[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12488-P

RONALD KNIGHT,

Petitioner - Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondent - Appellee.

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

ORDER:

Ronald Knight, a prisoner sentenced to death in Florida, applies for a certificate of appealability with respect to eight claims—six submitted with counsel, two submitted *pro se*—arising out of the denial of his petition for a writ of habeas corpus.

I may issue a COA only if Knight has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Expanding on this requirement, the Supreme Court has stated that a judge should issue a COA if the

petitioner demonstrates that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Although this standard "does not require a showing that the appeal will succeed," the "issuance of a COA must not be *pro forma* or a matter of course." *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). Rather, the habeas petitioner bears the burden of proving that he has met the statutory standard. As the Supreme Court summarized in *Slack*, the basic question is whether the petitioner's claims "deserve encouragement to proceed further." 529 U.S. at 475 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

I conclude that that reasonable jurists would agree with all but one of the district court's decisions here. Specifically, reasonable jurists may disagree over the district court's decision rejecting Knight's claim that his penalty-phase counsel rendered ineffective assistance. Accordingly, with respect to this claim, Knight's application for a COA is GRANTED. In all other respects, Knight's counselled and *pro se* applications are DENIED.

I

It bears emphasizing at the outset the layers of deference that guide and bind my review. First, the Florida Supreme Court affords the usual deference to the assessments of the initial trier of fact. *See, e.g.*, *Stephens v. State*, 748 So. 2d 1028, 1034 (Fla. 1999) ("We recognize and honor the trial court's superior vantage point

in assessing the credibility of witnesses and in making findings of fact."). Second, under the Antiterrorism and Effective Death Penalty Act of 1996, the district court here could grant habeas relief only if (1) the Florida state courts' denial of relief 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." 28 U.S.C. § 2254(d). In practice, that means that the Florida Supreme Court's determination that Knight's claims fail "precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the [Florida Supreme Court's] decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quotation marks omitted); *see also Rutherford v. Crosby*, 385 F.3d 1300, 1306–07 (11th Cir. 2004) (noting that the AEDPA "imposes a highly deferential standard for evaluating state-court rulings . . . which demands that state-court decisions be given the benefit of the doubt") (quotation marks and citations omitted); *Consalvo v. Sec'y, D.O.C.*, 664 F.3d 842, 845 (11th Cir. 2011) ("[T]he AEDPA affords a presumption of correctness to a factual determination made by a state court."). Finally, my COA analysis is limited to an "overview of the claims in the habeas petition and a general assessment of their merits." *Miller-El*, 537 U.S. at 336. Indeed, the Supreme Court has chastised just the "detailed evaluation

of the merits" that Knight's applications often invite me to undertake. *Jordan v. Fisher*, 135 S. Ct. 2647, 2652 (2015).

My review thus sits atop several layers of deference, such that the question presented here may be fairly (if still lengthily) summarized as follows: "Would a reasonable jurist debate the district court's conclusion that the Florida courts' denial of relief was neither contrary to clearly established federal law, nor an unreasonable application of clearly established federal law, nor unreasonable in light of the evidence presented?"

I

I begin with Knight's counselled application before turning to the additional claims that Knight submits *pro se*.

A

Knight first challenges the district court's rejection of his assertion that penalty-phase counsel rendered ineffective assistance. Specifically, Knight maintains that penalty-phase counsel failed to identify and offer mitigating evidence relating to his childhood trauma, emotional abuse, substance abuse, and psychiatric problems.

Strickland requires a petitioner to prove not only that penalty-phase counsel's efforts "fell below an objective standard of reasonableness" "under prevailing professional norms," *Strickland v. Washington*, 466 U.S. 668, 688

(1984), but also that there would have been a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Taking a step back, "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (quoting *Strickland*, 466 U.S. at 686).

After a "general assessment" of the merits of the Knight's claim, *Miller-El*, 537 U.S. at 336, I note first that "[t]he fact that [Knight] has now secured the testimony of more favorable mental health experts simply does not establish that the original evaluations were insufficient." *Carroll v. State*, 815 So. 2d 601, 618 (Fla. 2002). Second, the Florida Supreme Court did not unreasonably apply federal law in concluding that Knight's penalty-phase counsel did not render ineffective assistance by failing to call a witness—Timothy Pearson—who had indicated that he would refuse to testify. *See Knight v. State*, 211 So. 3d 1, 10 (Fla. 2016). Finally, the Florida Supreme Court's refusal to credit the testimony of an employee at Knight's juvenile facility because that employee struggled to recognize or recall Knight would not elicit the unanimous disapproval of fairminded jurists, either. *Richter*, 562 U.S. at 101.

All that said, each of these considerations has a colorable— "reasonable"—counterpoint. Knight's expert testimony during the postconviction evidentiary proceeding weighed additional information indicating that Knight had a more substantial history of substance abuse than previously demonstrated. Accordingly, Knight presented not just new voices but also new considerations. Second, a reasonable jurist could conclude that Pearson might have been more willing to testify about factors that would go to mitigation than he was about matters that implicated Knight's guilt. Finally, the Florida Supreme Court's treatment of the testimony of Knight's sister—seemingly suggesting that contradictions between her statements during the penalty and postconviction proceedings might bear on her credibility—may have assigned failings to a witness that were more properly attributed to the investigation and preparation undertaken by Knight's penalty-phase counsel. In any event, as I have noted, likelihood of success is not the standard here. Bearing in mind that the Florida Supreme Court did not reach the question of prejudice, and the debatable questions underlying its determination that penalty-phase counsel's performance was not deficient, I conclude that this claim "deserve[s] encourage to proceed further."

B

Knight's second claim argues that his waiver of penalty-phase counsel was not knowing, intelligent, and voluntary—as required by *Faretta v. California*, 422

U.S. 806 (1975)—and that, even if it satisfied *Faretta* in October 1997 and January 1998, he was not bound to that same waiver at the start of his trial the ensuing March.

As the Court in *Faretta* explained, because "[w]hen an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel," "in order to represent himself, the accused must knowingly and intelligently forgo those relinquished benefits." *Id.* at 835 (internal quotation marks omitted). Knight first contends that his decision to represent himself was neither "knowing" nor "intelligent," and points to the trial court's failure to consult mental health experts as proof that it did not adequately consider his cognitive fitness. But the *Faretta* inquiry is not so rigid. *See, e.g.*, *Iowa v. Tovar*, 541 U.S. 77, 88 (2004) (refusing to "prescribe[] any formula or script to be read to a defendant who states that he elects to proceed without counsel," and describing the case-specific nature of the inquiry into whether a defendant possesses adequate information). And in any case, the court here *did* consider Knight's mental health, repeatedly. *See, e.g.*, Trial Court Transcript, October 31, 1997 at 20 (finding Knight "certainly . . . an intelligent person; he understands what he is doing here"); *id.* January 8, 1998 at 143 (finding Knight a "fairly intelligent, bright young man").

Knight's backup argument—that his decision to waive counsel in October and January was not binding because the trial did not begin until March—also failed to persuade the district court, and I do not believe a reasonable jurist would find its conclusion debatable or wrong. Under *Tovar*, "an accused who faces incarceration [is entitled to] the right to counsel at all critical stages of the criminal process." 541 U.S. at 80–81. But as the Florida Supreme Court observed on direct appeal, the start of a trial is not—at least for Sixth Amendment purposes—a separate "critical stage" from the overall "trial portion" of Knight's case. *Knight v. State*, 770 So. 2d 663, 669 (Fla. 2000). Moreover, the "core" of the *Faretta* inquiry is "whether the defendant understood the choices before him," *Jones v. Walker*, 540 F.3d 1277, 1293 (11th Cir. 2008), and the trial court did assess again in March whether Knight understood and was satisfied with his prior decision. Knight's response was clear:

> THE COURT: Do you understand what you are doing by representing yourself?
>
> THE DEFENDANT: Yeah.
>
> THE COURT: Was it your desire to finish representing yourself here today?
>
> THE DEFENDANT: Yes.

No reasonable jurist would conclude that the denial of this claim was contrary to or an unreasonable application of Federal law.

C

In his third claim, Knight argues that he is entitled to a COA because his decisions to waive counsel at the guilt phrase of his trial, and to waive his right to a jury during the guilt and penalty phases, were both made without the requisite knowledge, intelligence, or volition.

Knight maintains that he "misunderstood several facets" of the trial process, "did not realize" certain procedural arguments were available to him, "did not realize" that the jury had to render a unanimous decision to convict, "did not know" the jury could recommend a life sentence, and "did not know" that he could waive the jury at the guilt phase of his trial but retain it for the penalty phase. Knight also cites Dr. Strauss' testimony at the postconviction evidentiary hearing to the effect that Knight's choice to waive counsel was behavior consistent with what Strauss believed to be Knight's mental illnesses.

The Florida Supreme Court rejected this claim on procedural grounds. With regard to Knight's waiver of counsel at the guilt phase, the court noted that this claim had already been raised and rejected on direct appeal. 211 So. 3d at 17. With regard to Knight's decision to waive his right to a jury, the court held that this claim was procedurally barred because under Florida law petitioners may not raise claims on collateral review that could have been raised on direct appeal. *Id.*; *see also Miller v. State*, 926 So. 2d 1243, 1260 (Fla. 2006) (collecting cases).

"As a rule, a state prisoner's habeas claims may not be entertained by a federal court when . . . the state judgment rests on independent and adequate state procedural grounds." *Maples v. Thomas*, 565 U.S. 266, 280 (2012) (internal quotation marks omitted); *see also Coleman v. Thompson*, 501 U.S. 722, 729 (1991) (specifying that to deprive the federal court of jurisdiction the state court judgment must rest on grounds "independent *of the federal question* and adequate *to support the judgment*") (emphases added). Federal courts lack jurisdiction in such circumstances because if the "state law determination . . . is sufficient to support the judgment," then "resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory." *Id.*

I conclude that reasonable jurists would agree that the Florida Supreme Court's decision here was independent and adequate. In *Card v. Dugger*, 911 F.2d 1494, 1516 (11th Cir. 1990), this Court identified "certain conditions" that must be met for a state court finding of a procedural bar to be sufficiently "independent and adequate" to deprive a federal habeas court of jurisdiction. First, "the last state court rendering a judgment in the case must fulfill the 'plain statement rule' of *Michigan v. Long*, and clearly and expressly state that it is relying on waiver as a ground for rejecting the petitioner's claim." *Id.* (internal citations and quotations omitted). No problems here: the Florida Supreme Court expressly relied on Florida's waiver law. *See* 211 So. 3d at 17 (citing *Muhammad v. State*, 603 So. 2d

488, 489 (Fla. 1992)); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983) ("[W]e . . . assume that there are no such [independent state law] grounds when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground."). Second, "the procedural rule relied on by the state court must serve as an independent state law ground for denying relief, and may not be intertwined with an interpretation of federal law." 911 F.2d at 1516. All clear here as well. The Florida Supreme Court made no reference to federal habeas procedures, and this Circuit has previously recognized that this procedural rule is independent of federal law. *See Spencer v. Sec'y, Dep't of Corr.*, 609 F.3d 1170, 1179 (11th Cir. 2010) ("There is no doubt that, under Florida law, a claim is procedurally barred from being raised on collateral review if it could have been, but was not raised on direct appeal.") Third, in order to be sufficiently "adequate" the state court must not apply the procedural bar "in an arbitrary or unprecedented fashion." *Card*, 911 F.2d at 1516. As the district court concluded, there was nothing arbitrary or unprecedented about the procedural bars applied to Knight's waiver of his rights to counsel or jury. There is no need for string citations here either. As for waiver of counsel, "[i]ssues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack." *Smith v. State*, 445 So. 2d 323, 325 (Fla. 1983); *see also id.* (collecting cases). And as for the jury waivers, the Florida Supreme Court has "consistently

held that a claim that could and should have been raised on direct appeal is procedurally barred." *Miller*, 926 So. 2d at 1260 (citations omitted).

Finally, I note that "[n]otwithstanding a state's valid application of procedural bar, a federal court may nevertheless entertain a petitioner's claim if the petitioner shows cause for noncompliance with the state's procedural rule and prejudice resulting therefrom." *Card*, 911 F.2d at 1517 (citations omitted). Florida's procedural bar on the relitigation of claims already raised on direct appeal is a poor match for this exception—it is difficult to imagine a cause for Knight's noncompliance other than wanting to overturn the prior decision. But that's strategy, not the error or ineffective assistance sometimes saved by the cause-and-prejudice exception. Second, Knight's describes his choice to forego a jury as the result of what he describes as "misunderst[anding]" the process and certain procedural rules. Yet even if misunderstanding could constitute adequate cause, and Knight could prove that he was prejudiced as a result, Knight's own arguments belie such unsophistication. Just after Knight pleads his unfamiliarity, he cites other, strategic considerations underpinning his thinking at the time, such as his concern that the jury in a previous trial had rendered a hasty decision and that jurors could be exposed to negative publicity about this case.

Adequate and independent state grounds therefore supported the Florida Supreme Court's application of a procedural bar to Knight's claim. The district

court therefore correctly refused the claim, and I find that no reasonable jurist would disagree.

D

Fourth, Knight asserts that the state failed to disclose exculpatory evidence, and that he received ineffective counsel at his guilt and postconviction proceedings because his attorneys did not pursue this *Brady* claim. *Brady v. Maryland*, 373 U.S. 83 (1963).

Starting with post-conviction counsel, as Knight recognizes, Florida law did not bar him from raising the ineffective-for-failure-to-pursue-*Brady* claim on direct appeal. Thus, this claim fails under *Davila v. Davis*, 137 S. Ct. 2058, 2066 (2017), which holds that attorney error in a postconviction proceeding may excuse a procedural default for failure to raise a claim on direct appeal *only* where state law required the prisoner to raise his claim of ineffective assistance of trial counsel in the initial-review collateral proceeding. Florida law does not so require, and thus this claim is procedurally barred under *Coleman v. Thompson*, 501 U.S. 722, 752–753 (1991), which held that, because there is no constitutional right to an attorney in state post-conviction proceedings, attorney error committed during these proceedings does not supply a petitioner cause to excuse procedural defaults resulting from the error.

Turning to Knight's claim against his counsel during the guilt phase, here the Florida Supreme Court found that even if it agreed that counsel had erred in failing to pursue Knight's *Brady* allegation, Knight still failed to prove prejudice because he had not "demonstrated that any of the documents in question would have had any additional impeachment value" against Dain Brennalt, a co-defendant. 211 So. 3d at 14. Knight was able to impeach Brennalt at trial, and I cannot say that the Florida Supreme Court was unreasonable in concluding that Knight failed to demonstrate how this additional evidence would have further impeached Brennalt. Knight gestures to the possibility that the evidence could have transformed his theory of the case, but I do not see how the ability to further discredit an already discredited witness could satisfy *Strickland*. Likewise for Knight's assertions concerning an allegedly undisclosed investigator report. Knight has done little to indicate why a jurist of reason would find that this report "would have made a difference" to the outcome of his trial aside from making the conclusory assertion—especially given that the report describes the location of the murder, whereas Knight's theory of the case was that someone else committed it. *See* Petitioner's Brief at 43. Again, I conclude that no reasonable jurist would conclude that the Florida Supreme Court's decision was contrary to or an unreasonable application of federal law.

E

In his fifth claim, Knight argues that his penalty-phase counsel was ineffective for failing to adequately investigate or challenge evidence relating to Knight's prior violent felony conviction. Knight maintains that he was harmed because the court cited this conviction as an aggravating factor at sentencing.

Knight focuses on conflicting statements offered by Wendy Whiteside. Whiteside initially indicated that she was with Knight during the night that the violent felony occurred. This narrative would have provided Knight with an alibi had her account not subsequently reversed, and then later, reverted to a variant of the original story. Whiteside was scheduled to testify in Knight's trial for this felony, but she ultimately chose not to.

As an initial matter, I do not agree that collateral counsel's failure to raise this issue "falls within the realm" of *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). Br. for Petitioner at 49. *Davis* once again indicates that the exception to the rule in *Coleman* articulated in *Martinez* does not apply to Knight's claim because Knight has not pointed to any Florida law that "explicitly or effectively foreclose[d] review of the claim on direct appeal." *Davis*, 137 S. Ct. at 2066 (citation omitted).

In any case, penalty-phase counsel's failure to use Whiteside's account to attack Knight's prior violent felony conviction did not render the assistance that Knight received ineffective.

Whiteside changed her story—twice. Any mitigating influence the first version may have had is belied by her utter lack of credibility. Moreover, the detective who testified at the penalty phase of Knight's trial to prove this prior conviction never even referred to Whiteside's claims. A lawyer who concluded that mentioning Whiteside's inconsistent account would do little to mitigate Knight's guilt for the prior violent felony would not commit serious error. And even if a reasonable jurist could disagree with that conclusion, *Strickland*'s second prong requiring prejudice remains unmet. "Knight was with me that night," plus "Knight wasn't with me that night," plus "but maybe Knight was with me that night" does not equal an alibi, it equals a non-credible witness. Had the government relied on Whiteside's (second) account to prove Knight's conviction, he may have had some argument here. But it didn't. Even setting aside the procedural-default question, a reasonable jurist would deny this claim on the merits.

F

In his final counselled claim, Knight cites the case of James Card, *see Card v. Jones*, 219 So. 3d 47 (Fla. 2017), as evidence that Florida Statute 921.141 has been applied retroactively to benefit some individuals, but not him. Knight argues that Florida has therefore violated his rights to equal protection and due process under the Fourteenth Amendment.

Statute 921.141 amended Florida's capital sentencing scheme in response to the U.S. Supreme Court's decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016), finding its predecessor unconstitutional. The Florida Supreme Court has construed *Hurst* as requiring that 921.141 apply only to individuals sentenced after the Court's decision in *Ring v. Arizona*, 536 U.S. 584, 600 (2002). *See Mosley v. State*, 209 So. 3d 1248, 1283 (Fla. 2016). Because James Card's case followed this approach to the letter—Card enjoyed the retroactive application of 921.141 because his sentence became final four days after the *Ring* decision—I understand Knight to be challenging the temporal limitations that the Florida Supreme Court placed on the retroactive effect of 921.141.

That challenge fails on two grounds. First, as a preliminary matter, Knight's decision to waive his right to a jury at the penalty phase of his trial places him outside the scope of Florida's revised sentencing statute. *See* Fla. Stat. 921.141(1) ("[T]he sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant"); *id.* at (2) ("Findings and Recommended Sentence by the Jury.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.").

Second, binding precedent in this Circuit makes clear that Florida's approach to retroactivity here is permissible. *See Lambrix v. Secretary, DOC*, 872 F.3d 1170, 1183 (11th Cir. 2017) (noting that "no U.S. Supreme Court decision

holds that the failure of a state legislature to make revisions in a capital sentencing statute retroactively applicable to all of those who have been sentenced to death before the effective date of the new statute violates the Equal Protection Clause, the Due Process Clause, or the Eighth Amendment"). I acknowledge that one of my colleagues has found Florida's use of *Ring* to draw the dividing line "arbitrary in the extreme," *see Hannon v. Sec'y, Fla. Dep't of Corr.*, 716 F. App'x 843, 846 (11th Cir. 2017) (Martin, J., concurring), but *Lambrix* remains the law—"Florida obviously had to draw the line at some point." *Dobbert v. Fla.*, 432 U.S. 282, 301 (1977). A jurist of reason could not disagree.

II

Finally, I consider two additional claims that Knight submits *pro se*. Because Knight has made both of these arguments before the Florida Supreme Court, *see* 770 So. 2d at 665–669; 211 So. 3d at 11–12, I continue to review these claims from the deferential perspective mandated by AEDPA. Knight first argues that he received ineffective assistance of counsel because his guilt-phase attorney failed to adequately investigate double jeopardy and related issues arising from the *nolle prosequi* of his 1994 charge for the same murder. Second, Knight alleges structural error due to an inadequate *Nelson* hearing.[1] The second claim follows

[1] *Nelson v. State*, 274 So. 2d 256, 258–59 (Fla. Dist. Ct. App. 1973), instructs trial judges to hold a pre-trial hearing on any motion to discharge counsel. The hearing must include an inquiry into

logically from the first: insofar as guilt-phase counsel was ineffective, then it will be easy to find flaws in the court's *Nelson* inquiry. Yet I find that the second claim does not follow *factually*.

First, Knight has not provided adequate evidence to demonstrate that he received ineffective assistance. Knight's *Nelson* hearing gave him the opportunity to raise these concerns. The transcript indicates that he did so and that the court found them unpersuasive. Asked by the court why he wished to dismiss his counsel, Knight responded:

> There are a few reasons. I have spoken to her already; she doesn't feel that there is any kind of problem or she doesn't see a problem. I, myself, see a problem whereas the way my case is being handled, the way it's being prepared as to the things that I should know or don't know, you know, prior to me being at the county jail.
>
> So far, I mean, I don't know anything since the day one, you know, on a case that I was already up for, you know, four years prior, and I am just not up to—I have been through this once already. I don't want to be dragged through it again. I don't feel she's represented me to the best of her ability, in my opinion.

Trial Court Transcript, October 31, 1997 at 3–4. The state trial court, Florida's appellate courts, and the federal district court whose decision is before us all concluded that Knight's contention failed to demonstrate ineffective assistance. I agree. Focusing on the substance of the claim that Knight argues his attorney

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whether the defendant is discharging counsel for incompetence, and whether there is a reasonable basis for the defendant's claim. If there is a reasonable basis, the judge must appoint a substitute attorney.

should have made, double jeopardy in Florida does not attach until a jury is impaneled and sworn. *See State v. Gaines*, 770 So. 2d 1221, 1225 (Fla. 2000). The postconviction court here reviewed Knight's 1994 proceedings and found that a jury had *not* been sworn. So, as the Florida Supreme Court concluded, "counsel cannot be deemed ineffective for failing to file a baseless motion." 211 So. 3d at 11 (citation omitted).

Absent a compelling factual predicate for his ineffective assistance claim, Knight's *Nelson* claim also fails. *Nelson* instructs Florida courts addressing a request to discharge counsel on grounds of incompetency to "make a sufficient inquiry of the defendant and his appointed counsel to determine whether or not there is reasonable cause to believe that the court appointed counsel is not rendering effective assistance." 274 So. 2d at 259. As my partial quotation of the transcript suggests, the court did that here. Where the court finds that the defendant's counsel is providing effective assistance, *Nelson* then instructs the judge to warn the defendant that he may not receive substitute counsel. The judge here had Knight review the full colloquy in January where Knight was warned of the consequences of foregoing counsel before Knight reaffirmed his decision in March—so, in effect, Knight was warned twice. Finally, *Nelson* states that the judge may then "in his discretion discharge counsel and require the defendant to proceed to trial without representation by court appointed counsel." *Id.* (citation

omitted). Yet again, Knight got what he wanted. And, most relevant to the instant claim, the court granted his request after following the procedure set out in *Nelson*. Recall that the district court could not grant Knight relief unless it believed that fairminded jurists would unanimously determine that Florida's courts had erred. *Harrington*, 562 U.S. at 101. It reached the opposite conclusion, and I do not believe a reasonable jurist could find that assessment debatable or wrong. *Slack*, 529 U.S. at 484.

III

I conclude that reasonable jurists may disagree with the district court's decision to deny Knight's first claim alleging ineffective assistance of penalty-phase counsel. As such, this application for a COA is **GRANTED**. In all other respects, Knight's counselled and *pro se* applications for a COA are **DENIED**. Mr. Knight's "Request to Court's Certificate of Appealability Question/Request for Appointment of Counsel for this Appeal/Request for Extension of time to File Brief" is **DENIED**.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE