imprisonment after being convicted of first-degree premeditated murder, assault of a pregnant individual with intent to cause miscarriage or stillbirth, and two counts of possession of a firearm during the commission of a felony. The Michigan Court of Appeals affirmed Bluew's convictions, and the Michigan Supreme Court denied leave to appeal. *People v. Bluew*, No. 313397, 2014 WL 3928790 (Mich. Ct. App. Aug. 12, 2014) (per curiam), *perm. app. denied*, 859 N.W.2d 518 (Mich. 2015). Bluew then filed a petition for a writ of habeas corpus, arguing that he received ineffective assistance of counsel; that the trial court erred in denying his challenges for cause as to four prospective jurors; that the trial court erred in denying his request for additional peremptory challenges; and that the trial court erred in denying his motion for change of venue. The district court denied the § 2254 petition and declined to issue a certificate of appealability. *Bluew v. Woods*, No. 2:16-cv-11992, 2019 WL 4416312 (E.D. Mich. Sept. 16, 2019).

Bluew now applies for a certificate of appealability on his claims that counsel was ineffective for failing to call an expert witness to testify that the victim's death could not have been caused by a chokehold, or to call an expert in forensic pathology to challenge the autopsy report, and that the trial court erred in denying his challenge for cause as to Juror D. Bluew has forfeited review of the issues that he raised in the district court but did not raise in his application for a certificate of appealability. *See* 28 U.S.C. § 2253(c)(3); *Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam).

A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the petitioner must demonstrate "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, 327 (2003). Where the state courts have adjudicated the petitioner's claims on the merits, the relevant question is whether the district court's application of 28 U.S.C. § 2254(d) to those claims is debatable by jurists of reason. *See id.* at 336-37.

Reasonable jurists would not debate the district court's rejection of Bluew's ineffective-assistance claims. To prove ineffective assistance of counsel, a habeas petitioner must show that his attorney's performance was objectively unreasonable and that he was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In habeas proceedings, the district court must apply a doubly deferential standard of review: "[T]he question [under § 2254(d)] is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Harrington v. Richter*, 562 U.S. 86, 105 (2011). The Michigan Court of Appeals rejected these claims on the merits after determining that "although [affidavits from experts retained after trial] may raise a question as to whether the victim died from hanging as opposed to a chokehold, they do not raise any reasonable question as to whether [Bluew] killed the victim in light of the overwhelming evidence of guilt presented at trial." *Bluew*, 2014 WL 3928790, at *1. Specifically, there was evidence that the victim planned to meet

with Bluew, the father of her unborn child, the night of her murder to discuss child support issues; that the victim and Bluew exchanged phone calls shortly before her death; that Bluew, a police officer on duty, failed to respond to numerous radio checks and other attempts to contact him around the time of the victim's death; that Bluew's DNA was found under the victim's fingernails and in her vehicle; and that Bluew's internet history showed several searches regarding ways to die from carotid artery compression and how long such a death would take. Because of the deference due to state court determinations of state law, as well as the double deference due under *Strickland* and § 2254, reasonable jurists could not disagree with the district court's rejection of these claims. *See Richter*, 562 U.S. at 105.

Reasonable jurists would not debate the district court's rejection of Bluew's claim that the trial court erred in denying his challenge for cause as to Juror D. The Sixth Amendment guarantees criminal defendants the right to be tried by an impartial jury. *United States v. Guzman*, 450 F.3d 627, 629 (6th Cir. 2006). In determining a juror's impartiality, "the relevant question is 'did a juror swear that he could set aside any opinion he might hold and decide the case on the evidence, and should the juror's protestation of impartiality have been believed.'" *United States v. Lanham*, 617 F.3d 873, 882 (6th Cir. 2010) (quoting *Dennis v. Mitchell*, 354 F.3d 511, 520 (6th Cir. 2003)). A trial court's assessment of a juror's ability to serve impartially is a factual finding "entitled to a presumption of correctness, rebuttable only upon a showing of clear and convincing evidence." *Dennis*, 354 F.3d at 520. Although Bluew asserts that Juror D was emotionally biased against him, the trial court declined to dismiss her because she stated that she would do her best to be fair and impartial to both sides despite finding the death of the unborn child deeply upsetting. Because the state court's factual findings are presumed correct and because Bluew has failed to offer clear and convincing evidence rebutting the state court's conclusion, reasonable jurists would not debate the district court's rejection of this claim.

Based upon the foregoing, the court **DENIES** Bluew's application for a certificate of appealability.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk