Appendix

A

p1 of 1

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
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Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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November 01, 2021

Amy Bishop Anderson
Tutwiler Prison for Women - Inmate Legal Mail
8966 US HWY 231 N
WETUMPKA, AL 36092

Appeal Number: 21-10593-H
Case Style: Amy Anderson v. Warden, et al
District Court Docket No: 5:18-cv-00971-MHH-SGC

The court is in receipt of your Motion for rehearing en banc. However, no action will be taken due to 11th Cir. R. 27-3 Successive Motions for Reconsideration Not Permitted. A party may file only one motion for reconsideration with respect to the same order. Likewise, a party may not request reconsideration of an order disposing of a motion for reconsideration previously filed by that party.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H
Phone #: (404) 335-6182

MP-1

B.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-10593-H

AMY BISHOP ANDERSON,

Petitioner-Appellant,

versus

WARDEN,
ATTORNEY GENERAL OF THE STATE OF ALABAMA,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

Before: JORDAN and LUCK, Circuit Judges.

BY THE COURT:

Amy Anderson has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's August 4, 2021, order denying her motion for a certificate of appealability and denying as moot her motions for leave to proceed on appeal *in forma pauperis* and appointment of counsel. Upon review, Anderson's motion for reconsideration is DENIED because she has offered no new evidence or arguments of merit to warrant relief.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-10593-H

AMY BISHOP ANDERSON,

Petitioner-Appellant,

versus

WARDEN,
ATTORNEY GENERAL OF THE STATE OF ALABAMA,

Respondents-Appellees.

Appeals from the United States District Court
for the Northern District of Alabama

ORDER:

Amy Anderson is an Alabama prisoner serving a life sentence for murder and attempted murder. She moves for a certificate of appealability ("COA"), leave to proceed *in forma pauperis* ("IFP"), and appointment of counsel, in order to appeal from the denial of her 28 U.S.C § 2254 petition, claiming that:

(A) counsel were ineffective (1) for not conducting meaningful adversarial testing during her criminal proceedings; (2) for not moving to withdraw her guilty pleas; and (3) due to personal issues that they had;

(B) her guilty pleas were involuntary because, *inter alia*, the trial court had misinformed her that the sentencing range for attempted murder was 10 years', instead of 20 years', to life imprisonment; and

(D) she should have been allowed to present defenses based on insanity and involuntary intoxication due to, *inter alia*, steroid psychosis.[1]

In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

The Antiterrorism and Effective Death Penalty Act ("AEDPA") provides that, after a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the state court's decision was: (1) contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or (2) based on an unreasonable determination of the facts in light of the evidence presented to the state court. 28 U.S.C. § 2254(d). To succeed on an ineffective assistance of counsel claim, a movant must show that: (1) his attorney's conduct was deficient; and (2) the deficient conduct prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "Where the highly deferential standards mandated by *Strickland* and AEDPA both apply, they combine to produce a doubly deferential form of review that asks only whether there is any reasonable argument that counsel satisfied *Strickland*['s] deferential standard." *Downs v. Sec'y, Fla. Dep't of Corr.*, 738 F.3d 240, 258 (11th Cir. 2013) (quotation marks omitted).

Here, no reasonable jurist would debate whether the district court erred by denying Grounds A, B, and D. As to Ground A(1), Anderson indicated that she was incompetent at the time of her

[1] Anderson only challenges the district court's denial of Claims A, B, and D, and she has, therefore, abandoned an appeal from the denial of her other claims. *See Jones v. Sec'y, Dep't of Corr.*, 607 F.3d 1346, 1353-54 (11th Cir. 2010).

criminal proceedings and not guilty of the charged offenses because her actions were unintentional. Upon entering her guilty pleas, however, she stipulated that an expert believed her to be mentally competent, she understood the wrongfulness of her actions during the shooting, and her conviction was the only rational verdict. As to Ground A(2), Anderson appeared to indicate that her counsel should have filed a motion to withdraw her guilty pleas on the ground that she was incompetent at the time. As noted above, however, an expert believed her to be mentally competent, and her attorneys agreed with that assessment. She also testified that her pleas were not the result of coercion. She, therefore, could not establish that counsel were ineffective for not filing a motion to withdraw her guilty pleas, or not conducting meaningful adversarial testing. *See Strickland*, 466 U.S. at 687.

As to Ground B, any error by the trial court in explaining the sentencing range for Anderson's attempted murder charges was harmless because her murder conviction resulted in a mandatory life sentence. Finally, Anderson had procedurally defaulted Ground D, and any other allegations asserted in support of Grounds A and B, because she did not raise them in state court, the time period for doing so has expired, and she could not overcome the default. *See* Ala. R. Crim. P. 32.2(c), 41(b); *Mize v. Hall*, 532 F.3d 1184, 1190 (11th Cir. 2008) (holding that a defaulted claim can support federal habeas relief only where the petitioner can show either cause for and actual prejudice from the default, or a fundamental miscarriage of justice).

Accordingly, Anderson's motion for a COA is DENIED because she has failed to make a substantial showing of the denial of a constitutional right. Her motions for IFP and appointment of counsel are DENIED AS MOOT.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

AMY BISHOP ANDERSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 5:18-cv-00971-MHH-SGC
	)	
WARDEN WRIGHT, et al.,	)	
	)	
Respondents.	)	

ORDER

Following the final judgment denying the petitioner's claims under 28 U.S.C. § 2254, the petitioner filed a notice of appeal (Doc. 38) and a number of post-judgment motions: (1) an "Emergency Motion for a Fourteen (14) Day Enlargement of Time" (Doc. 34); (2) a request for a certificate of appealability (Doc. 37); (3) a motion for leave to proceed *in forma pauperis* on appeal (Doc. 39); (4) a motion for appointment of counsel (Doc. 40); and (5) two motions to alter or amend judgment pursuant to Rule 59(e) of the *Federal Rules of Civil Procedure* (Docs. 35, 36). For the reasons stated below, the Court denies Ms. Anderson's motions.

I. POST-JUDGMENT MOTIONS

A. Motion for Enlargement of Time

In her motion for enlargement of time, Ms. Anderson seeks an extension of the deadline to file her Rule 59(e) motions and her notice of appeal. (Doc. 34).

Because Ms. Anderson filed her Rule 59(e) motions and her notice of appeal on time, her motion for extra time is moot. *See* FED. R. CIV. P. 59(e) (allowing 28 days from the date of judgment entry); FED. R. APP. P. 4(a)(1) (allowing 30 days from the date of judgment); FED. R. APP. P 4(a)(4)(A), (B) (time for appeal begins to run upon entry of order disposing of a timely Rule 59(e) motion).[1]

B. Rule 59(e) Motions

Regarding the Rule 59(e) motions to alter or amend, "the only grounds for granting a [Rule 59(e)] motion are newly-discovered evidence or manifest errors of law or fact." *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010) (*quoting Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007)). "[F]ederal courts generally have used Rule 59(e) only to reconsider matters properly encompassed in a decision on the merits. In particular, courts will not address new arguments or evidence that the moving party could have raised before the decision issued." *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020) (internal citations omitted; alterations incorporated). A Rule 59(e) motion does not provide a means to "relitigate old matters." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008). Instead, a movant must "demonstrate why the court should reconsider its decision

[1] Ms. Anderson filed her notice of appeal and Rule 59(e) motions contemporaneously. Accordingly, her notice of appeal "merely lies dormant while the motion[s] [are] pending, and . . . becomes effective as of the date of the order disposing of the Rule 59 motion[s]." *Jackson v. NCL Am., LLC*, 730 Fed. Appx. 786, 788 n.2 (11th Cir. 2018) (citing *Narey v. Dean*, 32 F.3d 1521, 1524 (11th Cir. 1994)).

and 'set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.'" *King v. Warden, Ga. Diagnostic Prison*, 2020 WL 3422193, at *1 (S.D. Ga. June 22, 2020) (quoting *United States v. Battle*, 272 F. Supp. 2d 1354, 1357 (N.D. Ga. 2003)).

In her first Rule 59(e) motion, Ms. Anderson contends that the Court erred in not allowing her to amend her habeas petition. (Doc. 35). Ms. Anderson recognizes, as did the Court, that the proposed amendment offers no new grounds and merely attempts to clarify her claims. (Docs. 29, 35). Ms. Anderson states that her proposed amendment described errors which were "'additive' and 'synergized' to result in 'egregious' error, more properly designated as cumulative error (accumulation of *harmless* errors that results in *non harmless* error) which led to a manifest injustice and miscarriage of justice." (Doc. 35, p. 6).

As noted in the Court's memorandum opinion, Ms. Anderson filed objections to the magistrate judge's report and recommendation on December 10, 2019. (Doc. 24; Doc. 32, p. 1, n. 1). She filed additional objections on December 30, 2019. (Doc. 26). Almost six months later, Ms. Anderson attempted to amend her petition. (Doc. 29).[2] Because the amended petition duplicated the claims already presented, the

[2] Ms. Anderson stated the following reasons for seeking to amend her petition: (1) her state court appointed attorney and the Magistrate Judge in the report and recommendation organized her claims in a "*vastly* more clear and cogent manner"; (2) she is now on appropriate medications; (3) she included inappropriate comments in her initial petition; (4) she included page citations to show her amended petition was not successive; (5) she learned the phrase "cumulative error analysis" in May 2020; (6) no final adjudication of her claims had yet occurred; (7) she asserted the same

Court denied the motion to amend but fully considered the arguments presented as additional objections to the report and recommendation. (Doc. 32). Because nothing in the amended petition affected the disposition of Ms. Anderson's claims and because the Court considered the additional arguments presented, the proposed amendment was futile. In any event, Ms. Anderson's arguments regarding "cumulative error" overlook the fact that, upon review, this Court found no error in the state court proceedings, constitutional or otherwise. (*See, e.g.*, Doc. 32, p. 9, n.4). For these reasons, the Court denies Ms. Anderson's first Rule 59(e) motion. (Doc. 35).

In her second Rule 59(e) motion, Ms. Anderson restates arguments from her petition, her objections to the report and recommendation, and her proposed amended complaint. (Doc. 36). Ms. Anderson once again challenges the jury instructions, contending "one correct jury instruction was interspersed with incorrect instructions all throughout the trial (where specific intent is not noted as necessary to my charge) that were delivered by the DA and even my own attnys [*sic*]." (Doc. 36, p. 8; *see also* Doc. 36, p. 12). As noted in the Court's memorandum opinion, the state court's jury instructions tracked the Alabama Pattern Jury Instruction for "Murder of Two or More Persons." (Doc. 32 at 8-9). Because the jury instructions

claims but with more development; (8) she attached a copy of her proposed amendment; and (9) she properly designated a claim as asserting cumulative error. (Doc. 29 at 1-2).

were proper, Ms. Anderson's argument that her attorney was ineffective for not objecting to those instructions is meritless.

Ms. Anderson also challenges the failure to instruct the jury on lesser included offenses and her attorney's failure to provide meaningful adversarial testing. (Doc. 36 at 13-18). These arguments ignore that Ms. Anderson pleaded guilty to capital murder. But for § 13A-5-42 of the *Alabama Code*, Ms. Anderson would not have had a jury trial following her guilty plea.[3] Ms. Anderson's arguments concerning her trial counsel's failure to procure a steroid expert as a basis for ineffective assistance of counsel and as a defense to the crime itself were thoroughly discussed in the report and recommendation (Doc. 19), and in the memorandum opinion (Doc. 32). The Court believes the analysis it has provided is sound.

Ms. Anderson also restates her arguments concerning trial counsels' failure to withdraw her guilty plea. (Doc. 36). Ms. Anderson argues that if her attorney had simply followed her instructions—rather than writing her back to confirm that she actually intended to withdraw her guilty plea—she could have filed a timely motion. Nothing in this argument demonstrates that the Court's decision, concluding these allegations were insufficient to support habeas relief, constitutes a manifest error of law.

[3] After the 2013 amendments, § 13A-5-42 requires the State of Alabama to prove a defendant's guilt to a jury beyond a reasonable doubt in a capital case only where, after entry of a guilty plea, the death penalty is to be imposed.

Ms. Anderson asserts that she was not properly informed of the essential elements of her crimes because: (1) she crossed out "intent" in the plea agreement; (2) the notification of rights she signed did not mention intent; and (3) the state court failed to address the elements in the plea colloquy. (Doc. 36). The plea colloquy belies this argument:

> THE COURT: What would the State expect to show in this case?
>
> MR. GANN: Your Honor, if put to trial, the State would expect that the evidence would be that on or about February 12, 2010, on the University of Alabama Huntsville campus, in Room 369, the Defendant was involved in a faculty meeting. During the meeting she stood up with a 9mm and opened fire. She shot Gopi Podila, Stephanie Monticciolo, Adriel Johnson, Maria Davis, Roger Cruz-Vera, Dr. Joseph Leahy. She fled the scene and was apprehended as she was trying to leave the building. The shooting left Dr. Gopi Podila dead, Adriel Johnson dead, and Maria Davis dead. Stephanie Monticciolo, Joseph Leahy, and Roger Cruz-Vera survived. Stephanie Monticciolo and Joseph Leahy were severely injured. The State alleges these acts were done intentionally. And all of these events occurred in Madison County.
>
> THE COURT: Ms. Anderson, let me ask you: To the charge in Count 1 of the offense of capital murder, with regard to the facts just stated by the Prosecutor, how do you plead?
>
> THE DEFENDANT: Guilty.
>
> THE COURT: And to the charge of attempted murder in Count 2, with regard to the facts just stated, how do you plead?
>
> THE DEFENDANT: Guilty.
>
> THE COURT: To the charge in Count 3 of the indictment of attempted murder, with regard to the facts just stated, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: And to the charge of attempted murder in Count 4, with regard to the facts just stated, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: Are you pleading Guilty in each of those counts because you are guilty?

THE DEFENDANT: Yes.

(Doc. 8-25, pp. 25-27).

Ms. Anderson next argues the medication she was prescribed due to stress caused by her pretrial detention in the Madison County Jail rendered her plea involuntary. (Doc. 36, p. 38). Nothing in Ms. Anderson's plea colloquy suggests that she pleaded guilty involuntarily. (*See* Doc. 8-25, pp. 25-27). Ms. Anderson's argument that she wanted to go to trial because she believed that the death penalty was a better option than life without parole provides no basis for habeas relief. (Doc. 36, p. 45).

Ms. Anderson has not presented newly discovered evidence and has not demonstrated manifest errors in the Court's reasoning; she merely reasserts the arguments she advanced in her § 2254 petition. Therefore, she has not satisfied the standard for relief under Rule 59(e). *See Chamblee v. Sec'y, Dep't of Corr.*, No. 17-13631-J, 2017 WL 7688259, *1 (11th Cir. Nov. 30, 2017) (noting that the reassertion of arguments previously raised in a § 2254 petition does not demonstrate manifest

errors or newly discovered evidence) (citing *Arthur*, 500 F.3d at 1343). Therefore, the Court denies Ms. Anderson's second Rule 59(e) motion. (Doc. 36).

The denial of a Rule 59(e) motion constitutes a final order. *See Perez v. Sec'y Dept. of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013). The Court will not issue a certificate of appealability as to this order. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000); Rule 11(a), *Rules Governing § 2254 Proceedings*. To the extent Ms. Anderson's pending motion seeking a certificate of appealability is aimed at the issues presented in her Rule 59(e) motions, the Court denies the motion. (Doc. 37).

C. Motion for Appointed Counsel

As no evidentiary hearing is warranted in this habeas proceeding, no basis for appointment of counsel exists. *See* Rule 8(c), *Rules Governing § 2254 Proceedings.* Accordingly, the Court denies Ms. Anderson's motion for appointment of counsel. (Doc. 40). To the extent Ms. Anderson seeks counsel to assist with her appeal of this Court's decision on her § 2254 habeas petition, she should file that request in the Eleventh Circuit Court of Appeals.

II. ORDER REGARDING APPEAL OF HABEAS CASE

As previously noted, Ms. Anderson has filed a notice of appeal, a request for certificate of appealability, and a motion to proceed *in forma pauperis* on appeal. (Docs. 37-39). A habeas petitioner may not appeal *in forma pauperis* if a district

court certifies in writing that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); FED. R. APP. P 24(a)(3)(A). For the reasons set forth in the magistrate judge's November 26, 2019 report and recommendation and this Court's February 5, 2021 memorandum opinion and final order, the Court finds that Ms. Anderson's appeal is not taken in good faith in that she does not have a basis in the law for an appeal. (Docs. 19, 32, 33). Accordingly, the Court denies Ms. Anderson's motion to proceed *in forma pauperis* on appeal. (Doc. 39). Ms. Anderson may file an application to proceed on appeal *in forma pauperis* directly with the Eleventh Circuit.

Again, the Court denies Ms. Anderson's request for a certificate of appealability, but she may seek a certificate from the Eleventh Circuit as to the Court's initial decision and this order.

The Clerk of Court shall please provide a copy of this order to the petitioner.

DONE and **ORDERED** this April 7, 2021.

Madeline H. Haikala

MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

E

AMY BISHOP ANDERSON, Petitioner, v. WARDEN WRIGHT, et al., Respondents.
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION
2021 U.S. Dist. LEXIS 22347
Case No.: 5:18-cv-00971-MHH-SGC
February 5, 2021, Decided
February 5, 2021, Filed

Editorial Information: Prior History

Anderson v. Warden Wright, 2019 U.S. Dist. LEXIS 236717 (N.D. Ala., Nov. 26, 2019)

Counsel **{2021 U.S. Dist. LEXIS 1}**Amy Bishop Anderson, Petitioner, Pro se, Wetumpka, AL.

For Warden Wright, Attorney General of the State of ALabama, Respondent: Kristi O Wilkerson, LEAD ATTORNEY, OFFICE OF THE ATTORNEY GENERAL, Montgomery, AL.

Judges: MADELINE HUGHES HAIKALA, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: MADELINE HUGHES HAIKALA

Opinion

MEMORANDUM OPINION

Pursuant to 28 U.S.C. § 2254, petitioner Amy Bishop **Anderson** seeks relief from her state court convictions for capital murder and attempted murder under Alabama law. (Doc. 1, p. 2). Ms. **Anderson** pleaded guilty to those counts. On November 26, 2019, the magistrate judge entered a 54-page report in which she recommended that the Court deny Ms. Anderson's request for relief and dismiss this action with prejudice. (Doc. 19). Ms. **Anderson** has objected to the report and recommendation. (Doc. 26).1

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A district judge must "make a *de novo* determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Crim. P. 59(b)(3) ("The district judge must consider *de novo* any objection to the magistrate judge's recommendation.").**{2021 U.S. Dist. LEXIS 2}** A district court's obligation to "'make a de novo *determination* of those portions of the report or specified proposed findings or recommendations to which objection is made,'" requires a district judge to "'give *fresh consideration* to those issues to which specific objection has been made by a party.'" *United States v. Raddatz*, 447 U.S. 667, 673, 675, 100 S. Ct. 2406, 65 L. Ed. 2d 424 (1980) (quoting 28 U.S.C. § 636(b)(1) and House Report No. 94-1609, p. 3 (1976)) (emphasis in *Raddatz*). Although § 636(b)(1) "does not require the [district] judge to review an issue *de novo* if no objections are filed, it does not preclude further review by the district judge, *sua sponte* or at the request of a party, under a *de novo* or any other standard." *Thomas*

v. Arn, 474 U.S. 140, 154, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). That is because for dispositive issues, like habeas petitions, "the ultimate adjudicatory determination is reserved to the district judge." *Raddatz*, 447 U.S. at 675.

As an initial matter, Ms. **Anderson** objects to the magistrate judge's conclusion that the habeas claims in this matter are time-barred and procedurally defaulted. (Doc. 26, pp. 1-18). For purposes of this opinion, the Court will assume that Ms. Anderson's claims are timely and are not procedurally defaulted. The magistrate judge addressed Ms. Anderson's claims on the merits, so the Court will consider Ms. Anderson's objections concerning**{2021 U.S. Dist. LEXIS 3}** the merits of her claims. If her claims fail on the merits, then there is no need to examine timeliness or default in this opinion.

Under the Antiterrorism and Effective Death Penalty Act of 1996, also known as AEDPA, a petitioner may obtain federal habeas relief on claims that have been adjudicated on the merits in state court only if the petitioner demonstrates that the state court's adjudication of the claims produced "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court" or "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. §§ 2254(d)(1)-(2). A habeas petitioner meets this standard by showing that the state court's decision was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011).

Many of Ms. Anderson's objections relate to her contention that her attorneys did not adequately explore her defenses. Ms. **Anderson** asserts that when she opened fire in a faculty meeting at the University of Alabama at Huntsville, (Doc. 8-23,**{2021 U.S. Dist. LEXIS 4}** p. 99; Doc. 8-29, p. 2), she was suffering from steroid psychosis, a condition which rendered her incompetent and unable to form the intent that the State must prove to obtain a guilty verdict on charges of capital and attempted murder. She argues that she blacked out while she shot her colleagues, leaving three colleagues dead and three wounded. (Doc. 26, pp. 1, 9).2

To obtain habeas relief on competency grounds, a petitioner must demonstrate that "there was a reasonable probability that [s]he would have received a competency hearing *and* been found incompetent, had counsel requested the hearing." *Lawrence v, Sec'y Fla. Dep't of Corr.*, 700 F.3d 464, 479 (11th Cir. 2012). Here, based on an examination by an expert in clinical psychology, the parties stipulated that when she shot her colleagues, Ms. **Anderson** was able to understand the nature, quality, and wrongfulness of her actions. (Doc. 8-22, p. 9). In these circumstances, an attorney does not have to seek another expert opinion. *See generally Bertolotti v. Dugger*, 883 F.2d 1503, 1514-15 (11th Cir. 1989); *Sidebottom v. Delo*, 46 F.3d 744, 753 (8th Cir. 1995) ("We have never suggested that counsel must continue looking for experts just because the one he has consulted gave an unfavorable opinion.").

At Ms. Anderson's change of plea hearing, the trial judge explored**{2021 U.S. Dist. LEXIS 5}** the topic of Ms. Anderson's competency and received from Ms. Anderson's three attorneys unequivocal affirmations that Ms. **Anderson** was competent. (Doc. 8-25, pp. 22-23). At her capital murder trial, to establish intent, the State of Alabama presented evidence of the steps that Ms. **Anderson** took to prepare for the February 12, 2010 shooting. That evidence included evidence that Ms. **Anderson** visited a firing range one week before the shooting. (Doc. 8-23, p. 103). The State also offered evidence of the steps that Ms. **Anderson** took to hide the gun and other evidence of her crime after the shooting. (Doc. 8-23, p. 100).3 On this record, Ms. **Anderson** cannot establish that her conviction "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. §§ 2254(d)(1)-(2).

Citing *United States v. Cronic*, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984), Ms. **Anderson** argues that the Court should presume that her attorneys were ineffective and not require her to make a showing of prejudice because her attorney was denied funds for an "appropriate steroid expert" and failed to appeal the order denying the fund request, her attorney agreed to incorrect jury instructions, and her attorney was involved in making "negative/untrue publicity . . . available for use by [the] prosecution." (Doc. 26, p. 22). In *Cronic*, the Supreme Court held that "[t]he right to the effective assistance of counsel is [] the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." 466 U.S. at 656. Because the right to effective counsel is a component of a criminal defendant's broader right to a fair trial, to receive relief on an ineffective assistance of counsel claim, a defendant typically must show that her attorney's conduct prejudiced her at trial. 466 U.S. at 659, n. 26 ("[T]here is generally no basis for finding a Sixth Amendment violation unless the accused can show how specific errors of counsel undermined the reliability of the finding of guilt."). But that is not**{2021 U.S. Dist. LEXIS 7}** so in "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." 466 U.S. at 658. In those circumstances, "ineffectiveness [is] properly presumed without inquiry into actual performance at trial." 466 U.S. at 661 (citing *Powell v. Alabama*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932)).

Ms. **Anderson** is not entitled to a presumption of prejudice because she pleaded guilty to capital murder and attempted murder before her trial began. Again, her capital murder trial is a function of Alabama statutory law. Ms. Anderson's guilty plea before trial diminished any claim she might have concerning her attorney's conduct during trial.

And even if she had not pleaded guilty before trial, the record does not suggest that Ms. Anderson's trial attorney's conduct was so deficient that she should be relieved of the burden of demonstrating prejudice. Ms. Anderson's belief that the outcome of the trial would have changed had counsel been able to fund a steroid psychosis expert is, on the record before the Court, speculation because, as noted, the State of Alabama presented circumstantial evidence of Ms. Anderson's intent. Ms. Anderson's criticism of her attorney's failure to object to the jury instructions based on her**{2021 U.S. Dist. LEXIS 8}** belief the instructions did not require specific intent be proved cannot withstand scrutiny on the record in this case. (Doc. 26, pp. 24-25). The trial court charged the jury in relevant part:

> Before you return a Guilty verdict of the offense charged in this indictment, each and every element of the specific offense charged must be established beyond a reasonable doubt.
>
> . . .
>
> I'm going to give you at this time the specific charge as it relates to the offense of capital murder. The Defendant, Amy Bishop **Anderson**, is charged with one count of capital murder, and the law states that the intentional murder of two or more persons is capital murder. **A person commits an intentional murder of two or more persons if pursuant to one scheme or course of conduct, he or she causes the death of two or more people and in performing the act or acts that caused the death of those people, he or she intends to kill each of those people**.
>
> To convict, the State must prove beyond a reasonable doubt each of the following elements of intentional murder of two or more persons: One, that Gopi Podila is dead; two, that the Defendant, Amy Bishop **Anderson**, caused the death of Gopi Podila by shooting him with a firearm;**{2021 U.S. Dist. LEXIS 9}** three, **that in committing the acts that caused the death of Gopi Podila, the Defendant intended to kill the deceased person or another person;** four, that Adriel Johnson is dead; five that the Defendant caused the death of Adriel Johnson by shooting him with

a firearm; six, **that in committing the acts that caused the death of Adriel Johnson, the Defendant intended to kill the deceased person or another person;** and seven that the murder of Gopi Podila and the murder of Adriel Johnson were pursuant to one scheme or course of conduct. The State has also presented evidence as to a third victim - that being Dr. Davis - but the State is only required to convince you beyond a reasonable doubt that two - or at least two - people were killed pursuant to one course or scheme of conduct.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific. If you find from the evidence that the State has proven beyond a reasonable doubt each of the elements of intentional murder of two or more persons, as charged, then you shall find the Defendant guilty of capital murder ....(Doc. 8-24, pp. 40-43) (emphasis added). The charge tracks**{2021 U.S. Dist. LEXIS 10}** the Alabama Pattern Jury Instruction, "Murder of Two or More Persons" almost verbatim. *See* Ala. Pattern Jury Instr. Crim. 5-121 (3d ed. 1994). Ms. Anderson's argument that the jury instructions were incorrect or lacked an instruction on specific intent is without merit.4

Nothing in Ms. Anderson's objections points to a state court ruling that resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. §§ 2254(d)(1)-(2). Ms. **Anderson** has not demonstrated that her attorneys' "performance was deficient" or that "the deficient performance prejudiced the defense" because the "errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). As noted, Ms. **Anderson** has not demonstrated that the verdict in her case would have changed had her attorneys pursued a steroid psychosis defense.5 Therefore, Ms. **Anderson** is not entitled to habeas relief based on the errors that she has described relating to her**{2021 U.S. Dist. LEXIS 11}** capital murder trial.

Ms. Anderson's contention that her counsel erroneously failed to file a motion to withdraw her guilty plea likewise fails to meet the standard for habeas relief. (Doc. 26, p. 31). To demonstrate counsel's ineffectiveness for either counseling her to accept the plea bargain offered or for failing to file a motion to withdraw the guilty plea, Ms. **Anderson** must establish that "a decision to reject the plea bargain would have been rational under the circumstances." *Padilla v. Kentucky*, 559 U.S. 356, 372, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010) (citing *Roe v. Flores-Ortega*, 528 U.S. 470, 480, 486, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000)); *see also North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) (holding that a plea to remove the possibility of the death penalty represents "a free and rational choice"); *AEY, Inc. v. United States*, 803 F.3d 1258, 1263 (11th Cir. 2015). Here, in exchange for her pleas of guilty to capital murder and attempted murder, the possibility of the death penalty was eliminated. Ms. **Anderson** has not established that "a decision to reject the plea bargain would have been rational under the circumstances." *Padilla*, 559 U.S. at 372.

Ms. Anderson's argument that her attorneys' failure to secure a trial more quickly coerced her into accepting a guilty plea likewise is not persuasive. (Doc. 26, pp. 23, 35-37). Ms. **Anderson** may not use her post-conviction assertion of coercion, which contradicts**{2021 U.S. Dist. LEXIS 12}** her testimony during her plea colloquy, to establish the prejudice prong of *Strickland. See U.S v. Baxley*, 402 Fed. Appx. 461, 462 (11th Cir. 2010) (courts "strongly presume that the defendant's statements at the guilty-plea colloquy were truthful"); *Knight v. Sec'y, Fla. Dep't of Corr.*, No. 17-12284, 2017 U.S. App. LEXIS 23735, 2017 WL 5593485, *5 (11th Cir. 2017) (quoting *United States v. Rogers*, 848 F.2d 166, 168 (11th Cir. 1988) ("when a defendant makes statements under oath at a plea colloquy, he bears a heavy burden to show his statements were false.")). The record supports a finding that Ms.

Anderson "understood the charges against [her] and the consequences of pleading guilty, and voluntarily entered the plea, such that [her] plea should be upheld on federal review." (Doc. 8-25); *Merilien v. Warden*, No. 17-13117, 2019 U.S. App. LEXIS 13495, 2019 WL 3079386, *2 (11th Cir. May 3, 2019) (citing *Stano v. Dugger*, 921 F.2d 1125, 1141 (11th Cir. 1991)); *see also Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992) (per curiam) (a knowing and voluntary guilty plea waives all constitutional challenges to a conviction, including claims of ineffective assistance of counsel).6

Ms. Anderson's assertion that the trial court did not inform her during her change of plea hearing that "intent" was an element of the charges against her overlooks the fact that when the trial judge gave Ms. **Anderson** the opportunity to have the court explain "anything about any" of the charges against her, Ms. **Anderson** declined and stated that she understood each of the charges against her. (*Compare* Doc. 26, pp. 33-34, *with* Doc. 8-25, p. 20). When**{2021 U.S. Dist. LEXIS 13}** describing the facts that the State of Alabama believed it could prove, counsel for the State indicated that the State believed that it could establish that Ms. **Anderson** shot her colleagues intentionally. (Doc. 8-25, p. 26). "Because Anderson's plea colloquy was both "intelligent and voluntary," her attorneys could not be ineffective for failing to move to withdraw her guilty plea. *See Alford*, 400 U.S. at 37-39; *Orange v. United States*, No. 16-12842, 2017 U.S. App. LEXIS 27355, 2017 WL 5714719, *3 (11th Cir. 2017) (claim that plea was unknowing and involuntary because petitioner did not understand how long his sentence might be was undermined by the record); *Sierra v. Fla. Dep't of Corr.*, 657 Fed. Appx. 849, 852 (11th Cir. 2016) ("With a video recording of the crime and no valid defenses, it would not have been rational for Sierra to have rejected the plea agreement and proceed to trial.").

For these reasons, Ms. Anderson's challenge to her guilty plea does not provide a basis for habeas relief.

Accordingly, the Court overrules Ms. Anderson's objections to the magistrate judge's report. The Court adopts the report and accepts the magistrate judge's recommendation. Ms. Anderson's request for habeas relief is without merit. By separate order, the Court will dismiss this habeas action. Because the petition does not present issues that are debatable among reasonable jurists, the Court**{2021 U.S. Dist. LEXIS 14}** will not issue a certificate of appealability. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484-85, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); Rule 11(a), *Rules Governing § 2254 Proceedings*. Ms. **Anderson** must request a certificate from the Eleventh Circuit if she wishes to appeal.

DONE and **ORDERED** this February 5, 2021.

/s/ Madeline Hughes Haikala

MADELINE HUGHES HAIKALA

UNITED STATES DISTRICT JUDGE

FINAL ORDER

Consistent with the accompanying memorandum opinion and with Rule 58 of the *Federal Rules of Civil Procedure*, the Court denies Ms. Anderson's request for habeas relief and dismisses this action with prejudice. For the reasons stated in the memorandum opinion, the Court will not issue a certificate of appealability. Ms. **Anderson** must request a certificate from the Eleventh Circuit Court of Appeals if she wishes to appeal.

Costs are taxed as paid.

DONE and **ORDERED** this February 5, 2021.

/s/ Madeline Hughes Haikala

MADELINE HUGHES HAIKALA

UNITED STATES DISTRICT JUDGE

Footnotes

1

Applying the prison mail rule, Ms. Anderson filed her initial objections on December 10, 2019. (Doc. 24, p. 24). Ms. Anderson filed expanded objections on December 30, 2019. (Doc. 26, p. 46). On June 7, 2020, the Court received a document that Ms. Anderson labelled a motion to amend her petition. (Doc. 29, pp. 1, 67). Because the motion responds to the report and recommendation, the Court construes the motion as additional objections to the magistrate judge's report. The arguments asserted in the 67-page document are duplicative of arguments Ms. Anderson has raised in her petition and in her initial objections. The Court will not address the repetitive arguments separately. To the extent that Ms. Anderson's most recent filing may be construed as a motion to amend, the Court denies the motion.

2

"The *Diagnostic and Statistical Manual of Mental Disorders*, fifth edition, categorizes steroid-induced psychosis as a form of substance/medication-induced psychotic disorder. For steroid-induced psychosis to be diagnosed, a number of criteria must be met. First, the patient must have at least delusions or hallucinations after exposure to a medication capable of producing these symptoms. The disturbance cannot be better explained by a non-medication-induced psychotic disorder, and it does not occur exclusively during the course of a delirium. Finally, it must cause clinically significant distress or functional impairment. These requirements make the condition a diagnosis of exclusion and therefore a physician must rule out other potential differential diagnoses of other medications, drug use, intoxication, electrolyte imbalance, infection, hypoglycemia, hyperglycemia, neoplasms, or known psychiatric causes." https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6793974/ (last visited Feb. 2, 2021) (footnote omitted).

3

As the magistrate judge discussed in her report, under Alabama law, after a defendant pleads guilty to capital murder, by statute, the State still must prove the defendant's guilt beyond a reasonable doubt to a jury. (Doc. 19, p. 8) (citing Ala. Code § 13A-5-42); *see ex parte Booker*, 992 So. 2d 686, 687 (Ala. 2008). Though later amended, before 2013, § 13A-5-42 provided:

A defendant who is indicted for a capital offense may plead guilty to it, but the state must in any event prove the defendant's guilt of the capital offense beyond a reasonable doubt to a jury. The guilty plea may be considered in determining whether the state has met that burden of proof. The guilty plea shall have the effect of waiving all non-jurisdictional defects in the proceeding**{2021 U.S. Dist. LEXIS 6}** resulting in the conviction except the sufficiency of the evidence. . . .Ala. Code § 13A-5-42

4

The Eleventh Circuit Court of Appeals has expressed doubt that the cumulative error doctrine may be used to establish an ineffective assistance claim in a habeas proceeding. *See Wood v. Sec'y, Dep't of Corr.*, 793 Fed. Appx. 813, 818 (11th Cir. 2019). The Court need not explore the issue because Ms. Anderson has not identified a colorable error by her trial attorney. Therefore, Ms. Anderson is not entitled to relief on her "synergy" of error theory. (Doc. 26, p. 22).

5

The Court has not located an Alabama or an Eleventh Circuit decision in which a court has recognized steroid psychosis as a viable defense to capital murder. Nationally, there seem to be three cases concerning steroid psychosis in a criminal context. In *U.S. v. Palumbo*, 735 F.2d 1095 (8th Cir. 1984), the Eighth Circuit found that a district court properly rejected a steroid psychosis defense to drug trafficking. 735 F.2d at 1098-99. In *U.S. v Warren*, 447 F.2d 278 (2d Cir. 1971), the jury rejected the defendant's expert testimony regarding steroid psychosis in an art theft case. 447 F.2d at 282. And in *United States v. Jones*, No. 98-251, 2001 U.S. Dist. LEXIS 27914, 2001 WL 37125201 (D.N.M. Apr. 19, 2001), the district court considered a defendant's competency during trial, finding "high levels of Prednisone taken over a long period of time may cause steroid psychosis and a compromise in one's mental functioning. . . . Both doctors also stated that elevated blood sugar levels may be caused by high levels of Prednisone and that in turn, the increase in blood sugar levels, especially at the amounts in the medical records and in the testimony, may also impair mental functioning." 2001 U.S. Dist. LEXIS 27914, 2001 WL 37125201 at *4. The *Warren* decision demonstrates that even if a defendant presents a steroid psychosis defense through expert testimony, a jury may reject that defense. There is nothing in the record in this case that suggests that testimony from an expert that Ms. Anderson experienced an episode of steroid psychosis when she shot her colleagues would have caused the jury to return a different verdict, given the evidence of intent in the record.

6

In her initial habeas petition, Ms. Anderson asserted that she signed the plea agreement for several reasons, one of which was to protect her husband. (Doc. 1-1, p. 13).

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