*No.*_____

IN THE
SUPREME COURT OF THE UNITED STATES

MARION TAYLOR

Plaintiff

VERSUS

DARREL VANNOY, WARDEN
LOUISIANA STATE PENITENTIARY

Respondent(s)

On Petition for a writ of Certiorari
to the
U.S. Court Of Appeals, Fifth Circuit Court No. 20-30274
Before: Clement, Elrod and Haynes, Circuit Judge.

The U.S. District Court, Eastern District Of Louisiana
Before: Martin L. C. Feldman, District Judge

APPENDIX TO
APPLICATION OF MARION TAYLOR

Pro Se
Marion Taylor #558611
Main Prison/Oak-1
Louisiana State Penitentiary
17544 Tunica Trace
Angola, Louisiana 70712

U.S. Solicitor General
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Certificate Of Service

Certificate Of Service

United States Court of Appeals for the Fifth Circuit

No. 20-30274

United States Court of Appeals
Fifth Circuit
FILED
June 11, 2021
Lyle W. Cayce
Clerk

MARION TAYLOR,

Petitioner—Appellant,

versus

DARREL VANNOY, *Warden, Louisiana State Penitentiary*,

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:13-CV-462

Marion Taylor, Louisiana prisoner # 558611, was convicted of second degree murder and sentenced in 2009 to serve life in imprisonment without the benefit of parole, probation, or suspension of sentence. Now, he moves this court for a certificate of appealability (COA) to appeal the district court's dismissal of the Federal Rule of Civil Procedure 60(b) motion that he filed with respect to the dismissal of his 28 U.S.C. § 2254 habeas corpus petition. He argues that there was a fraud upon the court and a defect in the integrity of his habeas proceeding under Rule 60(b)(6).

A COA may issue only when the movant makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see*

Appx (A)

Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). To obtain a COA, Taylor must establish that reasonable jurists would find the district court's resolution of his constitutional claims debatable or wrong, *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000), or that the issues he presents "are adequate to deserve encouragement to proceed further," *Miller-El*, 537 U.S. at 327. Specifically, with respect to the denial of Rule 60(b) relief, he must show that "a jurist of reason could conclude that the district court's denial of [the Rule 60(b)] motion was an abuse of discretion." *Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011). Because Taylor has not met these standards, his COA motion is DENIED.

/s/Jennifer Walker Elrod
JENNIFER WALKER ELROD
United States Circuit Judge

United States Court of Appeals for the Fifth Circuit

No. 20-30274

MARION TAYLOR,

Petitioner—Appellant,

versus

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:13-CV-462

ON PETITION FOR REHEARING EN BANC

Before CLEMENT, ELROD, and HAYNES, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

Appx(A)(1)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

MARION TAYLOR	*	CIVIL ACTION
versus	*	NO. 13-0462
N. BURL CAIN, WARDEN	*	SECTION "F"

ORDER AND REASONS

Before the Court is Marion Taylor's Rule 60(b)(6) motion for relief from judgment. For the reasons that follow, the motion is DISMISSED for lack of jurisdiction. Before pursuing the relief sought, the movant must first obtain pre-filing authorization from the U.S. Court of Appeals for the Fifth Circuit.

Background

Marion Taylor, Louisiana prisoner #558611, is serving a lifetime prison sentence at the Louisiana State Penitentiary in Angola. In 2013, Mr. Taylor filed a habeas petition under 28 U.S.C. § 2254 to challenge the constitutionality of his state-court conviction for second-degree murder. On July 23, 2015, this Court adopted the magistrate judge's report and recommendation that the habeas petition be dismissed with prejudice. Judgment was entered accordingly. Both this Court and the U.S. Fifth Circuit Court of Appeals denied Taylor's requests for certificates

Appx (B)

of appealability and to proceed in forma pauperis on appeal. Invoking Rule 60(b)(3), Taylor then sought relief from the Court's judgment; the Court denied the motion and again denied his requests for a certificate of appealability and to proceed in forma pauperis on appeal. Taylor moved the U.S. Fifth Circuit Court of Appeals for a certificate of appealability. On October 3, 2018, U.S. Fifth Circuit Judge Costa denied Taylor's requests for a certificate of appealability and to proceed in forma pauperis on appeal, finding that Taylor's Rule 60(b)(3) motion was a second or successive habeas petition over which this Court lacked jurisdiction. The U.S. Supreme Court denied Taylor's petition for certiorari. Now, for a second time, Taylor moves for relief under Rule 60, this time invoking subsection (b)(6).

I.

When a state prisoner seeks relief under Rule 60(b) of the Federal Rules of Civil Procedure, the district court must be mindful of the interplay between Rule 60(b) and the statutes applicable state habeas petitions. The Court must make a threshold determination of whether the motion amounts to a successive § 2254 petition subject to gate-keeping provisions administered solely by the Court of Appeals. See United States v. Jiminez-Garcia, 951 F.3d 704, 705 (5th Cir. 2020)(remanding case to district court to determine whether Rule 60 motion filed by federal prisoner amounted

to an unauthorized successive § 2255 motion); Crustinger v. Davis, 929 F.3d 259, 266 (5th Cir. 2019)(vacating district court's order transferring petitioner's motion to the appellate court as a successive petition, determining that the motion was not successive within the meaning of 28 U.S.C. § 2244(b)(1), and remanding to the district court to consider the Rule 60(b)(6) motion in the first instance). If, in its policing function, the district court determines that the prisoner's motion is genuinely a successive habeas petition disguised as a Rule 60(b) motion, then the Court must dismiss the petition for lack of jurisdiction or transfer it to the Fifth Circuit Court of Appeals, which has the singular power to authorize successive habeas petitions.

Rule 60(b) of the Federal Rules of Civil Procedure allows a party to seek relief from a final judgment under limited circumstances such as fraud, mistake, and newly discovered evidence, or "any other reason that justifies relief." Fed. R. Civ. P. 60(b). Rule 60(b) applies in § 2254 proceedings but only "to the extent [it is] not inconsistent with" applicable federal law. See Rule 11 of the Federal Rules Governing 28 U.S.C. § 2254 Cases. Rule 60(b) may not be used to circumvent the Antiterrorism and Effective Death Penalty Act of 1996. Title 28, United States Code, § 2254, as amended by the AEDPA, governs federal habeas review for a prisoner in state custody. The AEDPA-amended habeas

statutes, § 2244(b)(1)-(3), impose certain requirements on state prisoner's ability to seek successive federal habeas review. Gonzalez v. Crosby, 545 U.S. 524, 529-30 (2005); In re Edwards, 865 F.3d 197, 203 (5th Cir. 2017). "Because of the comparative leniency of Rule 60(b), prisoners sometimes attempt to file what are in fact second-or-successive habeas petitions under the guise of Rule 60(b) motions." In re Edwards, 865 F.3d at 203 (citations omitted). Thus, when a state prisoner requests Rule 60(b) relief, district courts must scrutinize the motion to determine whether it properly seeks Rule 60(b) relief or, instead, whether it is a sham Rule 60(b) motion subject to the AEDPA's preauthorization rules governing petitions seeking relief under 28 U.S.C. § 2254.

Before a successive habeas petition may be pursued in the district court, the Court of Appeals must first certify that it meets the requirements of § 2244(b)(2). See § 2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application") and § 2244(b)(3)(C) ("The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection."). The district court must ensure

that state prisoners do not circumvent these statutory requirements by filing Rule 60(b) motions that are functionally successive habeas petitions. In other words, the AEDPA "divests the district court of jurisdiction to consider unauthorized successive habeas petitions; thus, once the district court conclude[s that a petitioner's Rule 60] motion [i]s a successive 2254 habeas petition, it [must] dismiss[] the motion or transfer[] it to the [Court of Appeals] for authorization." Gamboa v. Davis, 782 Fed.Appx. 297, 298 n.1 (5th Cir. 2019)(unpublished, per curiam)(citations omitted).

To determine whether a prisoner's Rule 60(b) motion is, in substance, a second or successive habeas petition, the Court consults Gonzalez v. Crosby, 545 U.S. 524, 535 (2005)("[A]s a textual matter, § 2244(b) applies only where the court acts pursuant to a prisoner's 'application for a writ of habeas corpus,' and courts therefore must decide whether a Rule 60(b) motion filed by a habeas petitioner is a 'habeas corpus application' as the statute uses that term."). There, the Supreme Court articulated guidelines for determining the circumstances under which a district court may properly consider a Rule 60(b) motion in a § 2254 habeas proceeding. If the so-called Rule 60(b) motion either "(1) presents a new habeas claim (an 'asserted basis for relief from a state court's judgment of conviction'), or (2) 'attacks the

federal court's previous resolution of a claim on the merits,'" then the motion "should be treated as a second-or-successive habeas petition and subjected to AEDPA's limitation on such petitions." In re Edwards, 865 F.3d at 203-04 (citing Gonzalez, 545 U.S. at 531-32). By contrast, a district court may consider a Rule 60(b) motion in a § 2254 proceeding if one of two circumstances is present: if the motion attacks a "defect in the integrity of the federal habeas proceedings [such as] fraud on the federal habeas court"; or if the motion attacks a procedural ruling "which precluded a merits determination [such as] a denial [for] failure to exhaust, procedural default, or statute-of-limitations bar." See Gilkers v. Vannoy, 904 F.3d 336, 344 (5th Cir. 2018)(citing Gonzalez, 545 U.S. at 532 and n.2, 3). A § 2254 applicant need not satisfy § 2244(b)'s authorization requirement for the district court to consider a genuine Rule 60(b) motion. Id. at 343.

II.

A.

Mr. Taylor's Rule 60(b) motion is a disguised successive habeas petition; the AEDPA's gate-keeping provisions divest the Court of jurisdiction to entertain this successive motion unless and until a panel of the Fifth Circuit authorizes its filing.

Presented with a post-judgment motion like Taylor's, which follows the denial of a § 2254 habeas application, the Court must

determine whether the movant has accurately characterized the motion or whether he, in fact, seeks habeas relief. A Rule 60(b) motion that raises new substantive claims or attacks the district court's merits-based resolution of prior § 2254 claims is a successive § 2254 habeas application. Where, as here, a Rule 60(b) motion is truly a successive § 2254 application, the Court lacks jurisdiction to consider it absent authorization from the Court of Appeals.

Rather than confining his request for relief to a non-merits aspect of the original federal habeas proceeding, Mr. Taylor attempts to re-urge his argument that aspects of the state trial violated his constitutional right to confront witnesses against him. Taylor first invokes Gonzalez v. Crosby, 545 U.S. 542, 532 (2005) to suggest that he pursues a true Rule 60 motion rather than an unauthorized or successive habeas petition. But his characterization does not control; he merely pays lip service to the standard the Court must apply to determine whether his so-called Rule 60 motion is functionally equivalent to a successive habeas petition. The Court must look beyond Taylor's characterization of his motion to determine whether it is an unauthorized successive habeas petition. Taylor purports to challenge a "defect in the integrity" of his habeas proceeding, but he fails to identify any defect. He also summarizes the law

on Article III standing and appears to take issue with what he sees as the Court's refusal to exercise its federal question jurisdiction in adopting the magistrate judge's Report & Recommendation. Taylor merely regurgitates standards not apparently applicable to the relief he seeks. Considering the only substantive portion of the so-called Rule 60 motion reveals its true objective: Taylor alludes to a "factual determination" by the state court and a defendant's constitutional right to effective cross-examination. It is this confrontation clause right that Taylor has invoked at least twice before in this Court: in his initial habeas petition and, again, in a previous motion he styled as one seeking Rule 60(b) relief, which the Fifth Circuit determined was an unauthorized successive habeas petition. This latest filing, too, is a quintessential unauthorized successive habeas petition. To be sure, "[a] petition is successive when it 'raises a claim ... that was or could have been raised in an earlier petition ...." See In re Edwards, 865 F.3d at 203 (citations omitted); see also § 2244(b)(1). Absent authorization from the Fifth Circuit, this Court lacks jurisdiction to consider confrontation clause challenges previously considered and rejected.

Mr. Taylor does not challenge the integrity of the federal habeas corpus proceeding; he challenges its outcome. This requires

pre-filing authorization from the Fifth Circuit. Accordingly, IT IS ORDERED: that Taylor's motion is DISMISSED for lack of jurisdiction.

B.

Because the Fifth Circuit has not authorized Taylor to proceed, the Court is precluded from reaching the merits of Taylor's successive habeas petition; thus, the Court finds that an order denying a certificate of appealability is not required by 28 U.S.C. § 2253. Cf. United States v. Fulton, 780 F.3d 683, 688 (5th Cir. 2018)(citation omitted)("The transfer of an unauthorized § 2255 petition is not a final order under 28 U.S.C. § 2253(c)(1)(B) [and, thus, an] appeal of such an order does not require a COA."). However, there is some inconsistency in the case literature on whether a certificate of appealability is necessary when a district court determines that a prisoner's post-judgment motion is a successive petition requiring pre-authorization. Compare id. *with* Gonzales v. Davis, 788 Fed.Appx. 250 (5th Cir. 2019)(declining to consider whether Resendiz v. Quarterman, 454 F.3d 456, 458 (5th Cir. 2006) -- which held that a district court's dismissal of a motion on the ground that it is an unauthorized successive collateral attack constitutes a final order within the scope of 28 U.S.C. § 2253(c), and, therefore, a certificate of appealability is required -- was tacitly overruled

by the Supreme Court in Harbison v. Bell, 556 U.S. 180 (2009)), *petition for certiorari docketed*, 2/19/20; see also, e.g., United States v. Akers, --- Fed.Appx. ---, 2020 WL 1650652, at *2 (10th Cir. 2020)(dismissal of petition for lack of jurisdiction is a procedural ruling and, to appeal it, the petitioner must first obtain a COA); United States v. McRae, 793 F.3d 392, 398 (4th Cir. 2015)(acknowledging the incongruity of granting a COA only to hold that the district court lacked jurisdiction, and holding that the COA requirement in § 2253(c) allows the Circuit Court to review, without first issuing a COA, an order dismissing a Rule 60(b) motion as an improper successive habeas petition). Accordingly, in an abundance of caution, IT IS ORDERED: that a certificate of appealability shall not be issued for the following reasons. Taylor has failed to make a substantial showing of the denial of a constitutional right. The petitioner has failed to show: that reasonable jurists could debate whether the motion should have been resolved or characterized in a different manner; or that the issues presented were adequate to deserve encouragement to proceed further; or, insofar as the characterization issue is merely procedural, that jurists of reason would find it debatable whether the Court was correct in its procedural ruling.

***

For the foregoing reasons, IT IS ORDERED: that Taylor's motion is DISMISSED for lack of jurisdiction and no certificate of appealability shall be issued.

New Orleans, Louisiana, April 9, 2020

MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARION TAYLOR	CIVIL ACTION
versus	NO. 13-462
N. BURL CAIN, WARDEN	SECTION: "F" (3)

REPORT AND RECOMMENDATION

This matter was referred to this United States Magistrate Judge for the purpose of conducting a hearing, including an evidentiary hearing, if necessary, and submission of proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) and, as applicable, Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts. Upon review of the record, the Court has determined that this matter can be disposed of without an evidentiary hearing. See 28 U.S.C. § 2254(e)(2). Therefore, for all of the following reasons, **IT IS RECOMMENDED** that the petition be **DISMISSED WITH PREJUDICE.**

Petitioner, Marion Taylor, is a state prisoner incarcerated at the Louisiana State Penitentiary, Angola, Louisiana. On August 28, 2009, he was convicted of second-degree murder under Louisiana law.[1] On September 18, 2009, he was sentenced to a term of life imprisonment

[1] State Rec., Vol. VII of X, trial transcript, p. 394; State Rec., Vol. I of X, minute entry dated August 28, 2009; State Rec., Vol. I of X, jury verdict form.

Appx (B)(1)

without benefit of probation, parole, or suspension of sentence.[2] On May 11, 2011, the Louisiana Fourth Circuit Court of Appeal affirmed his conviction and sentence.[3] The Louisiana Supreme Court then denied his related writ application on January 20, 2012.[4]

On or about March 12, 2013, petitioner filed the instant federal application for *habeas corpus* relief.[5] The state concedes that the application is timely.[6]

I. Standards of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") comprehensively overhauled federal *habeas corpus* legislation, including 28 U.S.C. § 2254. Amended subsections 2254(d)(1) and (2) contain revised standards of review for pure questions of fact, pure questions of law, and mixed questions of both. The amendments "modified a federal habeas court's role in reviewing state prisoner applications in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law." Bell v. Cone, 535 U.S. 685, 693 (2002).

As to pure questions of fact, factual findings are presumed to be correct and a federal court will give deference to the state court's decision unless it "was based on an unreasonable

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[2] State Rec., Vol. VII of X, transcript of September 18, 2009, p. 9; State Rec., Vol. I of X, minute entry dated September 18, 2009.

[3] State v. Collins, 65 So.3d 271 (La. App. 4th Cir. 2011); State Rec., Vol. III of X.

[4] State v. Collins, 78 So.3d 140 (La. 2012); State Rec., Vol. II of X.

[5] Rec. Doc. 3.

[6] Rec. Doc. 11, p. 11.

determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2); see also 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.").

As to pure questions of law and mixed questions of law and fact, a federal court must defer to the state court's decision on the merits of such a claim unless that decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Courts have held that the "'contrary to' and 'unreasonable application' clauses [of § 2254(d)(1)] have independent meaning." Bell, 535 U.S. at 694.

Regarding the "contrary to" clause, the United States Fifth Circuit Court of Appeals has explained:

> A state court decision is contrary to clearly established precedent if the state court applies a rule that contradicts the governing law set forth in the [United States] Supreme Court's cases. A state-court decision will also be contrary to clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of the [United States] Supreme Court and nevertheless arrives at a result different from [United States] Supreme Court precedent.

Wooten v. Thaler, 598 F.3d 215, 218 (5th Cir. 2010) (internal quotation marks, ellipses, brackets, and footnotes omitted).

Regarding the "unreasonable application" clause, the United States Supreme Court has held: "[A] state-court decision is an unreasonable application of our clearly established precedent if it correctly identifies the governing legal rule but applies that rule unreasonably to the facts of a particular prisoner's case." White v. Woodall, 134 S. Ct. 1697, 1706 (2014). However, the Supreme Court cautioned:

> Section 2254(d)(1) provides a remedy for instances in which a state court unreasonably applies this Court's precedent; it does not require state courts to extend that precedent or license federal courts to treat the failure to do so as error. Thus, if a habeas court must extend a rationale before it can apply to the facts at hand, then by definition the rationale was not clearly established at the time of the state-court decision. AEDPA's carefully constructed framework would be undermined if habeas courts introduced rules not clearly established under the guise of extensions to existing law.

Id. (citations and quotation marks omitted). Therefore, when the Supreme Court's "cases give no clear answer to the question presented, let alone one in [the petitioner's] favor, it cannot be said that the state court unreasonably applied clearly established Federal law." Wright v. Van Patten, 552 U.S. 120, 126 (2008) (quotation marks and brackets omitted). The Supreme Court has also expressly cautioned that "an unreasonable application is different from an incorrect one." Bell, 535 U.S. at 694. Accordingly, a state court's merely incorrect application of Supreme Court precedent simply does not warrant *habeas* relief. Puckett v. Epps, 641 F.3d 657, 663 (5th Cir. 2011) ("Importantly, 'unreasonable' is not the same as 'erroneous' or 'incorrect'; an incorrect application of the law by a state court will nonetheless be affirmed if it is not simultaneously unreasonable.").

While the AEDPA standards of review are strict and narrow, they are purposely so. As the United States Supreme Court has held:

> [E]ven a strong case for relief does not mean the state court's contrary conclusion was unreasonable.
>
> If this standard is difficult to meet, that is because it was meant to be. As amended by AEDPA, § 2254(d) stops short of imposing a complete bar on federal court relitigation of claims already rejected in state proceedings. It preserves authority to issue the writ in cases where there is *no possibility* fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents. It goes no farther. Section 2254(d) reflects the view that habeas corpus is a guard against *extreme malfunctions* in the state criminal justice systems, *not a substitute for ordinary error correction through appeal. As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.*

Harrington v. Richter, 562 U.S. 86, 102-03 (2011) (citations omitted; emphasis added); see also Renico v. Lett, 559 U.S. 766, 779 (2010) ("AEDPA prevents defendants – and federal courts – from using federal habeas corpus review as a vehicle to second-guess the reasonable decisions of state courts.").

The Supreme Court has expressly warned that although "some federal judges find [28 U.S.C. § 2254(d)] too confining," it is nevertheless clear that "all federal judges must obey" the law and apply the strictly deferential standards of review mandated therein. White v. Woodall, 134 S. Ct. 1697, 1701 (2014).

II. Facts

Petitioner and co-defendant Justin Collins were tried jointly for the killing of Jerome Sparkman, and both defendants were convicted of second-degree murder. On direct appeal, the Louisiana Fourth Circuit Court of Appeal summarized the facts of the case as follows:

III. Petitioner's Claims

A. Confrontation Clause Violations

Petitioner asserts two claims based on the Confrontation Clause. In his first claim, he argues that his rights were violated when D.T.1 was allowed to testify by closed-circuit video without a sufficient foundation demonstrating potential harm to the witness. On direct appeal, the Louisiana Fourth Circuit Court of Appeal denied that claim, holding:

> Defendants argue that the trial court improperly allowed D.T.1 to testify by closed-circuit television rather than in the court room.
>
> La. R.S. 15:283 provides, in pertinent part:
>
> > A. On its own motion or on the motion of the attorney for any party, a court may order that the testimony of a protected person[FN5] who may have been a witness to or victim of a crime be taken in a room other than the courtroom and be simultaneously televised by closed circuit television to the court and jury, when the court makes a specific finding of necessity based upon both of the following:
> >
> > > [FN5] A "protected person" includes a person under the age of seventeen years who is a witness in a criminal prosecution. See La. R.S. 15:283(E)(1).
> >
> > (1) Expert testimony that the child would be likely to suffer serious emotional distress if forced to give testimony in open court.
> >
> > (2) Expert testimony that, without such simultaneous televised testimony, the child cannot reasonably communicate his testimony to the court or jury.
>
> The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted

with the witnesses against him." This right provides "two types of protections for a criminal defendant: the right physically to face those who testify against him, and the right to conduct cross-examination." Coy v. Iowa, 487 U.S. 1012, 1017, 108 S.Ct. 2798, 2801, 101 L.Ed.2d 857 (1988). However, public policy considerations and necessities may take precedence over "face-to-face" confrontation. Maryland v. Craig, 497 U.S. 836, 849, 110 S.Ct. 3157, 3165, 111 L.Ed.2d 666 (1990).

In Maryland v. Craig, *supra*, the United States Supreme Court reviewed a Maryland statute that allowed a child abuse victim to testify by one-way closed circuit television where it was shown that the child witness would suffer serious emotional distress such that the child could not reasonably communicate. Craig, 497 U.S. at 840-42. The Court held that if the state makes an adequate showing of necessity, the state's interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant. Id., 497 U.S. at 855. According to the Court, although the Maryland statute, when invoked, prevented a child witness from seeing the defendant as he or she testified against the defendant at trial, the procedure preserved all of the other elements of the confrontation right: "The child witness must be competent to testify and must testify under oath; the defendant retains full opportunity for contemporaneous cross-examination; and the judge, jury, and defendant are able to view (albeit by video monitor) the demeanor (and body) of the witness as he or she testifies." Id., 497 U.S. at 851. The Craig court noted that although it was aware of the many subtle effects face-to-face confrontation may have on an adversary criminal proceeding, the presence of these other elements of confrontation – oath, cross-examination, and observation of the witness' demeanor – adequately ensures that the testimony is both reliable and subject to rigorous adversarial testing in a manner functionally equivalent to that accorded live, in-person testimony. Id.

Further, in Craig, the Court stated that the requisite finding of necessity must be a case-specific one. Id., 497 U.S. at 855. The trial court must hear evidence and determine whether use of the one-way closed-circuit television procedure is necessary to protect the welfare of the particular child witness who seeks to testify. Id. The trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant. Id.,

497 U.S. at 856. Denial of face-to-face confrontation is not needed to further the state's interest in protecting the child witness from trauma unless it is the presence of the defendant that causes the trauma. Id. Finally, the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimis*, *i.e.*, more than mere nervousness, excitement or some reluctance to testify. Id. The Court concluded that, where necessary to protect a child witness from trauma that would be caused by testifying in the physical presence of the defendant, at least where such trauma would impair the child's ability to communicate, the Confrontation Clause does not prohibit use of a procedure that, despite the absence of face-to-face confrontation, ensures the reliability of the evidence by subjecting it to rigorous adversarial testing and thereby preserves the essence of effective communication. Id., 497 U.S. at 857.

In the matter *sub judice*, on the morning of trial, the State filed a motion to allow the closed-circuit presentation of the testimony of D.T.1 under La. R.S. 15:283, arguing that D.T.1 would likely suffer serious emotional distress and be unable to effectively communicate his testimony. In support of the motion, the State offered sworn letters from Drs. Richard Richoux and Rafael Salcedo, who interviewed D.T.1 and opined that requiring D.T.1 to testify live in the courtroom "would be extremely traumatic and stressful for him [and] would ... likely ... exacerbate what appeared to be pre-existing symptoms of a post-traumatic stress disorder."

Dr. Sarah Deland, accepted as an expert in the fields of general and forensic psychiatry, testified for the State that if D.T.1 were required to testify in open court, he would likely suffer extreme emotional distress and be unable to reasonably communicate his testimony to the jury. Contesting Dr. Deland's testimony, the defendants argue that the factors Dr. Deland gave in support of her opinion were generalities, none of which was sufficient to support the trial court's finding that D.T.1 would be able to testify if not in the defendants' presence. Dr. Deland's testimony regarding D.T.1's ability to testify in the presence of Defendants supported the trial judge's finding. Dr. Deland testified in part as follows:

[DIRECT EXAMINATION OF DR. DELAND]

A. My findings were that overall I found [D.T.1] to be a ... fairly intelligent child. He did not present any

overt symptom of ongoing mental illness. However, he was ... anxious about his situation.

He was able to tell me his version of the events that he witnessed very clearly without any difficulty. However, when it came to talking about coming into court, he became very, very anxious. He pretty much completely shut down, started drawing, did not want to talk about it, talked about other things, got up and down out of his chair, asked to leave the room.

And so based upon my ... observations [of his behavior], it was my opinion that it would cause him extreme emotional distress to come into open court.

Q. And, in your opinion to believe if he were to testify in open court, would he be able to communicate with the court ... express what he experienced?

A. I think that's – I mean – in open court, I have my doubts about whether or not he would be able to do that.

* * *

[CROSS EXAMINATION]

Q. Doctor, let me ask you something if you don't mind. Anyone that's called as a witness, who's appearing for the first time, whether they're 10 or 44, there's a degree of anxiousness, nervousness?

A. Yes, I'd agree with that.

* * *

Q. And there's no obvious – you said [D.T.1] is intelligent?

A. Yes.

Q. And he recalled everything to you without any problem?

A. That's correct.

Q. And you said that when you mentioned about going to court he showed some reluctance, as most witnesses do, is that correct?

A. Well, I wouldn't really say so much reluctance as extreme anxiety.

Q. Now, how would you categorize extreme anxiety?

A. Like I said, he pretty much – he had been talking to me fairly regularly before, when once that happened, he really just shut down, meaning he broke éye contact, he looked down and just started drawing. He started asking me about extraneous things like Sponge Bob or how do you spell Sponge Bob, things like that, getting up and down out of his chair, and then when I asked to talk to his Mom, he was very eager to leave. He asked, "So I can leave?"

* * *

Q. And my problem is trying to understand that this natural fear – as a new attorney is fearing going to trial for the first time, or a witness being called no matter what the age, is very reluctant, and fearful, and has anxiety – that this is basically what he's feeling right now because he's never been in the courtroom. Would you agree with that?

A. Yes.

Q. ... it would cause him extreme emotional distress?

A. Yes, it would.

> Q. Okay. And, in your opinion, would part of that be because he was placed in the same room with the defendants?
>
> A. I'm sure that has – yes. That has something to do with it. He is scared.
>
> Q. And you mentioned, when you started speaking about actually coming into the courtroom and testifying, he exhibited behavior such as shutting down, losing eye contact, going off topic. Would you expect that that would be his behavior if he were brought into court?
>
> A. Yes. That's one of the things that I based my – based my opinion upon.
>
> Q. And that would cause him to not reasonably be able to communicate what he experienced?
>
> A. Yes.
>
> We find that Dr. Deland's expert testimony conforms to the Maryland v. Craig, 497 U.S. 836, 849, 110 S.Ct. 3157, 3165, 111 L.Ed.2d 666 (1990) standard that the emotional distress suffered by the child witness in this case in the presence of the defendant is more than *de minimis*, *i.e.*, more than mere nervousness or excitement or some reluctance to testify. The trial court did not err in allowing D.T.1 to testify outside the presence of the defendants.[8]

The Louisiana Supreme Court then denied petitioner's related writ application without assigning additional reasons.[9]

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[8] State v. Collins, 65 So.3d 271, 279-82 (La. App. 4th Cir. 2011); State Rec., Vol. III of X.

[9] State v. Collins, 78 So.3d 140 (La. 2012); State Rec., Vol. II of X.

Under the stringent standards of review mandated by the AEDPA, petitioner may be granted relief with respect to this claim only if he shows that the foregoing state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Here, he has not made that showing for the following reasons.

Obviously, the state court correctly identified the controlling clearly established federal law, i.e. the Craig decision. In Craig, the United States Supreme Court expressly held that "where necessary to protect a child witness from trauma that would be caused by testifying in the physical presence of the defendant, at least where such trauma would impair the child's ability to communicate, the Confrontation Clause does not prohibit use of a procedure that, despite the absence of face-to-face confrontation, ensures the reliability of the evidence by subjecting it to rigorous adversarial testing and thereby preserves the essence of effective confrontation." Craig, 497 U.S. at 857.

Moreover, there is simply no basis for this Court to conclude that the state courts unreasonably applied Craig to the facts of this case. Here, as in Craig, the child witness testified under oath, was subject to full cross-examination, and was able to be observed by the judge, jury, and defendants as he testified, thereby adequately ensuring the reliability of evidence. See Craig, 497 U.S. at 857. While petitioner speculates that the procedure was not actually "necessary" to protect the child witness from trauma which would have impaired his ability to communicate, the state courts, after careful consideration of the evidence presented, expressly found that the procedure was necessary. Petitioner has never presented any evidence whatsoever to the contrary.

Accordingly, because petitioner has failed to show that the state court decision was contrary to, or involved an unreasonable application of, clearly established federal law, the AEDPA requires this federal *habeas* Court to defer to the state court decision and reject this claim.[10]

In his second claim, petitioner argues that his rights under the Confrontation Clause were violated by the admission of the 911 calls into evidence. On direct appeal, the Louisiana Fourth Circuit Court of Appeal likewise denied that claim, holding:

> Defendants Collins and Taylor argue that the trial court erred in allowing the 911 tapes into evidence. Defendants contend that because the callers did not testify, and were thus not subjected to confrontation, Defendants' Sixth Amendment rights were violated.
>
> In support of Defendants' contention that their right to confront their accusers was violated, Defendants cite Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), in which the U.S. Supreme Court found that certain ex parte examinations, while admissible under hearsay rules, are the type of testimonial evidence against the accused that the Confrontation Clause is supposed to prevent. The Supreme Court held that the Sixth Amendment bars admission of testimonial statements by a witness who did not appear at trial unless he was unavailable to

---

[10] The undersigned notes that when petitioner's co-defendant, Justin Collins, raised this same claim in his federal *habeas corpus* proceeding, the claim was likewise rejected in that case. Collins v. Cain, No. 13-0251, 2013 WL 4891923, at *8-19 (E.D. La. Sept. 11, 2013). In that case, in an opinion adopted by the United States District Judge Kurt D. Englehardt, United States Magistrate Judge Joseph C. Wilkinson, Jr., concluded:

> D.T.1's closed-circuit televison testimony was permissible under Craig and its progeny and was *not* a violation of the Confrontation Clause. Even if it could be characterized somehow as a Confrontation Clause violation, however, the cumulative nature of D.T.1's testimony, the availability and actuality of vigorous and contemporaneous cross-examination of D.T.1 via closed-circuit television at trial and the strength of the State's case against Collins establish that any undermining of Collins's right to confront D.T.1 in person was harmless error.

Id. at *19. Those observations apply with equal force with respect to petitioner.

RECOMMENDATION

Accordingly, **IT IS RECOMMENDED** that the petition for federal *habeas corpus* relief filed by Marion Taylor be **DISMISSED WITH PREJUDICE**.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. 28 U.S.C. § 636(b)(1); Douglass v. United Services Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).[18]

New Orleans, Louisiana, this twelfth day of May, 2015.

DANIEL E. KNOWLES, III
UNITED STATES MAGISTRATE JUDGE

[18] Douglass referenced the previously applicable ten-day period for the filing of objections. Effective December 1, 2009, 28 U.S.C. § 636(b)(1) was amended to extend that period to fourteen days.

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2011-K-1719

VS.

JUSTIN F. COLLINS AND MARION TAYLOR

- - - - - -

IN RE: Taylor, Marion; - Defendant; Applying For Writ of Certiorari and/or Review, Parish of Orleans, Criminal District Court Div. H, No. 479-689; to the Court of Appeal, Fourth Circuit, No. 2010-KA-0757;

- - - - - -

January 20, 2012

Denied.

JTK

BJJ

JPV

JLW

GGG

MRC

Supreme Court of Louisiana
January 20, 2012

Robin A. Burras

Deputy Clerk of Court
For the Court

Ex. App x (C)

STATE OF LOUISIANA	*	**NO. 2010-KA-0757**
VERSUS	*	**COURT OF APPEAL**
JUSTIN F. COLLINS AND MARION TAYLOR	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 479-689, SECTION "H"
Honorable Camille Buras, Judge
* * * * * *
Judge Terri F. Love
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay, III, Judge Terri F. Love)

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COUNSEL FOR DEFENDANT/APPELLANT, MARION TAYLOR

~~CONVICTIONS AFFIRMED; SENTENCES AFFIRMED~~
MAY 11, 2011

Appx (D)

shot the victim because she was afraid of Defendant Collins. Later, however, she stated that both Defendants Collins and Taylor shot the victim.

Dr. Samantha Huber, forensic pathologist for the Orleans Parish Coroner's Office, performed the autopsy on the victim's body. The victim suffered three gunshot wounds to the head and a bruise on the nose. One of the gunshot wounds was a close-contact wound to the right, back of his head. The area around the wound bore a muzzle imprint from the murder weapon, soot, and searing. That wound caused extensive brain damage. Two bullet fragments were retrieved from this wound. The second wound was to the left, back of the victim's head. The shot traveled forward and exited the victim's right cheek, causing extensive brain damage. The third wound was a shallow, penetrating injury to the victim's hand. That wound was not through-and-through, and appeared as if the bullet ricocheted or had passed through something prior to entering the victim's hand. Either of the head wounds would have been fatal and probably killed the victim almost instantly.

During his testimony, Mr. Meis also explained that in 2008, he was a member of the Guardian Angels, a volunteer crime fighting organization. Mr. Meis exited the store when he heard a shot and a crash, and he noticed a white vehicle pushing a blue truck through the intersection. Mr. Meis saw children running and two men exit the vehicle and run down Laurel Street toward Jackson Avenue. He did not notice whether either man was armed when exiting the vehicle. Mr. Meis observed the victim in the vehicle, and, after determining that he needed medical assistance, Mr. Meis called 911.

ERRORS PATENT

A review for errors patent reveals there are none.

CLOSED-CIRCUIT PRESENTATION OF TESTIMONY

In one of several assignments of error, Defendants argue that the trial court improperly allowed D.T.1 to testify by closed-circuit television rather than in the court room.

La. R.S. 15:283 provides, in pertinent part:

> A. On its own motion or on the motion of the attorney for any party, a court may order that the testimony of a protected person[5] who may have been a witness to or victim of a crime be taken in a room other than the courtroom and be simultaneously televised by closed circuit television to the court and jury, when the court makes a specific finding of necessity based upon both of the following:
> (1) Expert testimony that the child would be likely to suffer serious emotional distress if forced to give testimony in open court.
>
> (2) Expert testimony that, without such simultaneous televised testimony, the child cannot reasonably communicate his testimony to the court or jury.

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." This right provides "two types of protections for a criminal defendant: the right physically to face those who testify against him, and the right to conduct cross-examination." *Coy v. Iowa*, 487 U.S. 1012, 1017, 108 S.Ct. 2798, 2801, 101 L.Ed.2d 857 (1988). However, public policy considerations and necessities may take precedence over "face-to-face" confrontation. *Maryland v. Craig*, 497 U.S. 836, 849, 110 S.Ct. 3157, 3165, 111 L.Ed.2d 666 (1990).

In *Maryland v. Craig, supra,* the United States Supreme Court reviewed a Maryland statute that allowed a child abuse victim to testify by one-way closed circuit television where it was shown that the child witness would suffer serious emotional distress such that the child could not reasonably communicate. *Craig*, 497 U.S. at 840-42. The Court held that if the state makes an adequate showing of necessity, the state's interest in protecting child witnesses from the trauma of

find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimis, i.e.*, more than mere nervousness, excitement or some reluctance to testify. *Id.* The Court concluded that, where necessary to protect a child witness from trauma that would be caused by testifying in the physical presence of the defendant, at least where such trauma would impair the child's ability to communicate, the Confrontation Clause does not prohibit use of a procedure that, despite the absence of face-to-face confrontation, ensures the reliability of the evidence by subjecting it to rigorous adversarial testing and thereby preserves the essence of effective communication. *Id.*, 497 U.S. at 857.

In the matter *sub judice*, on the morning of trial, the State filed a motion to allow the closed-circuit presentation of the testimony of D.T.1 under La. R.S. 15:283, arguing that D.T.1 would likely suffer serious emotional distress and be unable to effectively communicate his testimony. In support of the motion, the State offered sworn letters from Drs. Richard Richoux and Rafael Salcedo, who interviewed D.T.1 and opined that requiring D.T.1 to testify live in the courtroom "would be extremely traumatic and stressful for him [and] would . . . likely . . . exacerbate what appeared to be pre-existing symptoms of a post-traumatic stress disorder."

Dr. Sarah Deland, accepted as an expert in the fields of general and forensic psychiatry, testified for the State that if D.T.1 were required to testify in open court, he would likely suffer extreme emotional distress and be unable to reasonably communicate his testimony to the jury. Contesting Dr. Deland's testimony, the defendants argue that the factors Dr. Deland gave in support of her opinion were generalities, none of which was sufficient to support the trial court's finding that D.T.1 would be able to testify if not in the defendants' presence. Dr. Deland's testimony regarding D.T.1's ability to testify in the presence of

Defendants supported the trial judge's finding. Dr. Deland testified in part as follows:

[DIRECT EXAMINATION OF DR. DELAND]

A. My findings were that overall I found [D.T.1] to be a ... fairly intelligent child. He did not present any overt symptom of ongoing mental illness. However, he was . . . anxious about his situation.

He was able to tell me his version of the events that he witnessed very clearly without any difficulty. However, when it came to talking about coming into court, he became very, very anxious. He pretty much completely shut down, started drawing, did not want to talk about it, talked about other things, got up and down out of his chair, asked to leave the room.

And so based upon my . . . observations [of his behavior], it was my opinion that it would cause him extreme emotional distress to come into open court.

Q. And, in your opinion to believe if he were to testify in open court, would he be able to communicate with the court . . . express what he experienced?

A. I think that's ---- I mean --- in open court, I have my doubts about whether or not he would be able to do that.

* * *

[CROSS EXAMINATION]

Q. Doctor, let me ask you something if you don't mind. Anyone that's called as a witness, who's appearing for the first time, whether they're 10 or 44, there's a degree of anxiousness, nervousness?

A. Yes, I'd agree with that.

* * *

Q. And there's no obvious – you said [D.T.1] is intelligent?

A. Yes.

Q. And he recalled everything to you without any problem?

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Q. And you said that when you mentioned about going to court he showed some reluctance, as most witnesses do, is that correct?

A. Well, I wouldn't really say so much reluctance as extreme anxiety.

Q. Now, how would you categorize extreme anxiety?

A. Like I said, he pretty much – he had been talking to me fairly regularly before, when once that happened, he really just shut down, meaning he broke eye contact, he looked down and just started drawing. He started asking me about extraneous things like Sponge Bob or how do you spell Sponge Bob, things like that, getting up and down out of his chair, and then when I asked to talk to his Mom, he was very eager to leave. He asked, "So I can leave?"

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Q. And my problem is trying to understand that this natural fear – as a new attorney is fearing going to trial for the first time, or a witness being called no matter what the age, is very reluctant, and fearful, and has anxiety – that this is basically what he's feeling right now because he's never been in the courtroom. Would you agree with that?

A. Yes.

Q. . . . it would cause him extreme emotional distress?

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Q. Okay. And, in your opinion, would part of that be because he was placed in the same room with the defendants?

A. I'm sure that has - - yes. That has something to do with it. He is scared.

Q. And you mentioned, when you started speaking about actually coming into the courtroom and testifying, he exhibited behavior such as shutting down, losing eye contact, going off topic. Would you expect that that would be his behavior if he were brought into court?

A. Yes. That's one of the things that I based my - - based my opinion upon.

Q. And that would cause him to not reasonably be able to communicate what he experienced?

A. Yes.

We find that Dr. Deland's expert testimony conforms to the *Maryland v. Craig*, 497 U.S. 836, 849, 110 S.Ct. 3157, 3165, 111 L.Ed.2d 666 (1990) standard that the emotional distress suffered by the child witness in this case in the presence of the defendant is more than *de minimis, i.e.*, more than mere nervousness or

excitement or some reluctance to testify. The trial court did not err in allowing D.T.1 to testify outside the presence of the defendants.

ADMISSION OF EVIDENCE

ADMISSION OF 911 TAPES

Defendants Collins and Taylor argue that the trial court erred in allowing the 911 tapes into evidence. Defendants contend that because the callers did not testify, and were thus not subjected to confrontation, Defendants' Sixth Amendment rights were violated.

In support of Defendants' contention that their right to confront their accusers was violated, Defendants cite *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), in which the U. S. Supreme Court found that certain ex parte examinations, while admissible under hearsay rules, are the type of testimonial evidence against the accused that the Confrontation Clause is supposed to prevent. The Supreme Court held that the Sixth Amendment bars admission of testimonial statements by a witness who did not appear at trial unless he was unavailable to testify, and the defendant had a prior opportunity to cross examine the witness. *Id.* In *Davis v. Washington,* 547 U.S. 813, 822, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), specifically in the context of 911 calls, the Supreme Court declared that "[s]tatements are nontestimonial when made in the course of police investigation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." Conversely, statements are "testimonial when the circumstances objectively indicate that is no such ongoing emergency, and that the purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecutions." *Id.*, 547 U.S. at 822.

In the matter before us, the 911 calls ranged from descriptions of suspicious persons running with guns to people reporting the shooting. Defendants

> violated the Fifth, Sixth, and Fourteenth Amendments. With respect to that ruling, it should go without saying that a trial judge is not at liberty to ignore the controlling jurisprudence of superior courts. *Bertrand,* 2008-2215, p. 8, 6 So.3d at 743.
>
> This Court cited and relied on *Bertrand* in *State v. Barbour,* 2009-1258 (La. App. 4 Cir. 3/24/10), 35 So.3d 1142, to reject the argument that the trial court had erred in denying the defendant's motion to declare La. C.Cr.P. art. 782(A) unconstitutional as violative of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.
>
> As stated by the Louisiana Supreme Court in *Bertrand,* under current jurisprudence from the U.S. Supreme Court, non-unanimous twelve-person jury verdicts are constitutional, and La. C.Cr.P. art. 782(A) is constitutional.

Accordingly, we find no merit in Defendant Taylor's assignment of error. Further, even if the trial court erred in failing to declare Louisiana's jury statutory scheme unconstitutional, we find that such error was harmless because the jury verdict against Defendant Taylor was unanimous.

DECREE

Defendants' convictions and sentences are affirmed.

CONVICTIONS AFFIRMED; SENTENCES AFFIRMED

CERTIFICATE OF SERVICE

I certify that the foregoing facts, herein, are true and accurate setforth in this petition and thereby, serve a copy on this 25 day of August, 2021, on the Orleans Parish Assistant District Attorney's Office, Mr. Gershon Benjamin Cohen (ADA).

Respectfully submitted,

Marion Taylor #558611
LSP-Main Prison/Oak-1
17544 Tunica Trace
Angola, La. 70712

CERTIFICATE OF SERVICE

I certify that the foregoing facts, herein, are true and accurate setforth in this petition and thereby, serve a copy on this 25 day of August, 2021, on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530-0001, in which an employee of the United States is a party.

Respectfully submitted,

Marion Taylor #558611
LSP-Main Prison/Oak-1
17544 Tunica Trace
Angola, La. 70712