APPENDIX A1 – A3

Order of the United States Court of Appeals

for the Sixth Circuit

(July 13, 2020 ; # 20-1205)

No. 20-1205

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 13, 2020
DEBORAH S. HUNT, Clerk

SHELBY CLARMONT,

Petitioner-Appellant,

v.

WILLIS CHAPMAN, Warden,

Respondent-Appellee.

ORDER

Before: NALBANDIAN, Circuit Judge.

Shelby Clarmont, a Michigan prisoner proceeding pro se, appeals the district court's denial of his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. Clarmont's timely notice of appeal has been construed as an application for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b)(2).

In June 2018, Clarmont pleaded guilty to conspiracy to commit armed robbery, in violation of Michigan Compiled Laws § 750.529, in exchange for the dismissal of an armed-robbery count and a fourth-habitual-offender notice. *People v. Clarmont*, No. 18-001315-FC (Kent Cty. Cir. Ct.). The trial court sentenced him to a term of imprisonment of 108 months to 50 years. The Michigan Court of Appeals denied Clarmont's delayed application for leave to appeal "for lack of merit in the grounds presented," *People v. Clarmont*, No. 347035 (Mich. Ct. App. Feb. 15, 2019), and the Michigan Supreme Court denied leave to appeal, *People v. Clarmont*, 929 N.W.2d 356 (Mich. 2019) (mem.).

In his § 2254 petition, Clarmont raised the same challenges to his sentence that he presented on direct appeal. He argued that the trial court erred by (1) imposing a sentence based on incorrectly scored sentencing guidelines and (2) imposing a sentence that represented an upward departure from the correctly scored guidelines without justification, in violation of *People v.*

Lockridge, 870 N.W.2d 502 (Mich. 2015), and that resulted in a disproportionate sentence, in violation of *People v. Milbourn*, 461 N.W.2d 1 (Mich. 1990). Pursuant to Rule 4 of the Rules Governing § 2254 Cases, the district court conducted an initial review of the petition. The court concluded that Clarmont's challenge to the scoring of the sentencing guidelines was not cognizable on habeas review and that his arguments concerning proportionality and reasonableness lacked merit. The court declined to issue a COA.

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). To satisfy this standard, a 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).

To the extent Clarmont argued that the trial court improperly assigned points to offense variable 14 for his leadership role in the offense, the district court correctly explained that such a claim is not cognizable on habeas review. *See Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991). "A state court's alleged misinterpretation of state sentencing guidelines and crediting statutes is a matter of state concern only." *Howard v. White*, 76 F. App'x 52, 53 (6th Cir. 2003); *see also Kissner v. Palmer*, 826 F.3d 898, 902 (6th Cir. 2016).

For the same reason, any state law challenge to the reasonableness of Clarmont's sentence or argument that his sentence is disproportionate under state law is also not cognizable on habeas review. *See Estelle*, 502 U.S. at 67–68. Generally, a sentence within statutory limits does not violate the Eighth Amendment. *Austin v. Jackson*, 213 F.3d 298, 302 (6th Cir. 2000). The statutory maximum sentence for armed robbery is life imprisonment. *See* Mich. Comp. Laws § 750.529. Clarmont was sentenced to 180 months to 50 years of imprisonment for his conviction for conspiracy to commit armed robbery. Reasonable jurists could not debate the district court's rejection of this claim.

Finally, reasonable jurists could not debate the district court's denial of Clarmont's claim under *Lockridge*. Clarmont argued that the district court's scoring of offense variable 14 based on

the judge-found fact that he was a leader in the conspiracy violated *Lockridge*. The Supreme Court has held that any fact that increases the mandatory minimum sentence for a defendant must be submitted to a jury. *Alleyne v. United States*, 570 U.S. 99, 103 (2013). In *Lockridge*, the Michigan Supreme Court held that Michigan's sentencing guidelines scheme was unconstitutional because it required impermissible judicial fact-finding in determining a defendant's mandatory minimum sentence and, as a remedy, the court rendered the guidelines advisory only. 870 N.W.2d at 506, 524. Because Clarmont was sentenced after the Michigan guidelines were rendered advisory and because "broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment[,]" the trial court's judicial fact-finding did not violate Clarmont's constitutional rights. *Alleyne*, 570 U.S. at 116.

Reasonable jurists could not debate the district court's denial of Clarmont's habeas petition. Accordingly, his application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B1 – B10

Order and Opinion and Judgment of the U.S. Dist. Ct. - E.D. Mich

(December 6, 2019; #3:19-cv-13226)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHELBY CLARMONT,

Petitioner,

v. Case No. 19-13226

WILLIS CHAPMAN,

Respondent.
_____/

OPINION AND ORDER DENYING THE PETITION FOR A WRIT OF HABEAS CORPUS AND DENYING CERTIFICATE OF APPEALABILITY

I. INTRODUCTION

Michigan prisoner Shelby Clarmont ("Petitioner") filed this habeas corpus petition under 28 U.S.C. § 2254. (ECF No. 1.) Petitioner was convicted of conspiracy to commit armed robbery, Mich. Comp. Laws § 750.529. He raises a single, sentencing-related claim for habeas corpus relief.

Promptly after the filing of a habeas petition, the court must undertake a preliminary review of the petition to determine whether "it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court." United States Courts, Rules Governing 2254 Cases, Rule 4 (2010); *see also* 28 U.S.C. § 2243. If, after preliminary consideration, the court determines that the petitioner is not entitled to relief, the court may summarily dismiss the petition. United States Courts, Rules Governing 2254 Cases, Rule 4 (2010); 28 U.S.C. § 2243; *Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970) (District courts have a duty to "screen

out" petitions that lack merit on their face.). A dismissal under Rule 4 of the Rules Governing 2254 Cases includes those petitions which raise legally frivolous claims, as well as those containing factual allegations which are palpably incredible or false. *Carson v. Burke*, 178 F.3d 434, 436-37 (6th Cir. 1999). After undertaking this review, the court concludes that the habeas petition lacks merit and will be denied.

II. BACKGROUND

Petitioner was charged in Kent County Circuit Court with armed robbery and conspiracy to commit armed robbery. On June 11, 2018, he pleaded guilty to conspiracy to commit armed robbery, Mich. Comp. Laws § 750.529, in exchange for the dismissal of the armed robbery charge and a fourth habitual offender notice.

On July 10, 2018, Petitioner was sentenced to 108 months to 50 years imprisonment. He filed an application for leave to appeal in the Michigan Court of Appeals arguing that his sentence was based upon incorrectly scored guidelines, violated the principle of proportionality, and conflicted with *People v. Lockridge*, 498 Mich. 358 (Mich. 2015). The Michigan Court of Appeals denied leave to appeal. *People v. Clarmont*, No. 347035 (Mich. Ct. App. Feb. 15, 2019). The Michigan Supreme Court also denied leave to appeal. *People v. Clarmont*, 504 Mich. 903, 903 (2019).

Petitioner then filed this habeas corpus petition. (ECF No. 1.) He raises the same sentencing-related claim raised on direct appeal:

> The trial court erred in imposing a sentence which was based on incorrectly scored guidelines and was a departure from applicable advisory guidelines where the sentence violates the principle of proportionality as set forth by *People v. Milbourn* and is unreasonable in violation of *People v. Lockridge*[,] thereby entitling the defendant-appellant to resentencing within the correctly scored range.

(ECF No. 1, PageID.3, 6-18.)

III. STANDARD

Title 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, imposes the following standard of review for habeas cases:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —
>
> (1) resulted in a decision that 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) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

A decision of a state court is "contrary to" clearly established federal law if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law, or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405-406 (2000). An "unreasonable application" occurs when "a state-court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case." *Id.* at 409. A federal habeas court may not "issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Id.* at 411.

The AEDPA "imposes a highly deferential standard for evaluating state-court rulings, and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (internal quotations omitted). A "state court's

determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quotation omitted). A "readiness to attribute error [to a state court] is inconsistent with the presumption that state courts know and follow the law." *Woodford v. Viscotti*, 537 U.S. 19, 24 (2002).

A state court's factual determinations are presumed correct on federal habeas review. 28 U.S.C. § 2254(e)(1). A habeas petitioner may rebut this presumption of correctness only with clear and convincing evidence. *Id.*

IV. DISCUSSION

Petitioner's habeas petition challenges his sentence of 108 months to 50 years. He argues that the sentence: (i) was based upon incorrectly scored guidelines; (ii) violates the principle of proportionality set forth in *People v. Milbourn,* 435 Mich. 630 (1990); and (iii) is unreasonable in violation of *Lockridge*, 498 Mich. 358.

Petitioner raised these challenges to his sentence in the state court of appeals, which denied leave to appeal "for lack of merit in the grounds presented." *People v. Clarmont*, No. 347035 (Mich. Ct. App. Feb. 15, 2019). The state supreme court then denied leave to appeal. *People v. Clarmont*, 504 Mich. 903, 903 (2019). The state courts' summary denial of Petitioner's claim, despite their brevity, are entitled to deference under section 2254(d). Where a state court denies a claim on the merits, but without explanation, "a habeas court must determine what arguments or theories . . . could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with [Supreme Court precedent]." *Harrington*, 562 U.S. at 102. Therefore,

the relevant question is whether any reasonable argument consistent with established Supreme Court law could support the state court decision summarily rejecting Petitioner's claim.

First, Petitioner argues that he is entitled to resentencing because the sentencing guidelines were scored incorrectly. A claim that the state trial court incorrectly scored, calculated, or applied the state legislative sentencing guidelines is not a cognizable claim for federal habeas review because it is based solely on state law. *Cotton v. Mackie*, No. 17-1059, 2017 WL 3686510, at *2 (6th Cir. May 23, 2017) (citing *Howard v. White*, 76 F. App'x 52, 53 (6th Cir. 2003)); *Paris v. Rivard*, 105 F.Supp.3d 701, 724 (E.D. Mich. 2015). "A federal court may not issue the writ on the basis of a perceived error of state law." *Pulley v. Harris*, 465 U.S. 37, 41 (1984). Therefore, Petitioner's claim that the trial court incorrectly scored state sentencing guidelines is not cognizable on federal habeas review. *Howard*, 76 F. App'x at 53 ("A state court's alleged misinterpretation of state sentencing guidelines and crediting statutes is a matter of state concern only.").

Second, Petitioner claims that his sentence is disproportionate. "[T]he Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (quoting *Solem v. Helm*, 463 U.S. 277, 288 (1983)). Courts reviewing Eighth Amendment proportionality must remain highly deferential to the legislatures in determining the appropriate punishments for crimes. *United States v. Layne*, 324 F.3d 464, 473-74 (6th Cir. 2003) (citing *Harmelin*, 501 U.S. at 999). "In implementing this 'narrow proportionality principle,' the

Sixth Circuit has recognized that 'only an extreme disparity between crime and sentence offends the Eighth Amendment.'" *Cowherd v. Million*, 260 F. App'x 781, 785 (6th Cir. 2008) (quoting *United States v. Marks*, 209 F.3d 577, 583 (6th Cir. 2000)). Where a sentence is within the statutory limits, trial courts are accorded "wide discretion in determining 'the type and extent of punishment for convicted defendants.'" *Austin v. Jackson*, 213 F.3d 298, 300 (6th Cir. 2000) (quoting *Williams v. New York*, 337 U.S. 241, 245 (1949)). The "actual computation of [a defendant's] prison term involves a matter of state law that is not cognizable under 28 U.S.C. § 2254." *Kipen v. Renico*, 65 F. App'x 958, 959 (6th Cir. 2003) (citing *Estelle v. McGuire*, 502 U.S. 62, 68 (1991)).

Petitioner's sentence is within the statutory limits for his crime, up to life in prison. Mich. Comp. Laws § 750.529. There is no reason for this court to question or curb the state's discretion in fashioning a sentence. Petitioner's sentence was not grossly disproportionate or excessive.

Finally, Petitioner argues that the sentencing court violated *Lockridge* by scoring offense variable 14 based upon the judge-found fact that Petitioner was a leader in a multiple-offender situation. In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490. The Court later applied the rule of *Apprendi* to a state sentencing-guidelines scheme, under which the maximum penalty could be increased by judicial fact-finding. *Blakely v. Washington*, 542 U.S. 296, 303 (2004). In *Alleyne v. United States*, 570 U.S. 99 (2013), the Supreme Court extended *Apprendi* to mandatory minimum sentences,

ruling that any fact that increases a mandatory minimum sentence is an "element" of the offense that must be submitted to the jury and proven beyond a reasonable doubt. *Alleyne*, 570 U.S. at 111-12.

In *People v. Lockridge*, 870 N.W.2d 502 (2015), the Michigan Supreme Court held that, under *Alleyne*, Michigan's mandatory sentencing guidelines violated the Sixth Amendment because the guidelines "require judicial fact-finding beyond facts admitted by the defendant or found by the jury to score offense variables that mandatorily increase the floor of the guidelines minimum sentence range." *Lockridge*, 870 N.W.2d at 506. The court's remedy was to make the guidelines advisory only. *Id.* at 520-21. *See also Robinson v. Woods*, 901 F.3d 710, 716-17 (6th Cir. 2018) (holding that *Alleyne* clearly established that Michigan's pre-*Lockridge* mandatory minimum sentencing guidelines scheme violated the Sixth Amendment).

Petitioner was sentenced well after *Lockridge* was decided. As a result, Michigan's sentencing guidelines were advisory only. Purely advisory applications of the sentencing guidelines do not violate the Sixth Amendment. *United States v. Booker*, 543 U.S. 220, 233 (2005) ("If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment."); *see also United States v. Cook*, 453 F.3d 775, 777 (6th Cir. 2006) (holding that defendant's sentence based on facts other than those found by the jury or admitted by defendant did not violate the Sixth Amendment because he was sentenced under advisory, rather than mandatory, sentencing guidelines). Petitioner

was sentenced when the sentencing guidelines were advisory only and no Sixth Amendment violation occurred.

For these reasons, Petitioner has failed to show that the state appellate court's determinations regarding the constitutionality of his sentence are contrary to, or an unreasonable application of, clearly established federal law.

V. CERTIFICATE OF APPEALABILITY

Before Petitioner may appeal the court's decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability 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 petitioner must show "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, 484 (2000) (citation omitted). In this case, reasonable jurists would not debate the conclusion that the petition fails to state a claim upon which habeas corpus relief should be granted. Therefore, the court will deny a certificate of appealability.

VI. CONCLUSION

Petitioner does not present claims upon which relief can be granted. For the reasons set forth above, the court will decline to issue a writ of habeas corpus or a certificate of appealability. Accordingly,

IT IS ORDERED that the petition for a writ of habeas corpus and a certificate of appealability are DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 6, 2019

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 6, 2019, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(810) 292-6522

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHELBY CLARMONT, #299801,

Petitioner,

v. Case No. 19-13226

WILLIS CHAPMAN,

Respondent.
_____/

JUDGMENT

IT IS ORDERED AND ADJUDGED that pursuant to this court's Opinion and Order dated December 6, 2019, this cause of action is DISMISSED.

Dated at Detroit, Michigan this 6th day of December, 2019.

DAVID J. WEAVER
CLERK OF THE COURT

BY: S/Lisa Wagner
Lisa Wagner, Case Manager and
Deputy Clerk to
Judge Robert H. Cleland
(810) 292-6522

APPENDIX C1

Order of the Michigan Supreme Court

(July 2, 2019, #159363)

People v. Clarmont, 2019 Mich. LEXIS 1163

Supreme Court of Michigan

July 2, 2019, Decided

SC: 159363

Reporter

2019 Mich. LEXIS 1163 * | 504 Mich. 903 | 929 N.W.2d 356 | 2019 WL 2870938

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v SHELBYJEAN SENA CLARMONT, Defendant-Appellant.

Subsequent History: Writ of habeas corpus denied, Certificate of appealability denied Clarmont v. Chapman, 2019 U.S. Dist. LEXIS 211079 (E.D. Mich., Dec. 6, 2019)

Prior History: **[*1]** COA: 347035. Kent CC: 18-001315-FC.

Judges: Bridget M. McCormack, Chief Justice. David F. Viviano, Chief Justice Pro Tem. Stephen J. Markman, Brian K. Zahra, Richard H. Bernstein, Elizabeth T. Clement, Megan K. Cavanagh, Justices.

Opinion

Order

On order of the Court, the application for leave to appeal the February 15, 2019 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

No. 20-_____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: SHELBY CLARMONT,
Petitioner,

V

WILLIS CHAPMAN, Warden
Respondent.

NOTARIZED STATEMENT OF DEPOSITING

Shelby Clarmont, first duly sworn, states he is an inmate confined at the Macomb Correctional Facility, at 34625 26 Mile Road, Lenox Township, Michigan 48048, and on this 15 day of September 2020, he turned over to the Michigan Department of Corrections Officials to deposit an Original; **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS w/AFFIDAVIT IN SUPPORT; PETITION FOR WRIT OF CERTIORARI w/APPENDIX; PROOF OF SERVICE,** to file with the Clerk of Court, United States Supreme Court, **Notarized Statement Of Depositing**; in the Macomb Correctional Facility Internal Mail System with first class postage fully prepaid.

Subscribed and sworn to before me

This 15 day of September 2020

Norbert Fronczak

Notary Public

NORBERT J. FRONCZAK
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Sep 9, 2021
ACTING IN COUNTY OF Macomb

Shelby Clarmont

Shelby Clarmont, #299801
Pro Se