

APPENDIX

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APPENDIX A - E

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 18, 2020

Decided July 1, 2020

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 19-2856

CHRISTOPHER A. CARTER,
Petitioner-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 19 C 2735

FRANK LAWRENCE,
Respondent-Appellee.

Virginia M. Kendall,
Judge.

ORDER

Christopher Carter has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254, which we construe as an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. Carter's motions to proceed in forma pauperis and for appointment of counsel are DENIED.

IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

CHRISTOPHER A. CARTER,)	
M32025,)	
)	
<i>Petitioner,</i>)	No. 19 C 2735
)	
v.)	Judge Virginia M. Kendall
)	
FRANK LAWRENCE,)	
Acting Warden,)	
Menard Correctional Center,)	
)	
<i>Respondent.</i>)	

ORDER

In 2012, an Illinois state jury convicted Christopher Carter of six counts of predatory criminal sexual assault of a child, namely, his daughter and another girl he believed to be his daughter (until post-arrest DNA testing revealed she was not). *See People v. Carter*, 2014 IL App (2d) 121053-U, ¶¶ 2, 4, 38. The trial court sentenced Carter to life in prison. *See id.* ¶ 38.

On direct appeal, Carter raised a limiting instruction issue about “other crimes” evidence in addition to challenging a comment the prosecutor made during closing argument. *See id.* ¶ 40. The appellate court held that Carter forfeited these claims, and further, that it would not excuse his forfeitures because the trial court did not plainly err. *See id.* ¶¶ 45, 54–55, 60. The state supreme court denied Carter’s ensuing petition for leave to appeal (PLA). *See People v. Carter*, 23 N.E.3d 1202 (Ill. 2015) (denying Carter’s PLA on direct appeal).

In 2015, Carter petitioned the trial court pro se under 725 ILCS 5/122-1 alleging 55 claims, including ineffective assistance of counsel and due process violations. *See People v. Carter*, 2018 IL App (2d) 150654-U, ¶¶ 1–2, 8, *appeal denied*, 108 N.E.3d 879 (Ill. 2018). The trial court dismissed the petition and the appellate court affirmed that disposition, reasoning that Carter again forfeited his claims because his brief failed to comply with a state procedural rule. *See id.* ¶¶ 1–2, 14. The appellate court alternatively ruled that the claims it could discern were meritless. *See id.* ¶¶ 15, 21. The Illinois Supreme Court denied the PLA that followed in 2018. *See People v. Carter*, 108 N.E.3d 879 (Ill. 2018) (denying Carter’s PLA on collateral attack).

In 2016, Carter sought leave to file a second and successive postconviction petition that the trial court denied. *See People v. Carter*, 2018 IL App (2d) 160382-U, ¶ 2, *appeal denied*, 108 N.E.3d 860 (Ill. 2018). On appeal, the court affirmed the trial judge's decision explaining that claim preclusion barred Carter's claim and that he failed to demonstrate cause and prejudice or actual innocence to overcome that bar. *See id.* ¶¶ 17, 20. The state supreme court denied Carter's PLA in 2018. *See People v. Carter*, 108 N.E.3d 860 (Ill. 2018) (denying Carter's PLA in his second and successive collateral attack).

In April 2019, Carter petitioned this Court pro se under 28 U.S.C. § 2254 asserting ineffective assistance of counsel, due process, and evidentiary claims. (Dkt. 1.)¹ But a federal court may not review habeas claims that the petitioner procedurally defaulted in the state courts—"that is, claims that the state court denied based on an adequate and independent state procedural rule." *Crutchfield v. Dennison*, 910 F.3d 968, 972 (7th Cir. 2018), *cert. denied*, 139 S. Ct. 1587 (2019) (quoting *Davila v. Davis*, 137 S. Ct. 2058, 2064 (2017) (internal punctuation omitted)).

A federal court may review a defaulted claim, however, "if the prisoner establishes cause to excuse his failure to comply with the state procedural rule and actual prejudice resulting from the alleged constitutional violation . . . A federal habeas court may also excuse a procedural default if the prisoner makes a convincing showing of actual innocence." *Id.* at 973 & n.2 (internal citations and quotations omitted).

Here, the Illinois Appellate Court held that Carter forfeited his claims on direct appeal, and it could not excuse his forfeitures because the trial court did not plainly err. *See People v. Carter*, 2014 IL App (2d) 121053-U, ¶¶ 45, 54–55, 60. That is an adequate and intendent ruling that bars federal habeas review of those claims. *See Richardson v. Lemke*, 745 F.3d 258, 269, 271–72 (7th Cir. 2014) (finding a petitioner procedurally defaulted a claim that he forfeited in the Illinois courts) (citing *Kaczmarek v. Rednour*, 627 F.3d 586, 591 (7th Cir. 2010); *see also Carter v. Douma*, 796 F.3d 726, 733 (7th Cir. 2015); *Gray v. Hardy*, 598 F.3d 324, 329 (7th Cir. 2010)).

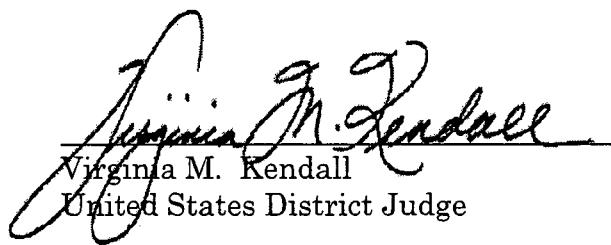
Similarly, Carter forfeited his claims on collateral attack because his postconviction appellate brief failed to comply with a state procedural rule requiring an appellant to clearly articulate her claims and support them with citations to the record and relevant legal authority. This conclusion, too, represents an adequate and independent decision that is not cognizable on federal habeas review. *See Szabo v. Walls*, 313 F.3d 392, 395 (7th Cir. 2002); *see, e.g.*, *Spates v. Lashbrook*, No. 17 C 50010, 2017 WL 6623763, at *5 (N.D. Ill. Dec. 27, 2017); *Calabrese v. Harrington*, No. 14 C 0790,

¹ Although the Acting Warden responded to Carter's petition, Carter failed to reply to the Acting Warden's response. (Dkt. 6 (ordering briefing).)

2016 WL 3088133, at *10 (N.D. Ill. June 1, 2016); *Olawale v. Hodge*, No. 13 C 8535, 2016 WL 278871, at *7 (N.D. Ill. Jan. 22, 2016).²

There is no excuse for Carter's failures to abide by state procedural law. Carter did not even try to establish cause for them, let alone prejudice resulting from the alleged violations. Carter does not vie for actual innocence either. Because he failed to argue for either ground to excuse the application of the Acting Warden's affirmative defense, the Court cannot consider his claims. *See Crockett v. Hulick*, 542 F.3d 1183, 1193 (7th Cir. 2008).³

Accordingly, the Court denies Carter's petition for a writ of habeas corpus (Dkt. 1). The Court also declines to issue a certificate of appealability because Carter did not make "a substantial showing of the denial of a constitutional right," or in other words, that reasonable jurists would not find this procedural default decision debatable. 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000).



Virginia M. Kendall
United States District Judge

Date: August 27, 2019

² Carter could not preserve any claim for federal habeas review in his second and successive postconviction petition because the trial court denied him leave to file it. *Cf. Martinez v. Jones*, 556 F.3d 637, 639 (7th Cir. 2009) (clarifying that a denied request to file a successive petition in Illinois state court does not toll the statute of limitations for federal habeas petitions).

³ To the extent Carter alleges any new claims, he also defaulted them because he did not fairly present them to the Illinois courts in one complete round of judicial review. *See Crutchfield*, 910 F.3d at 972–73 (first citing *Davila*, 137 S. Ct. at 2064; then quoting 28 U.S.C. § 2254(b)(1)(A)).

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 2, 2020

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 19-2856

CHRISTOPHER A. CARTER,
Petitioner-Appellant,

v.

FRANK LAWRENCE,
Respondent-Appellee.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 19 C 2735

Virginia M. Kendall,
Judge.

ORDER

On consideration of the petition for rehearing and for rehearing en banc filed by Petitioner-Appellant on August 17, 2020, no judge in active service has requested a vote on the petition for rehearing en banc, and the judges on the original panel have voted to deny rehearing.

Accordingly, the petition for rehearing is DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**