IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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| MICHAEL ALLEN BULLOCK,<br><br>Plaintiff,<br><br>v.<br><br>ERIK A. HOOKS, Secretary, North Carolina Department of Public Safety,<br><br>Defendant. | ) | 1:19-CV-1092 |

**JUDGMENT**

For the reasons set forth in the Order filed contemporaneously with this Judgment,

It is hereby **ORDERED AND ADJUDGED** that the defendant's motion for summary judgment, Doc. 4, is **GRANTED** and this case is **DISMISSED** with prejudice.

This the 24th day of January, 2020.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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|---|---|---|
| MICHAEL ALLEN BULLOCK,<br><br>Plaintiff,<br><br>v.<br><br>ERIK A. HOOKS, Secretary, North Carolina Department of Public Safety,<br><br>Defendant. | ) | 1:19-CV-1092 |

**ORDER**

Petitioner Michael Bullock, a prisoner of the State of North Carolina, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 alleging ineffective assistance of counsel and sentencing errors arising out of his state court convictions. Because Mr. Bullock has offered no evidence to support his claims, respondent's motion for summary judgment will be granted, and Mr. Bullock's petition is denied.

**Background**

Mr. Bullock pled guilty to and was convicted of charges of habitual impaired driving and aggravated impaired driving, along with a number of misdemeanors, in Stokes County Superior Court on April 23, 2019. Docs. 5-2, 5-3. At his plea hearing, Mr. Bullock confirmed that he understood the nature of the proceeding, the charges to which he was pleading guilty, and the rights he was relinquishing by pleading guilty. Doc. 5-2. He admitted to the existence of aggravating factors and sentencing points that affected his prior record level, and he acknowledged that by pleading guilty he was giving up his right to have a jury determine these. *Id.* He further acknowledged that

there would be two judgments for his offenses and that his second sentence "shall run at the expiration" of the first. *Id.* at 4. Finally, he affirmed that no one had made any promises or threats to induce his plea. *Id.* The Superior Court accepted his guilty plea and sentenced Mr. Bullock to 28 to 43 months for habitual impaired driving, and 12 months for aggravated impaired driving, to run consecutively. Doc. 5-3 at 2, 4. Mr. Bullock did not appeal.

On July 23, 2019, Mr. Bullock filed a pro se motion for appropriate relief in state Superior Court. Doc. 1 at 16–20. In his MAR, Mr. Bullock asserted that he did not agree to plead to consecutive sentences for his convictions, that he was sentenced at the wrong prior record level, and that he did not receive enough credit for time served before his conviction. *Id.* The Superior Court summarily denied his motion. *Id.* at 23–24. The court found that the plea transcript specifically contemplated two judgments and indicated that the sentences would run consecutively, *id.* at 24, and that Mr. Bullock was properly sentenced as a record level 5 with 14 record level points. *Id.* Mr. Bullock filed a petition for a writ of certiorari in the North Carolina Court of Appeals, Doc. 5-4 at 2–4, which was dismissed for failure to attach supporting documents. Doc. 5-5.

On October 28, 2019, Mr. Bullock filed the pending writ for habeas corpus under 28 U.S.C. § 2254. Doc. 1. He contends that his attorney told him "he could beat the DWI charge at the expiration of [his] first sentence," that his prior record level points were not what he was told they would be, and that he "felt pressured to enter the plea." *Id.* at 5. He also contends that his prior record level was miscalculated and that, as a

result, he was sentenced in the incorrect range. *Id.* at 7, 18. The respondent filed an answer, Doc. 3, and moved for summary judgment. Doc. 4.

## Analysis

### A. Legal Standard

Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–49 (1986). At summary judgment, the Court views the facts and draws all reasonable inferences in the light most favorable to the non-moving party. *See id.* at 255; *see also Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994). Summary judgment applies to habeas proceedings. *See Brandt v. Gooding*, 636 F.3d 124, 132 (4th Cir. 2011).

### B. Ineffective Assistance of Counsel

Mr. Bullock first claims he received ineffective of counsel.[1] Specifically, he contends that his lawyer was ineffective in telling him he could beat his DWI charge, misrepresenting his prior record points, and pressuring him to plead guilty. Doc. 1 at 5.

To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient and that but for counsel's deficient performance,

[1] Mr. Bullock's petition labels his first claim as a due process and equal protection violation, Doc. 1 at 5, but the supporting facts he includes relate to his attorney's representation. *Id.* His reply brief addresses this claim as an ineffective assistance of counsel claim, Doc. 7, and it is not otherwise clear how the facts alleged would support a due process or equal protection claim. *See Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) (noting that courts are not required to "construct full blown claims from sentence fragments"). The Court construes Mr. Bullock's first claim as an ineffective assistance of counsel claim.

there was a reasonable probability of a different result. *See Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). Courts "must be highly deferential" in evaluating counsel's performance and apply "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" and that counsel "made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 689–90. To overcome that presumption and establish deficient performance, a petitioner "must show that counsel failed to act reasonably considering all the circumstances." *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011).[2] The question for a federal habeas court "is not whether counsel's actions were reasonable" but "whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Mr. Bullock's ineffective assistance of counsel claims are not supported by the record. He claims that his attorney told him "that he could beat the DWI charge at the expiration of [his] first sentence," that "the prior record points were not what [he] was told they would be," and that he "felt pressured to enter the plea." Doc. 1 at 5. These assertions are belied by the plea transcript Mr. Bullock signed under penalty of perjury. He agreed explicitly that "[t]here shall be two judgments": one for the habitual impaired driving conviction and one for the aggravated impaired driving offense, which "shall run at the expiration" of the habitual impaired driving sentence. Doc. 5-2 at 4. The plea agreement was silent as to his prior record points, *id.*, and he affirmed that no one had

[2] The Court omits internal citations, alterations, and quotation marks throughout this opinion, unless otherwise noted. *See United States v. Marshall*, 872 F.3d 213, 217 n.6 (4th Cir. 2017).

made any promises or threats to induce his plea. *Id.* These "[s]olemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977). His conclusory contentions now that he received "deficient advice" from and felt pressured by his attorney are not enough to rebut his previous testimony made under oath or to satisfy the highly deferential standard imposed by *Strickland* and § 2254(d). *Harrington,* 562 U.S. at 105 ("The standards created by *Strickland* and § 2254(d) are both highly deferential, and when the two apply in tandem, review is doubly so."). The respondent's motion for summary judgment on petitioner's ineffective assistance of counsel claim will be granted.

**C. Prior Record Level**

Mr. Bullock also challenges his prior record level calculation, used in determining the presumptive sentence for Mr. Bullock's felony conviction. Mr. Bullock raised this issue in his MAR, Doc. 1 at 18, and the Superior Court, after reviewing the record, denied his motion. *Id.* at 24.

First, "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Estelle v. McGuire,* 502 U.S. 62, 67–68 (1991). Whether his prior record level was properly calculated under North Carolina law is an issue of state law, and to the extent he contends the state court got it wrong, this claim is not cognizable on federal habeas review. *See* 28 U.S.C. § 2254(a); *McGuire,* 502 U.S. at 67–68; *Weeks v. Angelone,* 176 F.3d 249, 262 (4th Cir. 1999); *Helms v. Mitchell,* No. 1:09CV261–1–MU,

2009 WL 2168893, at *1 (W.D.N.C. July 20, 2009); *Kelly v. North Carolina*, No. 5:06–HC–2208–D, 2008 WL 244174, at *7 (E.D.N.C. Jan. 29, 2008).

Second, the Superior Court resolved this claim on the merits in ruling on Mr. Bullock's MAR, and he has made no showing that the state court adjudication was "contrary to, or involved an unreasonable application of, clearly established Federal law," nor that it "resulted in a decision that [is] based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *See* 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. 362, 405–406 (2000).[3] Mr. Bullock's conclusory assertion that his record level was calculated incorrectly, without any evidence or arguments to support it, is insufficient to establish a violation of federal law.

It is **ORDERED** that the respondent's motion for summary judgment, Doc. 4, is **GRANTED** and the petition is **DISMISSED**. The Court finds no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, and a certificate of appealability is **DENIED**.

This the 24th day of January, 2020.

UNITED STATES DISTRICT JUDGE

[3] According to the worksheet, it appears Mr. Bullock had 13 countable misdemeanor convictions and two countable felony convictions. Doc. 1 at 21–22.

FILED: June 23, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 20-6182
(1:19-cv-01092-CCE-LPA)

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MICHAEL ALLEN BULLOCK

Petitioner - Appellant

v.

ERIK A. HOOKS

Respondent - Appellee

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J U D G M E N T

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In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 20-6182**

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MICHAEL ALLEN BULLOCK,

Petitioner - Appellant,

v.

ERIK A. HOOKS,

Respondent - Appellee.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, District Judge. (1:19-cv-01092-CCE-LPA)

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Submitted: June 18, 2020 Decided: June 23, 2020

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Before FLOYD, THACKER, and RUSHING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Michael Allen Bullock, Appellant Pro Se.

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PER CURIAM:

Michael Allen Bullock seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2018) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A) (2018). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2018). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Bullock has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, deny Bullock's motions for appointment of counsel and transcripts, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*

# STATE OF NORTH CAROLINA

File No. 18CRS 050704

STOKES County

In The General Court Of Justice
☒ District ☐ Superior Court Division

**STATE VERSUS**

*Name And Address Of Defendant*
MICHAEL ALLEN BULLOCK
2506 AMOSTOWN ROAD
ST CH RD
SANDY RIDGE NC 27046

| *Social Security No.* | *SID No.* | *Race* | *Sex* | *DOB* |
|---|---|---|---|---|
| ***-**-6247 | NC0533840A | W | M | 06/23/1963 |

## WORKSHEET PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING
**(STRUCTURED SENTENCING)**

**(For Offenses Committed On Or After Dec. 1, 2009)**

G.S. 15A-1340.14, 15A-1340.21

## I. SCORING PRIOR RECORD/FELONY SENTENCING

| NUMBER | TYPE | FACTORS | POINTS |
|---|---|---|---|
| | Prior Felony Class A Conviction | X10 | |
| | Prior Felony Class B1 Conviction | X 9 | |
| | Prior Felony Class B2 or C or D Conviction | X 6 | |
| 2 | Prior Felony Class E or F or G Conviction | X 4 | |
| | Prior Felony Class H or I Conviction | X 2 | |
| 13 | Prior Class A1 or 1 Misdemeanor Conviction *(see note on reverse)* | X 1 | 12 |
| | | SUBTOTAL | 12 |

*Defendant's Current Charge(s):*
HABITUAL DWI

| | | |
|---|---|---|
| If all the elements of the present offense are included in any prior offense whether or not the prior offenses were used in determining prior record level. | + 1 | 1 |
| If the offense was committed while the offender was: ☒ on probation, parole, or post-release supervision; ☐ serving a sentence of imprisonment; or ☐ on escape from a correctional institution. **NOTE:** *If part of a plea transcript, use form AOC-CR-300 ("Transcript Of Plea"), Nos. 16 and 17.* | + 1 | 1 |
| *County* / *File No.* / *State (if other than NC)* | TOTAL | 14 |

## II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

### MISDEMEANOR

**NOTE:** *If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.*

| No. Of Prior Convictions | Level |
|---|---|
| 0 | I |
| 1 - 4 | II |
| 5 + | III |

PRIOR CONVICTION LEVEL: III

☒ The Court has determined the number of prior convictions to be 21 and the level to be as shown above.

☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.

### FELONY

**NOTE:** *If sentencing for a felony, locate the prior record level which corresponds to the total points determined in Section I above.*

| Points | Level |
|---|---|
| 0 - 1 | I |
| 2 - 5 | II |
| 6 - 9 | III |
| 10 - 13 | IV |
| 14 - 17 | V |
| 18 + | VI |

PRIOR RECORD LEVEL: V

☐ The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.

☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.

☐ In finding a prior record level point under G.S. 15A-1340.14(b)(7), the Court has relied on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

☐ The Court finds that all of the elements of the present offense are included in a prior offense.

☐ For each out-of-state conviction listed in Section V on the reverse, the Court finds by a preponderance of the evidence that the offense is substantially similar to a North Carolina offense and that the North Carolina classification assigned to this offense in Section V is correct.

☒ The Court finds that the State and the defendant have stipulated in open court to the prior convictions, points, and record level.

| *Date* | *Name Of Presiding Judge (type or print)* | *Signature Of Presiding Judge* |
|---|---|---|
| 4-23-19 | Angela Puckett | |

Petitoner contends that the points issue within my conviction show that I am a prior record level IV with 13 points and that level IV should have been my sentencing points. The worksheet plainly shows that prior convictions in case file NO(s) 12CRS 830, are Habitual sentences and can't be used for sentencing purpose, as well as case file NO(s) 17CR50710, and 00CRS1709 as DWI's can't be used for enhancement and sentencing purposes, therefore, the remaining points of DWLR in case fileNO(s) 07CR702222, and 89CR140 can't be used either because DWLR, is now a class II misdemeanor. Therefore, the worksheet lists 11 points on the back page and 1 point for while being on probation, and one point for the same conviction totalling 13 points as a prior record level IV, therefore, petioner should be re-sentenced as a prior record level IV with 13 points.

Michael A Bullock

Michael A. Bullock

FILED: August 11, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 20-6182
(1:19-cv-01092-CCE-LPA)

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MICHAEL ALLEN BULLOCK

Petitioner - Appellant

v.

ERIK A. HOOKS

Respondent - Appellee

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ORDER

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Floyd, Judge Thacker, and Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk