

APPENDIX

A

No. 20-3124
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUITFILED
Sep 01, 2020
DEBORAH S. HUNT, Clerk

WILLIAM ECHOLS,)
Petitioner-Appellant,)
v.) O R D E R
DOUGLAS FENDER, Warden,)
Respondent-Appellee.)

Before: BUSH, Circuit Judge.

William Echols, an Ohio prisoner proceeding *pro se*, appeals the district court's judgment denying his petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Echols has applied for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b). He also moves to proceed *in forma pauperis* on appeal.

In 2014, a jury convicted Echols of two counts of rape, in violation of Ohio Revised Code § 2907.02(A)(2), and two counts of kidnapping, in violation of Ohio Revised Code § 2905.01(A)(4). The convictions stemmed from two separate incidents involving two different women in 1994 and 1999, which were linked to Echols after DNA testing was conducted in 2012. The Ohio Court of Appeals affirmed the convictions, but it remanded the case to the trial court for the purpose of merging the sentencing for the kidnapping and rape counts relating to one of the victims. *Ohio v. Echols*, No. 102504, 2015 WL 8484088 (Ohio Ct. App. Dec. 10, 2015). Echols, acting *pro se*, filed a motion for leave to file a delayed appeal in the Ohio Supreme Court, which rejected that motion and dismissed the appeal. *State v. Echols*, 49 N.E.3d 319 (Ohio 2016) (table). Upon resentencing, the trial court merged the kidnapping and rape counts, as instructed by the appellate court, and imposed an aggregate sentence of thirty-one years of imprisonment. Echols

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did not appeal his new sentence. He moved to vacate or set aside his conviction or sentence in the trial court, but the petition was denied. He did not appeal that denial.

Echols next filed the § 2254 petition that is currently before the court. He raised the same claims that he raised on direct appeal, specifically that: (1) he was denied a fair trial due to the trial court's denial of his motion for separate trials for the separate victims; (2) his right to confront witnesses against him was violated by the admission of medical records concerning one victim, who did not testify because she was deceased at the time of trial; (3) insufficient evidence supported his convictions concerning that victim; and (4) the rape and kidnapping offenses should have been merged for sentencing purposes. A magistrate judge recommended that the petition be denied in its entirety because his claims were procedurally defaulted. Over Echols's objections, the district court adopted the report and recommendation, dismissed the petition, and declined to issue a COA.

Echols moves this court for a COA, arguing that the district court abused its discretion by not "fully considering the equitable tolling [regarding his Ohio Supreme Court filing] associated with this case," and by failing to conduct an evidentiary hearing to address alleged discrepancies in the state court record.

To obtain a COA, an applicant 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). When the district court has denied a petition on procedural grounds, a petitioner must show "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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

"A habeas petitioner procedurally defaults a claim if: (1) the petitioner failed to comply with a state rule; (2) the state enforced the rule against the petitioner; and (3) the rule is an 'adequate

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and independent' state ground foreclosing review of a federal constitutional claim." *Bickham v. Winn*, 888 F.3d 248, 251 (6th Cir. 2018) (quoting *Willis v. Smith*, 351 F.3d 741, 744 (6th Cir. 2003)). To overcome a procedural default, a petitioner must show "cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). A fundamental miscarriage of justice requires a showing of actual innocence. *See Dretke v. Haley*, 541 U.S. 386, 393 (2004).

The district court determined that Echols's claims were procedurally defaulted because he did not raise them in a timely appeal to the Ohio Supreme Court, and the Ohio Supreme Court denied his motion for a delayed appeal, which is a procedural ruling. *See Bonilla v. Hurley*, 370 F.3d 494, 497 (6th Cir. 2004) (per curiam). The district court further found that Echols had failed to show cause or prejudice for his failure to file a timely appeal because he had acknowledged receiving a copy of the appellate court's decision eight days after it was issued, and thus, he had ample time to file an appeal within the required forty-five-day period, *see* Ohio S. Ct. Prac. R. 7.01(A)(1), despite having been transferred to a different prison and not receiving sufficient assistance from other inmates. Echols does not dispute this determination in his COA application, and reasonable jurists could not debate that he procedurally defaulted his claims.

The thrust of Echols's argument in his application is that his procedural default should be excused because excusing the default would result in a fundamental miscarriage of justice. To qualify for this exception, however, he must present "new reliable evidence" of factual innocence, not mere legal insufficiency. *Schlup v. Delo*, 513 U.S. 298, 324 (1995). The district court found that Echols had not presented any such new evidence of his actual innocence, and he similarly fails to make such a showing in his COA application. Reasonable jurists could not debate the district court's conclusion that a fundamental miscarriage of justice did not occur here. Because reasonable jurists could not debate that Echols's claims were procedurally defaulted, he was not entitled to an evidentiary hearing.

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Accordingly, the application for a COA is **DENIED**. The motion to proceed *in forma pauperis* on appeal is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX

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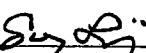
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLIAM ECHOLS,)	CASE NO. 1:17CV859
)	
)	
PETITIONER,)	JUDGE SARA LIOI
)	
VS.)	
)	JUDGMENT ENTRY
)	
BRIGHAM SLOAN, Warden,)	
)	
)	
RESPONDENT.)	

For the reasons set forth in the contemporaneously filed memorandum opinion and order, the report and recommendation of the magistrate judge (Doc. No. 13) is ACCEPTED and the petition for a writ of habeas corpus (Doc. No. 1) is DISMISSED. Further, for the same reasons, the Court CERTIFIES that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: December 9, 2019


HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE