Index to Appendixes

Appendix A- Sixth Cir. Clerk's merits review	Appendix H- Supreme Court Rule 20
Appendix B- COA published order Judges signatures	Appendix I- Supreme Court Rule 44
Appendix C- COA published order Judges signatures	Appendix J- 1st,5th,6th, and 14th U.S. Const. Amend.
Appendix D- COA published order Judges signatures	Appendix K- §2254 State Custody Federal Remedy
Appendix E- §2253 COA	Appendix L- §2241 Power to Grant Writ
Appendix F- Cir. R. 45. Duties of Clerks	
Appendix G- USCS Fed Rule Civ Proc. R. 55	

Harris relies and hereby fully incorporates all exhibits as indicated in the index to appendixes, to support and get redress in this Court of his protected constitutional claims. I declare under penalty of perjury that the forgoing is true and correct pursuant to ***28 U.S.C.S. §1746.***

Executed on April 27, 2022

Respectfully Submitted,

Isaiah S. Harris Sr.

Isaiah S. Harris Sr. #570016
P.O. Box 8107
Mansfield, Ohio 44901

No. 21-6978

In The

SUPREME COURT OF THE UNITED STATES

In re Isaiah S. Harris Sr., Petitioner

JOINT APPENDIX A - L

Isaiah S. Harris Sr., #570016
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

Pro se Litigant

Solicitor General of the United States,
Room 5614, Department of Justice,
950 Pennsylvania Ave., N.W.,
Washington, DC. 20530-0001

Index to Appendixes

Appendix A- Sixth Cir. Clerk's merits review Appendix B- COA published order Judges signatures Appendix C- COA published order Judges signatures Appendix D- COA published order Judges signatures Appendix E- §2253 COA Appendix F- Cir. R. 45. Duties of Clerks Appendix G- USCS Fed Rule Civ Proc. R. 55	Appendix H- Supreme Court Rule 20 Appendix I- Supreme Court Rule 44 Appendix J- 1st,5th,6th, and 14th U.S. Const. Amend. Appendix K- §2254 State Custody Federal Remedy Appendix L- §2241 Power to Grant Writ

Harris relies and hereby fully incorporates all exhibits as indicated in the index to appendixes, to support and get redress in this Court of his protected constitutional claims. I declare under penalty of perjury that the forgoing is true and correct pursuant to ***28 U.S.C.S. §1746.***

Executed on April 27, 2022

Respectfully Submitted,

/s/ Isaiah S. Harris Sr.

Isaiah S. Harris Sr. #570016
P.O. Box 8107
Mansfield, Ohio 44901

APPENDIX A

(Sixth Circuit Court's Clerk's Unpublished COA Denial, 3page)

No. 17-3326

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 28, 2017
DEBORAH S. HUNT, Clerk

ISAIAH HARRIS,

Petitioner-Appellant,

v.

DAVE MARQUIS, Warden,

Respondent-Appellee.

ORDER

Isaiah Harris, a pro se Ohio prisoner, appeals the district court's judgment dismissing his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Harris moves the court for a certificate of appealability (COA) and to proceed in forma pauperis on appeal.

In May 2009, Harris was convicted after a bench trial of domestic violence, violating a protection order, rape, aggravated burglary, and intimidation. The trial court sentenced Harris to an aggregate term of twenty-three-and-a-half years of imprisonment. The Ohio Court of Appeals affirmed Harris's convictions, *State v. Harris*, Nos. 09CA009605, 09CA009606, 09CA009607, 2010 WL 1016085 (Ohio Ct. App. Mar. 22, 2010), and the Ohio Supreme Court denied leave to appeal, *State v. Harris*, 932 N.E.2d 339 (Ohio 2010). Harris did not seek state post-conviction relief.

In April 2014, Harris filed a § 2254 petition, and in February 2015 a supplement to the petition, raising a total of five claims: (1) he is actually innocent of the crimes of conviction; (2) the evidence was insufficient to find him guilty beyond a reasonable doubt; (3) the habeas statute of limitations should be equitably tolled; (4) and (5) he received ineffective assistance of appellate counsel. Over Harris's objections, the district court adopted a magistrate judge's report

and recommendation that concluded that Harris's claims were barred by the one-year 28 U.S.C. § 2244(d)(1) statute of limitations and that Harris was not entitled to equitable tolling based on his asserted inability to access the prison law library or his claim of actual innocence. The district court declined to issue a COA.

When a district court denies a habeas petition on procedural grounds, the court may issue a certificate of appealability only if the applicant shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Harris's claims are untimely under § 2244(d)(1)(A) because he filed his petition in 2014, more than one year after his convictions became final in November 2010, when his time for filing a petition for a writ of certiorari in the United States Supreme Court expired. *See Payton v. Brigano*, 256 F.3d 405, 409 n.3 (6th Cir. 2001). Harris does not argue that his petition is timely under any other provision of § 2244(d)(1). Reasonable jurists therefore would not debate the district court's conclusion that Harris's petition is barred by the statute of limitations.

The statute of limitations is not jurisdictional, however, and may be equitably tolled by the court upon a credible showing of actual innocence by the petitioner. *See Souter v. Jones*, 395 F.3d 577, 588-89 (6th Cir. 2005). The petitioner must support his actual innocence claim with new, reliable evidence that establishes that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. *See Cleveland v. Bradshaw*, 693 F.3d 626, 633 (6th Cir. 2012). Harris's actual innocence claim is based on allegedly newly discovered evidence that the victim in the case, his former girlfriend K.T., had falsely accused him of domestic violence in the past. Harris claims that the prosecution failed to disclose this evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), that it could have been used to impeach K.T. at trial, and that he probably would not have been convicted because the outcome of his trial hinged on her credibility. The district court concluded that Harris failed to make a credible showing of actual innocence.

Although the trial record shows that the prosecution did not disclose to Harris that K.T. had previously made domestic violence allegations against him that the police determined were unfounded, the record also shows that Harris's attorney acquired this information independently before trial. Consequently, the prosecution's failure to disclose the impeaching evidence was harmless. *See Carter v. Bell*, 218 F.3d 581, 601 (6th Cir. 2000) (stating that there is no *Brady* violation if the information was available to the defendant from another source). Moreover, the trial judge permitted Harris to testify, albeit in a limited fashion, that K.T. had previously made false accusations against him. Additionally, K.T. admitted on cross-examination that she had previously lodged false domestic violence charges against Harris and that she was nearly charged with making a false complaint. Consequently, the allegedly new impeachment evidence is cumulative and does not show that it is more likely than not that no reasonable juror would have convicted Harris. *See Byrd v. Collins*, 209 F.3d 486, 518-49 (6th Cir. 2000). Reasonable jurists therefore would not debate the district court's conclusion that Harris is not entitled to equitable tolling of the statute of limitations because he has not made a credible showing of actual innocence.

Finally, reasonable jurists would not debate the district court's conclusion that Harris is not entitled to equitable tolling based on his asserted inability to access the prison law library while he was on lockdown status. *See Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 751 (6th Cir. 2011).

Accordingly, the court **DENIES** Harris's COA application and **DENIES** as moot his motion to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

(Sixth Circuit Published Orders Judges Indicated, 1 page)

Michael v. Butts, 2022 U.S. App. LEXIS 7866

Copy Citation

United States Court of Appeals for the Sixth Circuit

March 24, 2022, Filed

No. 21-5862

Reporter
2022 U.S. App. LEXIS 7866 *

CHARLES FRANKLIN MICHAEL, Petitioner-Appellant, v. BOBBI JO BUTTS, Warden,[1] Respondent-Appellee.

Core Terms

default, district court, state court, jurists

Counsel: [*1] CHARLES FRANKLIN MICHAEL, Petitioner - Appellant, Pro se, Fredonia, KY.

For BOBBI JO BUTTS, Warden, Respondent - Appellee: Jenny Lynn Sanders, Office of the Attorney General, Frankfort, KY.

Judges: Before: MOORE, Circuit Judge.

Opinion

ORDER

Charles Franklin Michael, a Kentucky prisoner proceeding pro se, appeals from a district court judgment denying his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. The district court granted a certificate of appealability ("COA") as to two of Michael's claims but declined to certify a third. Michael seeks to expand the COA. *See* Fed. R. App. P. 22(b). He also moves for the appointment of counsel and asks that this court expedite its ruling on his application.

In 2011, Michael pleaded guilty to one count of sodomy in the first degree and one count of sexual abuse in the first degree. A judge in the Nelson County Circuit Court imposed a total sentence of 20 years' imprisonment, with 14 years for the first count and six years for the second. Per the terms of his plea, Michael exercised his right to appeal the trial court's denial of his motion to suppress incriminating statements made during two interviews with law enforcement officers. However, the Kentucky Supreme Court held that, **[*2]** under the totality of the circumstances, Michael had offered the incriminating statements voluntarily. *Michael v. Commonwealth*, No. 2012-SC-000097-MR, 2013 Ky. Unpub. LEXIS 19, 2013 WL 1188052, at *6 (Ky. Mar. 21, 2013). Michael filed a motion for post-conviction relief but withdrew it several months later. In 2015, Michael filed the underlying § 2254 petition pro se, and in 2019 he

supplemented it with a brief drafted by hired counsel. Upon review, the district court acknowledged that law-enforcement officers made coercive statements to Michael during his interviews, but the court held nonetheless that Michael had offered the incriminating statements voluntarily. As to Michael's claim that the interview recordings and transcripts used by the state courts were "corrupted past the point of serviceability," thus depriving him of a fair proceeding, the district court found it to be procedurally defaulted because Michael failed to first raise it on direct appeal before the state courts. Accordingly, the district court granted a COA as to Michael's claims that his confessions were offered involuntarily, but it declined to issue a COA as to Michael's claim of corrupted evidence. This appeal followed.

In his application to expand the COA, Michel presents arguments as to each of the three claims in his underlying **[*3]** habeas petition. But because the district court already certified Michael's first two claims for appeal, this court need only address the third.

A court may issue or expand the issuance of a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "That standard is met when 'reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner,'" *Welch v. United States*, 578 U.S. 120, 127, 136 S. Ct. 1257, 194 L. Ed. 2d 387 (2016) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)), or when "jurists could conclude the issues presented are adequate to deserve encouragement to proceed further," *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). When the district court has denied a claim on a procedural basis, a COA should issue "when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

Michael all but concedes that his third claim is procedurally defaulted, but he argues that the default must be set aside. This court reviews de novo whether a petitioner has procedurally defaulted a habeas claim. *Bickham v. Winn*, 888 F.3d 248, 251 (6th Cir. 2018). A claim is procedurally defaulted, **[*4]** and therefore not suitable for consideration by a federal court on habeas review, if a state court has not first reviewed the claim "either due to the petitioner's failure to raise that claim before the state courts while state-court remedies are still available or due to a state procedural rule that prevents the state courts from reaching the merits of the petitioner's claim." *Broom v. Mitchell*, 441 F.3d 392, 401 (6th Cir. 2006) (quoting *Seymour v. Walker*, 224 F.3d 542, 549-50 (6th Cir. 2000)). "A petitioner may avoid this procedural default only by showing that there was cause for the default and prejudice resulting from the default, or that a miscarriage of justice will result from enforcing the procedural default in the petitioner's case." *Kissner v. Palmer*, 826 F.3d 898, 904 (6th Cir. 2016). "[T]he existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." *Murray v. Carrier*, 477 U.S. 478, 488, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986).

As for cause and prejudice, Michael continues to claim that the allegedly corrupted evidence presented at trial "compromised the very ruling of the Kentucky Supreme [C]ourt on which [his] petition is based," thereby establishing that an external reason prevented him from raising the claim earlier and showing substantial prejudice **[*5]** that undermined the integrity of his proceedings. But Michael failed to exhaust the claim at all in the state courts—either in his direct appeal or post-conviction proceedings—and it was procedurally defaulted for that reason. *See* Coleman v. Thompson, 501 U.S. 722, 731-32, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991); *Wheeler v. Simpson*, 852 F.3d 509, 518 (6th Cir. 2017). Even if Michael could show cause for failing to raise his corruption-of-evidence claim on direct appeal, he has not shown cause for failing to raise it in a postconviction proceeding. Because Michael otherwise presents no legal support, his argument is unavailing.

Michael also appears to argue that he is actually innocent and that any procedural default must be set aside to correct a miscarriage of justice. "[A] petitioner claiming actual innocence must 'support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.'" *Gulertekin v. Tinnelman-Cooper*, 340 F.3d 415, 427 (6th Cir. 2003) (quoting *Schlup v. Delo*, 513 U.S. 298, 324, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995)). The only "new evidence" Michael presents is the conclusory assertion that the evidence was corrupted because statements allegedly made by Detective Barbara Roby were missing from the audio recordings and transcripts. But as the magistrate judge correctly noted, "nothing in **[*6]** the record demonstrates that the recordings or transcripts reviewed by the trial court or the Kentucky Supreme Court included additional statements that prove Michael's innocence." Therefore, Michael fails to rebut the district court's holding that his third claim was incurably procedurally defaulted, and no reasonable jurist could debate the district court's conclusion.

Finally, given the district court's grant of a COA concerning potentially coercive statements made by law-enforcement officials during Michael's interviews, this court would be aided by the appointment of counsel to represent Michael on appeal. *See* 18 U.S.C. § 3006A(a)(2)(B).

For the foregoing reasons, the motion to expand the COA is **DENIED**, the motion for the appointment of counsel on appeal is **GRANTED**, and the motion to expedite is **DENIED** as moot. After counsel has been appointed, the Clerk's Office is **DIRECTED** to enter a briefing schedule on the claims certified by the district court.

APPENDIX C

(Sixth Circuit Published Orders Judges Indicated, 3pages)

Nicholson v. Bauman, 2022 U.S. App. LEXIS 7871

Copy Citation

United States Court of Appeals for the Sixth Circuit

March 24, 2022, Filed

No. 21-2695

Reporter
2022 U.S. App. LEXIS 7871 *

CHRISTOPHER NICHOLSON, Petitioner-Appellant, v. CATHERINE S. BAUMAN, Warden, Respondent-Appellee.

Core Terms

jurists, trial court, robbery, rights, Appeals, district court, consent to search

Counsel: [*1] Christopher Nicholson, Petitioner - Appellant, Pro se, Manistee, MI.

For CATHERINE S. BAUMAN, Warden, Respondent - Appellee: John S. Pallas, Respondent - Appellee, Office of the Attorney General, Lansing, MI.

Judges: Before: STRANCH, Circuit Judge.

Opinion

ORDER

Christopher Nicholson, a pro se Michigan prisoner, appeals the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. The timely notice of appeal has been construed as a request for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b). Nicholson also moves for leave to proceed in forma pauperis.

In 2016, a jury found Nicholson guilty of armed robbery, Mich. Comp. Laws § 750.529, and conspiracy to commit armed robbery, *id.*; Mich. Comp. Laws § 750.157a. He was sentenced to concurrent terms of eighteen to thirty years in prison. The Michigan Court of Appeals affirmed, *People v. Nicholson*, No. 333546, 2017 WL 3441514 (Mich. Ct. App. Aug. 10, 2017) (per curiam), and the Michigan Supreme Court denied leave to appeal, *People v. Nicholson*, 908 N.W.2d 310 (Mich. 2018) (mem.).

Nicholson then filed his habeas petition, claiming that (1) the trial court deprived him of his rights to due process and a fair trial by admitting "other acts" evidence, (2) the evidence was insufficient to support his conviction, (3) police questioned him and obtained his consent to search his residence in violation of his constitutional rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), (4) the trial **[*2]** court gave a misleading jury instruction in response to a question

from the jury, (5) the trial court erred in scoring his offense variables, (6) trial counsel was ineffective for failing to adequately investigate and prepare for trial, and (7) DNA evidence from a buccal swab should have been suppressed because it was obtained as a result of the illegal search.

The district court denied the petition and declined to issue a COA, reasoning that Nicholson's claims lacked merit, were not cognizable on federal habeas review, or were reasonably adjudicated on the merits by the state courts. Nicholson then filed a motion in the district court for a COA on his first, third, and fourth claims, which the district court denied. In his motion to proceed in forma pauperis, Nicholson also states that he wishes to raise only his first, third, and fourth claims on appeal.

A COA may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). To be entitled to a COA, the movant must demonstrate that reasonable jurists would find the district court's assessment of his claims debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a state court previously adjudicated the petitioner's **[*3]** claims on the merits, the district court may not grant habeas relief unless the state court's adjudication 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 "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); *Harrington v. Richter*, 562 U.S. 86, 100 (2011). Thus, in this context, the COA question is whether reasonable jurists could debate the district court's determination that the state court's adjudication was not unreasonable.

Claim One - Admission of "Other Acts" Evidence

Nicholson first claims that the trial court improperly admitted "other acts" evidence—namely, evidence of an armed robbery that he committed in 2003.

The Michigan Court of Appeals rejected this claim, concluding that the evidence was admissible under Michigan Rule of Evidence 404(b) because it was relevant to show a common scheme and plan, given that the robberies "occurred in the same area, were done by two men wearing bandanas who used a gun, and [that] money was taken at a time that the business would not be expected to have other customers." *Nicholson*, 2017 WL 3441514, at *3. And although evidence of **[*4]** the 2003 robbery might have been prejudicial, the state courts reasoned, the probative value was not substantially outweighed by the danger of unfair prejudice. *See id.* Finally, the trial court instructed the jurors that they could not use the bad acts evidence to decide that Nicholson's was a bad person. *See id.* at *4.

To the extent that Nicholson challenges the state courts' application of a state evidentiary rule, his claim is not cognizable on federal habeas review. *See Estelle v. McGuire*, 502 U.S. 62, 67-68

(1991). "A state court evidentiary ruling will be reviewed by a federal *habeas* court only if it were so fundamentally unfair as to violate the petitioner's due process rights." *Coleman v. Mitchell*, 244 F.3d 533, 542 (6th Cir. 2001). Nicholson's claim does not reach this high bar. "There is no clearly established Supreme Court precedent which holds that a state violates due process by permitting propensity evidence in the form of other bad acts evidence." *Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003); *see Bass v. Burt*, 850 F. App'x 962, 965 (6th Cir. 2021) (noting that the Supreme Court has never found the admission of bad acts evidence to be so unfair as to violate due process). Reasonable jurists thus could not debate the district court's rejection of this claim.

Claim Three - *Miranda* and Search of Residence

Nicholson claims a violation of his Fifth Amendment rights (as set forth in *Miranda*) and his **[*5]** Sixth Amendment rights with respect to the manner in which he was questioned and how the police obtained his consent to search his residence.

Nicholson's Sixth Amendment claim is easily disposed of: as the district court explained, the right to counsel under the Sixth Amendment does not attach until "at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991) (quoting *United States v. Gouveia*, 467 U.S. 180, 188 (1984)). Here, when police obtained Nicholson's consent to search his residence, he had not yet been charged with any crimes; thus, he was not entitled to counsel at that juncture. *See id.*; *United States v. Fowler*, 535 F.3d 408, 416 (6th Cir. 2008) (concluding that the admission of the defendant's post-arrest statements did not violate the Sixth Amendment because the right to counsel had not yet attached).

Regarding Nicholson's Fifth Amendment claim, there is no dispute that, during his initial interrogation, Nicholson requested an attorney. And there also is no dispute that, after Nicholson requested an attorney (according to him, four times), the detective requested Nicholson's consent to search his residence. Nicholson argues that this sequence of events renders his consent unlawfully obtained because, once he invoked his *Miranda* rights, all questioning should **[*6]** have ceased. But "[t]he protections of the Fifth Amendment only apply to incriminating evidence of a testimonial or communicative nature." *United States v. Cooney*, 26 F. App'x 513, 523 (6th Cir. 2002) (citing *Schmerber v. California*, 384 U.S. 757, 760-61 (1966)). And "[t]he courts that have considered this issue unanimously agree that consenting to a search is not an incriminating statement under the Fifth Amendment because the consent is not evidence of a testimonial or communicative nature." *Id.* (collecting cases). As the Michigan Court of Appeals noted here, the search conducted following the consent may yield incriminating evidence, but the consent itself is not incriminating. *Nicholson*, 2017 WL 3441514, at *2. Consequently, the court concluded that Nicholson's Fifth Amendment right to counsel was not violated by the officer's asking him for his consent to search. *Id.* Reasonable jurists

would not disagree with the district court that the state appellate court reasonably determined that Nicholson's consent was lawfully obtained and that the resulting search was lawful.

Claim Four - Jury Instructions

Next, Nicholson claims that the trial court violated his due process rights when, in response to a question from the jury, it reiterated the standard jury instruction for aiding and abetting, i.e., that "[a]nyone who intentionally assists someone in committing a crime is as **[*7]** guilty as the person who directly commits it and can be convicted of that crime." But this is a standard jury instruction that the jury was obligated to receive, and it was supported by the evidence. *See Nicholson*, 2017 WL 3441514, at *5. And the jury instruction did not bar Nicholson from presenting his defense—which he did—that he had no connection to the robbery and did not aid and abet in the robbery. *See id.* In short, the jury instructions were neither erroneous nor "so infirm that they rendered the entire trial fundamentally unfair." *Doan v. Carter*, 548 F.3d 449, 455 (6th Cir. 2008) (quoting *Austin v. Bell*, 126 F.3d 843, 846 (6th Cir. 1997)). No reasonable jurist therefore could debate the denial of this claim.

Abandonment of Remaining Claims

In his motion to proceed informa pauperis, Nicholson stated that he wished to appeal claims one, three, and four; Nicholson appears to have abandoned his remaining claims. *Cf. Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam). In any event, a COA is not warranted on any of those claims for the reasons set forth below.

Claim Two - Insufficiency of the Evidence

Nicholson claims that the evidence was insufficient to sustain his convictions because no witness identified him as the perpetrator. The Michigan Court of Appeals rejected this claim, concluding that there was direct and circumstantial evidence that **[*8]** Nicholson committed the robbery. *Nicholson*, 2017 WL 3441514, at *4. In particular, the court noted that: the attendant at the gas station that was robbed testified that the perpetrators were "two African-American men wearing black clothing, one of whom had a handgun and was wearing a black hat, black and white bandana, black clothes, and white gloves, with the second man wearing a black hooded sweatshirt"; an individual jogging roughly one mile away from the gas station found remnants of the crime, including bandanas, a black hat or ski mask, and pieces of a gun, and Nicholson's DNA was found on one of the bandanas; and a dark-colored t-shirt with a "distinctive . . . pattern" found in Nicholson's home matched the shirt worn by one of the robbers as seen in the gas station surveillance video. *Id.*

Viewing this and all other evidence most favorably to the prosecution, *see* Jackson v. Virginia, 443 U.S. 307, 319 (1979), the Michigan Court of Appeals determined that a rational trier of fact could have found Nicholson guilty of armed robbery and the related conspiracy, Nicholson, 2017 WL 3441514, at *4. Although Nicholson vaguely challenges the victim's testimony and the jury's assessment of the evidence, a federal habeas court "may not reweigh the evidence, reevaluate the credibility of witnesses, **[*9]** or substitute [its] judgment for that of the jury." United States v. Martinez, 430 F.3d 317, 330 (6th Cir. 2005); *see also* Mich. Comp. Laws § 750.520h. No reasonable jurist therefore could debate the district court's conclusion that the Michigan Court of Appeals did not unreasonably apply the Jackson standard in rejecting Nicholson's insufficiency-of-the-evidence claim.

Claim Five - Scoring of Offense Variables

Nicholson claims that the trial court erred in scoring offense variables 1 and 2. To the extent that Nicholson raises this claim under state law, reasonable jurists would agree that the claim is not cognizable on federal habeas review. *See, e.g.,* Howard v. White, 76 F. App'x 52, 53 (6th Cir. 2003). And to the extent that Nicholson claims that the trial court violated his due process rights by basing its sentencing decision on inaccurate information, reasonable jurists would also agree with the district court's denial of the claim because Nicholson failed to present any evidence that the information on which the trial court based his sentence was in fact inaccurate or that he lacked an opportunity to correct any allegedly inaccurate information. *See* Townsend v. Burke, 334 U.S. 736, 740-41 (1948); Stewart v. Erwin, 503 F.3d 488, 495 (6th Cir. 2007).

Claim Six - Ineffective Assistance of Counsel

Nicholson claims that his counsel was ineffective for failing to adequately challenge his charges and object to the admission **[*10]** of certain evidence. The Michigan Court of Appeals rejected this claim, noting that trial counsel did raise of a number of challenges and objections and that Nicholson failed to show prejudice in any event. Nicholson, 2017 WL 3441514, at *6-7. When applying the Strickland v. Washington, 466 U.S. 668 (1984), standard and § 2254(d) in tandem, review is doubly deferential. *See* Richter, 562 U.S. at 105. No reasonable jurist could debate the district court's conclusion that the Michigan Court of Appeals' decision was not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts.

Claim Seven - Fourth Amendment

Finally, Nicholson claims that DNA evidence from a buccal swab should have been suppressed because it was obtained as a result of an illegal search, in violation of his Fourth Amendment rights.

Under *Stone v. Powell*, 428 U.S. 465, 482 (1976), "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." A Fourth Amendment claim is barred by *Stone* unless "the state provided no procedure by which the prisoner could raise his Fourth Amendment claim, or the prisoner was foreclosed from using that procedure." *Good v. Berghuis*, 729 F.3d 636, 639 (6th Cir. 2013) (quoting *Willett v. Lockhart*, 37 F.3d 1265, 1273 (8th Cir. 1994) (en banc)). That is **[*11]** not what happened here. *See Nicholson*, 2017 WL 3441514, at *1. Thus, no reasonable jurist could debate the district court's conclusion that Nicholson's Fourth Amendment claim is not cognizable in a federal habeas corpus proceeding.

Accordingly, the court **DENIES** the application for a COA and **DENIES** as moot the motion for leave to proceed in forma pauperis.

APPENDIX D

(Sixth Circuit Published Orders Judges Indicated, 4pages)

Randolph v. United States, 2022 U.S. App. LEXIS 7880

Copy Citation

United States Court of Appeals for the Sixth Circuit

March 24, 2022, Filed

No. 21-5491

Reporter
2022 U.S. App. LEXIS 7880 *

DARRELL RANDOLPH, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.

Core Terms

district court, defaulted, jurists, direct appeal, ineffectively

Counsel: |*1| For DARRELL RANDOLPH, Petitioner - Appellant: Darrell Randolph, F.C.I. Texarkana, Texarkana, TX.

For UNITED STATES OF AMERICA, Respondent - Appellee: Michelle Kimbril-Parks, Assistant U.S. Attorney, Office of the U.S. Attorney, Memphis, TN.

Judges: Before: GRIFFIN, Circuit Judge.

Opinion

ORDER

Darrell Randolph, a pro se federal prisoner, appeals the district court's judgment denying his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. Randolph moves the court for a certificate of appealability (COA). *See* 28 U.S.C. § 2253(c).

In 2015, a federal jury convicted Randolph of possession with intent to distribute cocaine, cocaine base, and heroin, in violation of 21 U.S.C. § 841(a)(1), possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). The district court sentenced Randolph to a total term of 300 months of imprisonment, and this court affirmed. *See United States v. Randolph*, 685 F. App'x 429 (6th Cir. 2017).

In 2018, Randolph filed a § 2255 motion in the district court, raising the following claims: (1) the district court violated his right to due process by relying on acquitted conduct in selecting his sentence; (2) his trial attorney performed ineffectively by not moving to suppress statements he gave to law **[*2]** enforcement officers allegedly in violation of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), and by not objecting to the admission of these statements at trial; (3) his trial attorney performed ineffectively by not objecting to testimony

that violated his Sixth Amendment right to confront witnesses against him; (4) he received ineffective assistance of counsel because his attorney was unprepared for trial; and (5) the prosecution committed misconduct by reneging on a plea offer, by improperly referring to his alleged aliases during the trial, and by not making a timely disclosure of recordings of his jailhouse phone conversations. With leave of court, Randolph filed an amended § 2255 motion that added a claim that the district court improperly instructed the jury on the elements of the § 922(g) charge in view of *Rehaif v. United States*, 139 S. Ct. 2191, 204 L. Ed. 2d 594 (2019). After the government filed its response to Randolph's claims, he filed another motion for leave to amend in order to add a claim that the indictment was defective as to the § 924(c) charge in view of *United States v. Combs*, 369 F.3d 925 (6th Cir. 2004).

The district court denied Randolph's second motion to amend, finding that he was dilatory in raising the claim and that granting him leave to amend would have been futile because his challenge to the sufficiency of the indictment was both procedurally defaulted **[*3]** and barred by the statute of limitations. In the same order, the court ruled that Randolph's other claims were either procedurally defaulted or without merit. The court therefore denied Randolph's § 2255 motion. The district court declined to issue a COA.

In his COA application, Randolph seeks review of his prosecutorial-misconduct claims, three ineffective-assistance-of-counsel claims (two of which he did not raise in the district court), and a sufficiency-of-the-evidence claim. By limiting his COA application to these claims, Randolph has forfeited appellate review of the district court's resolution of his remaining claims, as well as the court's denial of his second motion for leave to amend. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam).

As just mentioned, two of the three ineffective-assistance claims that Randolph cited in his COA application are new. Randolph claims that his trial attorney performed ineffectively by not calling Sparkle Massey as a defense witness. According to Randolph, Massey would have testified that other people occupied the house where the drugs that were attributed to him were found. He also claims that his appellate attorney provided deficient advice about what issues he could raise on appeal. **[*4]** But Randolph did not present either of these claims to the district court. He cannot raise them for the first time on appeal absent extraordinary circumstances, a showing he has not made. *See Foster v. Barilow*, 6 F.3d 405, 407 (6th Cir. 1993).

Randolph also argues in his COA application that the evidence was insufficient for the jury to convict him of violating §§ 922(g) and 924(c). This court rejected both of these sufficiency claims in Randolph's direct appeal. *See Randolph*, 685 F. App'x at 432-34. He cannot relitigate them in a motion to vacate. *See DuPont v. United States*, 76 F.3d 108, 110 (6th Cir. 1996).

That leaves just the prosecutorial-misconduct claims and one ineffective-assistance-of-counsel claim for our review. A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant must demonstrate that "jurists of reason could disagree with the district court's

resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). When a district court denies a motion to vacate on procedural grounds, the court may issue a COA only if the applicant shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial **[*5]** of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

Randolph raised several instances of alleged prosecutorial misconduct in his motion to vacate. The district court concluded that Randolph procedurally defaulted these claims by not raising them in his direct appeal, which was sufficient reason alone to deny him relief. Alternatively, the court concluded that the claims were meritless.

A federal prisoner procedurally defaults any claim that he could have raised on direct appeal. *Elzy v. United States*, 205 F.3d 882, 884 (6th Cir. 2000). Randolph's prosecutorial-misconduct claims are based on errors that were apparent from the trial record, and thus he could have—but did not—raise them on direct appeal. Reasonable jurists therefore could not debate the district court's conclusion that Randolph procedurally defaulted these claims. *Cf. Poulsen v. United States*, 717 F. App'x 509, 517 (6th Cir. 2017) (concluding that the petitioner could have raised his prosecutorial-misconduct claim on direct appeal because "the alleged misconduct has been an existing fixture in this case since the pre-trial stage of the proceedings"). Randolph does not contest the district court's procedural default analysis in his COA application, **[*6]** nor does he assert cause and prejudice to excuse the default. *See Elzy*, 205 F.3d at 884.

Randolph has preserved one ineffective-assistance-of-trial-counsel claim in his COA application. To establish an ineffective-assistance claim, the prisoner must demonstrate that his attorney's performance was objectively unreasonable and a reasonable probability that the outcome of the proceedings would have been different absent counsel's unprofessional errors. *See Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Randolph claims that his trial counsel performed ineffectively by not moving to suppress statements that he allegedly gave in violation of his *Miranda* rights and then by not objecting when the government introduced these statements at trial. Randolph asserts that law enforcement officers failed to properly advise him of his *Miranda* rights before interrogating him, that he made incriminating statements only after the officers threatened to charge his wife with possessing the drugs that were found in their joint residence, and that the officers gave him the *Miranda* warnings only after he had already confessed. The district court denied this claim, finding that Randolph failed to demonstrate either deficient performance by his attorney or prejudice resulting from the claimed error. **[*7]**

Assuming that Randolph has shown deficient performance by his attorney, reasonable jurists would not debate the district court's prejudice analysis. As the district court found, and as this court determined on direct appeal, substantial circumstantial evidence tied Randolph to the evidence in the house.[1] *Cf.* *United States v. McConer*, 530 F.3d 484, 496 (6th Cir. 2008) (finding that a claimed *Miranda* violation was harmless because other evidence connected the defendant to drugs discovered in the bedroom of a house, including his coat, which was hanging on the bedroom door, documents bearing his name, which were in the dresser, and the fact that he had keys to the residence). Additionally, Randolph made other incriminating statements to which *Miranda* did not apply. *Cf.* *Kyger v. Carlton*, 146 F.3d 374, 382-83 (6th Cir. 1998) (holding that the admission of a statement obtained in violation of *Miranda* was a harmless error because the defendant repeated the substance of the statement in a later admissible statement). Consequently, reasonable jurists would not debate the district court's conclusion that Randolph failed to demonstrate a reasonable probability that the jury would have acquitted him without evidence of his custodial statements.

Accordingly, for all of the above reasons, the court **DENIES** Randolph's COA application. **[*8]**

APPENDIX E

(§2253(C)(1)(C)(2) COA, 1page)

28 USCS § 2253

Copy Citation

Current through Public Law 117-80, approved December 27, 2021.

- United States Code Service
- TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE (§§ 1 — 5001)
- Part VI. Particular Proceedings (Chs. 151 — 190)
- CHAPTER 153. Habeas Corpus (§§ 2241 — 2256)

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 [28 USCS § 2255] before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [28 USCS § 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

APPENDIX F

(Cir. R. 45 Duties of Clerk, 1page)

USCS Ct App 6th Cir, Cir R 45

Copy Citation

Current through changes received February 25, 2022.

- USCS Federal Rules Annotated
- United States Court of Appeals for the Sixth Circuit
- Title VII. General Provisions

Cir. R. 45. Duties of Clerks—Procedural Orders

(a) Orders That the Clerk May Enter. The clerk may prepare, sign, and enter orders or otherwise dispose of the following matters without submission to the court or a judge, unless otherwise directed:

(1) Procedural motions;

(2) Motions involving production or filing of the appendix or briefs on appeal;

(3) Orders for voluntary dismissal of appeals or petitions, or for consent judgments in National Labor Relations Board cases;

(4) Orders for dismissal for want of prosecution;

(5) Orders appointing counsel under the Criminal Justice Act of 1984, as amended, in criminal cases in which the appellant is entitled to the appointment of counsel under the Sixth Circuit Plan for the Implementation of the Criminal Justice Act and in any other case in which an order directing the clerk to appoint counsel has been entered;

(6) Bills of costs under Fed. R. App. P. 39(d);

(7) Orders granting remands and limited remands where the motion includes a notice under Fed. R. App. P. 12.1(a); and

(8) Orders dismissing a second appeal as duplicative, where the court has docketed a jurisdictionally sound appeal from the same judgment or final order.

(b) Notice. A clerk's order must show that it was authorized under 6 Cir. R. 45(a).

(c) Reconsideration. A party adversely affected by a clerk's order may move for reconsideration by a judge or judges. The motion must be filed within 14 days of service of notice of entry of the order.

(d) Remand from the Supreme Court. The clerk refers remands from the Supreme Court of the United States to the panel that decided the case. Counsel need not file a motion concerning the remand—it is referred when the clerk receives a certified copy of the judgment. The clerk's office will advise counsel of further proceedings.

APPENDIX G

(Civ. R. 55 Default Judgment, 1page)

USCS Fed Rules Civ Proc R 55

Copy Citation

Current through changes received February 25, 2022.

- USCS Federal Rules Annotated
- Federal Rules of Civil Procedure
- Title VII. Judgment

Rule 55. Default; Default Judgment

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment.

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) *By the Court.* In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) Judgment Against the United States. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

APPENDIX H

(Supreme Court Rule 20, 2pages)

USCS Supreme Ct R 20

Copy Citation

Current through changes received February 25, 2022.

- USCS Federal Rules Annotated
- Rules of the Supreme Court of the United States
- Part IV. Other Jurisdiction

Rule 20. Procedure on a Petition for an Extraordinary Writ

1. Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. A petition seeking a writ authorized by 28 U.S.C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

3.

(a) A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.

(b) The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed on the docket, a party shall file 40 copies of any brief or briefs in opposition thereto, which shall comply fully with Rule 15. If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by letter. All persons served are deemed respondents for all purposes in the proceedings in this Court.

4.

(a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U.S.C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U.S.C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.
(b) Habeas corpus proceedings, except in capital cases, are *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U.S.C. § 2241(b), is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.
5. The Clerk will distribute the documents to the Court for its consideration when a brief in opposition under subparagraph 3(b) of this Rule has been filed, when a response under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived.
6. If the Court orders the case set for argument, the Clerk will notify the parties whether additional briefs are required, when they shall be filed, and, if the case involves a petition for a common-law writ of certiorari, that the parties shall prepare a joint appendix in accordance with Rule 26.

APPENDIX I

(Supreme Court Rule 44, 2page)

USCS Supreme Ct R 44

Copy Citation

Current through changes received February 25, 2022.

- **USCS Federal Rules Annotated**
- **Rules of the Supreme Court of the United States**
- **Part VIII. Disposition of Cases**

Rule 44. Rehearing

1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. The petitioner shall file 40 copies of the rehearing petition and shall pay the filing fee prescribed by Rule 38(b), except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. A petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court, at the instance of a Justice who concurred in the judgment or decision.

2. Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The time for filing a petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ will not be extended. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

3. The Clerk will not file any response to a petition for rehearing unless the Court requests a response. In the absence of extraordinary circumstances, the Court will not grant a petition for rehearing without first requesting a response.

4. The Clerk will not file consecutive petitions and petitions that are out of time under this Rule.

5. The Clerk will not file any brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

6. If the Clerk determines that a petition for rehearing submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition for rehearing submitted in accordance with Rule 29.2 no more than 15 days after the date of the Clerk's letter will be deemed timely. (Amended effective October 1, 2007; further amended effective February 16, 2010; amended effective July 1, 2013.)

APPENDIX J

(1st,5th, 6th, 14th, United States Constitutional Amendment, 4pages)

USCS Const. Amend. 1, Part 1 of 8

Copy Citation

Current through the ratification of the 27th Amendment on May 7, 1992.

- **United States Code Service**
- **Amendments**
- **Amendment 1 Religious and political freedom.**

Amendment 1 Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

USCS Const. Amend. 5, Part 1 of 13

Copy Citation

Current through the ratification of the 27th Amendment on May 7, 1992.

- United States Code Service
- Amendments
- Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

USCS Const. Amend. 6, Part 1 of 17

Copy Citation

Current through the ratification of the 27th Amendment on May 7, 1992.

- **United States Code Service**
- **Amendments**
- **Amendment 6 Rights of the accused.**

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

USCS Const. Amend. 14, Part 1 of 15

Copy Citation

Current through the ratification of the 27th Amendment on May 7, 1992.

- United States Code Service
- Amendments
- Amendment 14

Amendment 14

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [Representatives—Power to reduce apportionment.] Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.] No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to be paid.] The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.] The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX K

(§2254 State Custody Federal Remedy, 2pages)

28 USCS § 2254, Part 1 of 6

Copy Citation

Current through Public Law 117-80, approved December 27, 2021.

§ 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) 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

(2) 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.

(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.
(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—
(A) the claim relies on—
(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.
(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.
(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.
(h) Except as provided in section 408 of the Controlled Substance Acts [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.
(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 [28 USCS § 2254].

APPENDIX L

(§2241 Power to Grant Writ, 1page)

28 USCS § 2241, Part 1 of 2

Copy Citation

Current through Public Law 117-80, approved December 27, 2021.

- United States Code Service
- TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE (§§ 1 — 5001)
- Part VI. Particular Proceedings (Chs. 151 — 190)
- CHAPTER 153. Habeas Corpus (§§ 2241 — 2256)

§ 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)

(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been

determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.