A P P E N D I X

APPENDIX

A-1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-12587-D

LEWIS TAYLOR, JR.,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL STATE OF ALABAMA,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Lewis Taylor, Jr., moves for a certificate of appealability ("COA") in order to appeal the district court's denial of his 28 U.S.C. § 2254 petition. To obtain a COA, Taylor must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Because Taylor has failed to make the requisite showing, his motion for a COA is DENIED.

/s/ Elizabeth L. Branch
UNITED STATES CIRCUIT JUDGE

A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 16-60905-CV-SMITH

LEWIS TAYLOR, JR.,

Petitioner,

v.

MARK S. INCH,

Respondent.
_____/

ORDER DENYING
PETITION FOR WRIT OF HABEAS CORPUS

This case is currently before the court because Petitioner, Lewis Taylor, who is presently confined at the Union Correctional Institution, filed an Amended Petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 [DE 12], challenging the constitutionality of his sentence entered in the Seventeenth Judicial Circuit, Broward County, Case No. 76-2188. The Amended Petition was filed after this Court appointed counsel to represent Petitioner because the Eleventh Circuit Court of Appeals granted his application for leave to file a second or successive habeas petition.

The only claim presented in the Amended Petition is whether Petitioner's sentence is violative of the Eighth Amendment after recent Supreme Court opinions addressing juvenile sentences.

I. Factual and Procedural History

In 1976 Petitioner was convicted of robbery in Case No. 76-2188 and sentenced to a term of 129 years imprisonment. (DE 20-1 at 19.) Through a direct appeal and numerous rounds of post-conviction litigation, Petitioner's sentence has remained unchanged.

II. Statute of Limitations and Exhaustion

In responding to the order to show cause, the State argued that the Amended Petition should be dismissed because Petitioner had failed to exhaust his claim in state court. (DE 19 at 7.) The Court granted a stay to allow Petitioner to exhaust his claim in state court. (DE 32) After those state proceedings had concluded, the Court lifted the stay. (DE 35)

III. Standard of Review

A prisoner in state custody may not be granted a writ of habeas corpus for any claim that was adjudicated on the merits in state court unless 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)(1), (2); *see Williams v. Taylor*, 529 U.S. 362, 405-06 (2000); *Fugate v. Head*, 261 F.3d 1206, 1215-16 (11th Cir. 2001).

A state court decision is "contrary to" or an "unreasonable application of" the Supreme Court's clearly established precedent within the meaning of § 2254(d)(1) only if the state court applies a rule that contradicts the governing law as set forth in Supreme Court case law, or if the state court confronts a set of facts that are materially indistinguishable from those in a decision of the Supreme Court and nevertheless arrives at a result different from Supreme Court precedent. *Brown v. Payton*, 544 U.S. 133, 141 (2005); *Williams*, 529 U.S. at 405-06. In the habeas context, clearly established federal law refers to the holdings of the Supreme Court's decisions as of the time of the relevant state-court decision. *Hall v. Head*, 310 F.3d 683, 690 (11th Cir. 2002) (citing *Williams*, 529 U.S. at 412). In adjudicating a petitioner's claim, however, the state court does not need to cite Supreme Court decisions and the state court need not even be aware of the Supreme

Court cases. *See Early v. Packer*, 537 U.S. 3, 8 (2002); *Parker v. Sec'y, Dep't of Corr.*, 331 F.3d 764, 775-76 (11th Cir. 2003).

So long as neither the reasoning nor the result of the state court decision contradicts Supreme Court decisions, the state court's decision will not be disturbed. *Early*, 537 U.S. at 8. Further, a federal court must presume the correctness of the state court's factual findings unless the petitioner overcomes them by clear and convincing evidence. *See* 28 U.S.C. § 2254(e)(1); *Putman v. Head*, 268 F.3d 1223, 1241 (11th Cir. 2001).

More recently, the U.S. Supreme Court, in *Wilson v. Sellers*, 138 S. Ct. 1188, 1194 (2018), concluded there is a "look through" presumption in federal habeas corpus law, as silence implies consent. *See also Kernan v. Hinojosa*, 136 S. Ct. 1603, 1605-06 (2016) (*per curiam*) (adopting the presumption that silence implies consent but refusing to impose an irrebuttable presumption). Where the state court's adjudication on the merits of a claim is unaccompanied by an explanation:

> [T]he federal court should "look through" the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning.

Wilson, 138 S. Ct. at 1192. In other words, if the last state court to decide a prisoner's federal claim provides an explanation for its merits-based decision in a reasoned opinion, "a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Id*. However, if the relevant state-court decision on the merits is not accompanied by a reasoned opinion, because it was summarily affirmed or denied, a federal court "should 'look through' the unexplained decision to the last state-court decision that does provide a relevant rationale." *Id.*

The presumption, however, may be rebutted by showing the state court's adjudication most likely relied on different grounds than the lower state court's reasoned decision, such as persuasive alternative grounds briefed or argued to the higher court or obvious in the record. *Id*. at 1192, 1196.

"Where there are convincing grounds to believe the silent record had a different basis for its decision than the analysis followed by the previous court, the federal habeas court is free, as we have said, to find to the contrary." *Id*. at 1197.

Moreover, the Supreme Court repeatedly has admonished "[t]he petitioner carries the burden of proof" and the § 2254(d)(1) standard is a high hurdle to overcome. *See Bobby v. Dixon*, 565 U.S. 23, 24 (2011) (quoting *Richter*, 560 U.S. at 102-03 (quotation marks omitted)); *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011) (acknowledging that § 2254(d) places a difficult burden of proof on the petitioner); *Renico v. Lett*, 559 U.S. 766, 777 (2010) ("AEDPA prevents defendants—and federal courts—from using federal habeas corpus review as a vehicle to second-guess the reasonable decisions of state courts."); *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (section 2254(d) "demands that state-court decisions be given the benefit of the doubt."); *see also Rimmer v. Sec'y, Fla. Dep't of Corr.*, 876 F.3d 1039, 1053 (11th Cir. 2017) (opining that to reach the level of an unreasonable application of federal law, the ruling must be objectively unreasonable, not merely wrong or even clear error).

Thus, state court decisions are afforded a strong presumption of deference even when the state court adjudicates a petitioner's claim summarily—without an accompanying statement of reasons. *Richter*, 560 U.S. at 96-100 (concluding that the summary nature of a state court's decision does not lessen the deference that it is due); *Gill v. Mecusker*, 633 F.3d 1272, 1288 (11th Cir. 2011) (acknowledging the well-settled principle that summary affirmances are presumed adjudicated on the merits and warrant deference and *citing Richter*, 560 U.S. at 100-101 and *Wright v. Sec'y for the Dep't of Corr.*, 278 F.3d 1245, 1254 (11th Cir. 2002)); *see also Renico* 559 U.S. at 773 ("AEDPA ... imposes a highly deferential standard for evaluating state-court rulings ... and

demands that state-court decisions be given the benefit of the doubt." (citations and internal quotation marks omitted)).

Because the "AEDPA erects a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court, federal courts can grant habeas relief only when a state court blundered in a manner so well understood and comprehended in existing law and was so lacking in justification that there is no possibility fair-minded jurists could disagree." *Tharpe v. Warden*, 834 F.3d 1323, 1338 (11th Cir. 2016) (citations and quotations omitted). This standard is intended to be difficult to meet. *Richter,* 560 U.S. at 102.

IV. Discussion

According to the Status Report [DE 33] filed by Petitioner's counsel, the state court has denied his motion to correct an illegal sentence. (DE 33 at ¶ 6.) The denial was affirmed on appeal. *See Taylor v. State*, 288 So.3d 663 (Fla 4th DCA 2019) (Table). The United States Supreme Court denied a petition for certiorari review. *See Taylor v. Florida*, 140 S. Ct. 2782 (2020).

The Court takes judicial notice[1] of the online records of the Broward County Clerk of Court, which reflect that the state trial court denied the motion to vacate or correct sentence after finding that Petitioner's 129-year sentence with the possibility for parole did not violate the categorical rule of *Graham v. Florida*, 560 U.S. 48 (2010).

In *Graham* the Court "established that the Eighth Amendment prohibits juvenile offenders convicted of nonhomicide offenses from being sentenced to life without parole." *Virginia v. LeBlan*c, 137 S. Ct. 1726, 1727 (2017). "A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime." *Graham*, 560 U.S. at 75. However, a state

[1] *See* Fed. R. Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.").

must provide "defendants some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id*. In *LeBlanc*, the Court held that "it was not objectively unreasonable for the state court to conclude that, because the geriatric release program employed normal parole factors, it satisfied *Graham*'s requirement that juveniles convicted of a nonhomicide crime have a meaningful opportunity to receive parole." *Leblanc*, 137 S. Ct. at 1729. The Court reversed the grant of a habeas petition finding that the Fourth Circuit had failed to accord the state court's decision the deference owed under AEDPA. *Id*. at 1728.

In applying *Graham* and *LeBlanc*, the Florida Supreme Court has found that "Florida's statutory parole process fulfills *Graham*'s requirement that juveniles be given a meaningful opportunity to be considered for release during their natural life based upon normal parole factors as it includes initial and subsequent parole reviews based upon individualized considerations before the Florida Parole Commission that are subject to judicial review." *Franklin v. State*, 258 So. 3d 1239, 1241 (Fla. 2018) (internal quotations and citations omitted).

Petitioner has acknowledged that his sentence provides for the possibility of parole. Under Florida law, this possibility for parole meets the requirements of *Graham*. As in *Leblanc*, this court must give deference under AEDPA to the state court's finding that because Petitioner is parole eligible his sentence did not violate the Eighth Amendment. This finding, as in *Leblanc*, is not contrary to or an unreasonable application of controlling Supreme Court precedent.

V. Certificate of Appealability

As amended, effective December 1, 2009, Rules Governing § 2254 Proceedings, Rule 11(a) provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant," and if a certificate is issued "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." A timely

notice of appeal must still be filed, even if the court issues a certificate of appealability. *See* Rules Governing § 2254 Proceedings, Rule 11(b), 28 U.S.C. foll. § 2254.

After review of the record, Petitioner is not entitled to a certificate of appealability. "A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To merit a certificate of appealability, Petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *see also Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). Because the claims raised are clearly without merit, Petitioner cannot satisfy the *Slack* test.

Having considered the petition, the record, and being fully advised, it is hereby

ORDERED AND ADJUDGED that:

1. This Amended Petition [DE 12] is **DENIED**.
2. No certificate of appealability shall issue.
3. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Fort Lauderdale, Florida, this 30th day of June 2021.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: Henry Ras
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A-3

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-11492-F

IN RE: LEWIS TAYLOR, JR.,

Petitioner.

Application for Leave to File a Second or Successive Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before MARTIN, ROSENBAUM, and JILL PRYOR, Circuit Judges.

PER CURIAM:

Lewis Taylor, Jr. has asked to file a second or successive petition for a writ of habeas corpus. We can grant this permission only if:

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, 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.

28 U.S.C. § 2244(b)(2). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection." Id. § 2244(b)(3)(C).

Taylor claims he was unlawfully sentenced to 129 years in prison for an armed robbery he committed as a juvenile. His application relies on Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (2016), and Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011 (2010). Graham held that the Eighth Amendment "prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." Graham, 560 U.S. at 82, 130 S. Ct. at 2034. The Supreme Court then held in Miller v. Alabama, 567 U.S. ___, 132 S. Ct. 2455 (2012), that mandatory life imprisonment without parole for juveniles convicted of homicide violates the Eighth Amendment as well. Id. at 2469. The Supreme Court later clarified in Montgomery that Miller announced a new substantive rule of constitutional law that applied retroactively to cases on collateral review. Montgomery, 136 S. Ct. at 732, 736. Montgomery explained that the Eighth Amendment requires that "a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing." Id. at 725.

Taylor has made a prima facie showing that his habeas petition "relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court." 28 U.S.C. § 2244(b)(2)(A). We thus grant Taylor's application for leave to file a second or successive habeas petition. We also direct that counsel be appointed for Taylor.

APPLICATION GRANTED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Amy C. Nerenberg
Acting Clerk of Court

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April 22, 2016

Steven M. Larimore
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 16-11492-F
Case Style: In re: Lewis Taylor, Jr.
District Court Docket No:

The enclosed order has been entered which grants the application for a successive habeas corpus and directs that counsel be appointed to represent Taylor. No further action will be taken in this matter by this Court.

Sincerely,

AMY C. NERENBERG, Acting Clerk of Court

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

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

A-4

May 18, 2020

140 S.Ct. 2782
Supreme Court of the United States.

Lewis TAYLOR Jr., Petitioner,
v.
FLORIDA.

No. 19-8042.

Case below, 288 So.3d 663.

Opinion
Petition for writ of certiorari to the District Court of Appeal of Florida, Fourth District denied.

All Citations

140 S.Ct. 2782 (Mem), 206 L.Ed.2d 948

A-5

2019 WL 6976735
Unpublished Disposition
Only the Westlaw citation is currently available.
NOT FINAL UNTIL DISPOSITON OF
TIMELY FILED MOTION FOR REHEARING.

District Court of Appeal of Florida, Fourth District.

Lewis TAYLOR, Jr., Appellant,
v.
STATE of Florida, Appellee.

No. 4D19-1200
|
[December 16, 2019]

Appeal of order denying rule 3.800 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Elizabeth Anne Scherer, Judge; L.T. Case No. 76002188 CF10B.

Attorneys and Law Firms

Carey Haughwout, Public Defender, and Paul Edward Petillo, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Heidi L. Bettendorf, Assistant Attorney General, West Palm Beach, for appellee.

Opinion

Per Curiam.

***1** *Affirmed.*

Taylor, May and Klingensmith, JJ., concur.

All Citations

Slip Copy, 2019 WL 6976735 (Table)

A-6

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO.: 76-2188CF10B

JUDGE: ELIZABETH SCHERER

vs.

LEWIS TAYLOR,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE

THIS CAUSE is before the Court upon the Defendant's Motion to Vacate, Set Aside, or Correct Sentence pursuant to Florida Rule of Criminal Procedure 3.800, filed on January 10, 2017. The motion was stayed pending the resolution of the conflict between *Michel v. State*, 204 So. 3d 101 (Fla. 4th DCA 2016), *Williams v. State*, 197 So. 3d 569 (Fla. 5th DCA 2016) and *Stallings v. State*, 198 So. 3d 1081 (Fla. 5th DCA 2016). The basis for the stay has been resolved, and the State filed its response on the merits on January 15, 2019. Having reviewed the Defendant's motion, the State's response, the court file, and applicable law, this Court finds as follows:

On September 17, 1976, a jury found the Defendant guilty of armed robbery, and the Court sentenced him to 129 years in jail with *the possibility of parole*. In the instant motion, the Defendant asserts that his sentence violates the Eighth Amendment of the United States Constitution prohibiting the imposition of a life sentence without the possibility of parole for a juvenile who commits a non-homicide offense. He seeks an order vacating and setting aside the sentence imposed and granting a resentencing hearing pursuant to sections 775.082(3)(c), 921.1401, and 921.1402, Florida Statutes.

The State has provided a response which refutes the Defendant's claims with relevant portions of the record attached as exhibits. This Court hereby adopts the State's response, a copy of which has previously been provided to Defendant and which remains in the court file.

The Defendant's 129 year prison sentence with *the possibility of parole* did not violate the categorical rule of *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L.

Ed. 2d 825 (2010), that any life sentence for a juvenile non-homicide offender be accompanied by some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation before the end of the sentence and during the offender's natural life. *Franklin v. State*, 43 Fla. L. Weekly s557 (Fla. November 8, 2018); *Michel v. State*, 204 So. 3d 101 (Fla. 4th DCA 2016); *State v. Wesby*, 2019 WL 140813, 4D16-4246 (Fla. 4th DCA January 9, 2019); *State v. West*, 2019 WL 140816, 4D16-4252 (Fla. 4th DCA January 9, 2019). Florida's statutory parole process fulfills *Graham*'s requirement because it includes initial and subsequent parole reviews based upon individualized considerations before the Florida Parole Commission that are subject to judicial review. *Id*.

Accordingly, it is,

ORDERED AND ADJUDGED that the Defendant's Motion to Vacate, Set Aside, or Correct Sentence is **DENIED**.

Defendant has thirty (30) days from the date of this order to file an appeal.

DONE AND ORDERED in Chambers, Broward County Courthouse, Fort Lauderdale, Florida this 22 day of January, 2019.

ELIZABETH SCHERER
CIRCUIT COURT JUDGE

Copies furnished to:

Parties of Record