Nos. 20-3067/3094/3095

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 22, 2020
DEBORAH S. HUNT, Clerk

CHRISTOPHER STEGAWSKI,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: MOORE, Circuit Judge.

Christopher Stegawski, a federal prisoner proceeding pro se, appeals the district court's denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence and several related motions. He has filed motions for a certificate of appealability, to proceed in forma pauperis, and for release pending appeal, citing the risk of exposure to COVID-19.

In 2015, a jury convicted Stegawski of conspiracy to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1) and 846; two counts of maintaining a place for distributing controlled substances, in violation of 21 U.S.C. § 856(a)(1); and conspiracy to launder money, in violation of 18 U.S.C. § 1956(h). The district court sentenced Stegawski to 160 months of imprisonment, to be followed by ten years of supervised release. On appeal, Stegawski challenged the denial of his motion for a new trial, claiming that his attorney, Michael Cheselka, was ineffective for not retaining a medical expert and not cross-examining the prosecution's medical expert, Dr. Kort Gronbach. *See United States v. Stegawski*, 687 F. App'x 509, 513 (6th Cir. 2017). The court reasoned that there was no "identified medical expert who would have supported Stegawski's prescription habits"; that, in any event, no medical expert could have refuted the "overwhelming evidence" of Stegawski's guilt; and that, lacking any "legitimate basis for impeachment," the decision not to cross-examine Dr. Gronbach was reasonable. *Id.* at 513-15.

In 2018, Stegawski filed a pro se motion for a new trial and an amended motion for a new trial, raising eleven grounds for relief. In May 2019, while those motions were pending, he filed a § 2255 motion in the Western District of Kentucky, which was transferred to the Southern District of Ohio but docketed separately from the criminal case. Shortly after mailing his § 2255 motion, Stegawski filed a motion asking the district court to "merge" his new-trial motions into his § 2255 motion. But because the § 2255 motion had been filed as a separate civil case rather than in the criminal case, the district court was not aware that it had been filed, so it construed Stegawski's motion as requesting only that his motions for a new trial, along with an earlier motion for transcripts, be merged into a § 2255 motion. So construed, the district court granted that request, considered the claims raised in Stegawski's new-trial motions under § 2255, and denied relief, concluding that the claims were procedurally defaulted, without merit, or both.

A few weeks later, the district court ruled on Stegawski's still-pending § 2255 motion, which it treated as a motion to amend the new-trial motions that it had considered under § 2255. After summarizing the claims and explaining why each one either did not raise a discernable basis for relief, was procedurally defaulted, was addressed in its previous order, or was wholly conclusory, the district court denied the construed motion to amend as futile. The district court denied Stegawski's subsequent motions for reconsideration under Federal Rule of Civil Procedure 59(e) and for copies and an extension of time to reply.

A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant 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 denies relief on procedural grounds, the applicant must demonstrate that reasonable jurists "would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right" and "whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Although Stegawski's various filings enumerate approximately sixty claims, the claims raised in his new-trial motions are subsumed in his later-filed § 2255 motion and thus will not be addressed separately. When possible, overlapping claims will be addressed together. For the reasons set forth below, none of his claims warrant a certificate of appealability.

As explained by the district court, many of Stegawski's claims fail to state a discernable basis for relief under § 2255. In grounds one, three, four, ten, seventeen, thirty-six, thirty-seven, thirty-nine, forty-two, and forty-five, he asserts, among other things, that subsequent developments have vindicated his treatment methods; that law enforcement, by raiding his clinic, interrupted his treatment plans and his investigation into the causes of his patients' pain and drug use, then blamed him at trial for the unfinished results; that no jury would have convicted him had they been told that he had established a protocol that reduced his patients' medications and resulted in zero deaths; that federal law wrongfully labels physicians who treat chronic pain as incompetent; that conspiracy law cannot reasonably be applied to a medical practice; that his prosecution put a halt to the progress of scientific understanding of the underlying causes of chronic pain; that his prescriptions were written for a legitimate medical purpose; and that there was no probable cause for his prosecution in light of his positive results. Ground twenty-five catalogs alleged inaccuracies in the prosecution's press release regarding his case, and grounds thirty-two and thirty-four do the same for this court's opinion on direct appeal. And in ground forty-eight, he refers to his letter to President Trump summarizing his theory that the opioid epidemic is the result of pain caused by a "tick transmitted infectious endemic disease" and reiterating that he was unfairly prosecuted.

The district court also rejected as conclusory or patently frivolous grounds forty, forty-one, forty-three, forty-seven, and forty-nine, in which Stegawski asserts, among other things, that 21 U.S.C. § 841(a) should not be applied to physicians who are making a reasonable effort to treat chronic pain; that federal prosecution infringes on physician discretion and treats "rescue" missions as criminal; and that a 2019 Food and Drug Administration statement on tapering patients off opioids is the "missing link" showing that he provided proper treatment.

To the extent that these grounds can be construed as challenging the sufficiency of the evidence presented at trial, that challenge is procedurally defaulted because Stegawski could have raised it on direct appeal and did not. *See Huff v. United States*, 734 F.3d 600, 605-06 (6th Cir. 2013). Even if Stegawski could show cause for his failure to do so, he cannot demonstrate prejudice because, as this court stated on direct appeal, there was ample evidence presented at trial to support a guilty verdict, including testimony from Dr. Gronbach and from several former patients and undercover officers who received prescriptions from Stegawski with cursory or no medical examinations. *See Stegawski*, 687 F. App'x at 513-14. Finally, as noted by the district court, Stegawski's broad brush attacks on the merits of the prosecution's case do not state a basis for relief under § 2255 because he does not identify any "error of constitutional magnitude" at trial that had a "substantial and injurious effect" on the jury's verdict. *Griffin v. United States*, 330 F.3d 733, 736 (6th Cir. 2003) (citing *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)). Reasonable jurists could not disagree with the district court's rejection of these claims.

In grounds two, five, twelve, and thirteen, Stegawski asserts violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and the Jencks Act, 18 U.S.C. § 3500(a). To prevail on a *Brady* claim, a defendant must demonstrate that 1) the evidence at issue was favorable to him, 2) the prosecution suppressed that evidence, and 3) the suppression prejudiced him. *Abdur'Rahman v. Colson*, 649 F.3d 468, 473 (6th Cir. 2011) (citing *Stickler v. Green*, 527 U.S. 263, 281-82 (1999)). There is no *Brady* violation if the "defendant knew or should have known the essential facts permitting him to take advantage of any exculpatory information." *Id.* at 474 (quoting *United States v. Clark*, 928 F.2d 733, 738 (6th Cir. 1991)).

Stegawski repeatedly faults the prosecution for failing to produce the manual of the company that performed the pain clinic's urine screening tests, which contained guidelines for interpreting those tests. He also asserts that the prosecution withheld a report that Dr. Gronbach made to the Pharmacy Board, income logs and receipts that would have undercut the prosecution's case with regard to his patient volume, and various patient charts. As noted by the district court, however, Stegawski only speculates that any of this information would be exculpatory. And

Stegawski does not explain why information from the urine test manual, which he claims to be familiar with, could not have been obtained from another source. *See Abdur'Rahman*, 649 F.3d at 474. Reasonable jurists could not disagree with the rejection of Stegawski's *Brady* claims.

In grounds seven, twenty-two, twenty-six, twenty-seven, twenty-nine, and a portion of ground eleven, Stegawski asserts a "lack of adversarial process" and ineffective assistance of counsel. Although he contends that he was not afforded adequate time to present his case, the district court expressly stated at trial that there was no limit on the amount of time that the defense could take. But according to Stegawski, Cheselka refused to put on an adequate defense and cut the trial short because he had another trial scheduled; did not call, object to, or cross-examine certain witnesses; did not investigate or subpoena witnesses, including other area doctors who were investigated for similar prescribing practices; should have asked him to testify about more of his research; and ordered him to leave during the presentation of evidence. Stegawski also raises several instances of ineffective assistance of appellate counsel, including a failure to raise a claim based on *United States v. Arny*, 831 F.3d 725 (6th Cir. 2016).

A defendant claiming ineffective assistance of counsel must show that (1) his attorney made errors so serious that the attorney was not functioning as the counsel guaranteed by the Sixth Amendment, and (2) the attorney's deficient performance was prejudicial, i.e., there is a reasonable probability that, but for the errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). As noted by the district court, Stegawski's claim that Cheselka ordered him to leave during the presentation of evidence is contrary to the record and in any event could have been raised on direct appeal. And although Stegawski continues to argue that Cheselka was ineffective for failing to cross-examine Dr. Gronbach, that claim was rejected by this court on direct appeal and cannot be relitigated. *See Jones v. United States*, 178 F.3d 790, 796 (6th Cir. 1999). Finally, Stegawski's assertion that Cheselka cut the trial short because he had another trial scheduled is belied by the record, and he has failed to demonstrate that additional direct or cross-examination would have affected the outcome of the trial.

When Stegawski took the stand, he had multiple opportunities to rebut Dr. Gronbach's conclusions with regard to the urine test results. Instead, he testified that he was "lazy" and relied on a "urine technician" to flag any issues. And when Cheselka asked whether it was true that he was only interested in writing prescriptions and failed to adhere to any reasonable standard of care, Stegawski laughed and said, "This is a tricky question." He gave similarly unhelpful responses when asked whether he ever wrote unnecessary prescriptions and whether his patients needed the medications he prescribed. Absent any showing of prejudice, Stegawski's ineffective assistance of trial counsel claims do not deserve encouragement to proceed further.

As to Stegawski's claims of ineffective assistance of appellate counsel, the district court concluded that he had failed to identify any specific issue counsel should have raised other than the sufficiency of the evidence, and that, because that issue lacked merit, it was not clearly stronger than the issues that were presented on appeal. Reasonable jurists could not disagree with that conclusion. To the extent that Stegawski relies on *Arny*, that case is distinguishable on its facts. *See* 831 F.3d at 735-36 (pointing to specific testimony from another physician and former patients that could have refuted the prosecution's case).

In grounds eight, nine, fifteen, twenty-one, twenty-three, twenty-four, thirty, and thirty-one, Stegawski asserts that the prosecutor engaged in misconduct by declaring in his opening statement that Stegawski was guilty, by refusing to show him a slide of a neck tumor that Stegawski diagnosed, by pressuring a witness to testify, by using derogatory terms like "pill-mill" and "lollygagging," and by making statements that were inflammatory or mischaracterized the evidence. The district court concluded that any claims arising from the prosecutor's statements at trial were procedurally defaulted because Stegawski did not raise them on direct appeal, offered no cause for his failure to do so, and, in any event, could not demonstrate prejudice. *See Huff*, 734 F.3d at 605-06. As to Stegawski's claim about the witness who did not want to testify and testified that Stegawski might have treated her family member who died, the district court concluded that Stegawski failed to show that this single line of testimony, even if false, was prejudicial. Reasonable jurists could not disagree with the district court's rejection of these claims.

In ground thirty-two, Stegawski claims that he was denied allocution and that, if given the opportunity, he would have informed the court that he cared for high risk patients, lowered their medications, and discovered the underlying causes of their pain. This claim is flatly contradicted by the record, which shows that Stegawski was afforded the opportunity to allocute, as well as to detail his objections to the facts presented in the presentence report. In any event, as noted by the district court, Stegawski could have raised this claim on direct appeal but did not, and he has not asserted cause for his failure to do so. In ground thirty-three, Stegawski argues that the "marijuana equivalent" used to calculate drug quantity is improper and falsely equates physicians with drug traffickers. The district court explained that this claim, too, was procedurally defaulted. Reasonable jurists could not disagree.

In his remaining claims, Stegawski attacks Dr. Gronbach's testimony, asserting that it was misleading or erroneous; argues that the immediate release oxycodone pills he was prescribing have now been shown to be safer than the extended release pills favored by Dr. Gronbach; that he was properly tapering patients off their medications rather than withdrawing them too quickly; that the indictment was constructively amended by testimony that some patients switched to heroin after Stegawski's clinic was raided; that the jury should have been instructed on 21 U.S.C. § 801(1), which provides that many of the drugs listed as controlled substances "have a useful and legitimate medical purpose"; that the use of undercover agents in the investigation of pain clinics constitutes entrapment; and that he was denied access to transcripts on appeal. For the reasons stated by the district court, these claims are "largely stream-of-conscious expressions of discontent with [Stegawski's] prosecution unsupported by legal authority or the record," procedurally defaulted, or conclusory. These claims do not deserve encouragement to proceed further.

Finally, reasonable jurists could not disagree with the district court's denial of Stegawski's motions for reconsideration under Rule 59(e) and for copies and extensions of time. Although the district court misconstrued Stegawski's merger motion, any error was harmless because the district court ultimately reviewed all of the claims in Stegawski's § 2255 motion and his new-trial motions, so allowing him to file another § 2255 motion would have served no purpose. And because the

district court had already entered a decision, there was no basis on which to grant Stegawski's requests for copies or for an extension of time in which to respond.

For these reasons, Stegawski's application for a certificate of appealability is **DENIED**, and his motions to proceed in forma pauperis and for release pending appeal are **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 20-3067

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 07, 2020
DEBORAH S. HUNT, Clerk

CHRISTOPHER STEGAWSKI,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: COLE, Chief Judge; BATCHELDER and McKEAGUE, Circuit Judges.

Christopher Stegawski, a federal prisoner, petitions the court to rehear en banc its order denying him a certificate of appealability. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER STEGAWSKI,

Defendant.

CRIMINAL CASE NO. 1:12-cr-054-2
CIVIL CASE NO. 1:19-cv-428

Judge Michael R. Barrett

ORDER

Defendant requests a certificate of appealability for the Court's January 3, 2020 order. (Doc. 238). The Court will not issue a certificate of appealability. *See* Rules Governing Sec. 2255 Proceedings for the U.S. Dist. Courts, Rule 11(a). Similar to the Court's explanation in its November 15, 2019 Order denying his Section 2255 motion and declining to issue a certificate of appealability with respect to his Section 2255 motion, Defendant's motion requesting copies of documents and an extension of time, relating to his Section 2255 motion, is not "debatable among reasonable jurists," subject to being "resolved differently on appeal[,]" or adequate to deserve encouragement to proceed further." *Poandl v. United States*, No. 1:12-cr-00119-1 (1:16-cv-00286), 2017 WL 1247791, at *17 (S.D. Ohio April 5, 2017) (citing *Slack v. McDaniel*, 529 U.S. 473, 483–84, (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983))). Defendant has also failed to make a substantial showing of the denial of a constitutional right. *Id.* (citing 28 U.S.C § 2253(c) and Fed. R. App. 22(b)).

IT IS SO ORDERED.

_/s Michael R. Barrett_____
Michael R. Barrett, Judge
United States District Court

No. 20-3067/3094/3095

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 24, 2020
DEBORAH S. HUNT, Clerk

CHRISTOPHER STEGAWSKI,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Before: COLE, Chief Judge; BATCHELDER and McKEAGUE, Circuit Judges.

Christopher Stegawski petitions for rehearing en banc of this court's order entered on April 22, 2020, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
Deborah S. Hunt
Clerk
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: August 24, 2020

Christopher Stegawski
F.C.I. Ashland
P.O. Box 6001
Ashland, KY 41105

Re: Case No. 20-3067/20-3094/20-3095, *Christopher Stegawski v. USA*
Originating Case No.: 1:19-cv-00428: 1:12-cr-00054-2

Dear Mr. Stegawski,

The Court issued the enclosed Order today in these cases.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

Enclosure