

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 6, 2021

Lyle W. Cayce
Clerk

DANTE LEON MILON,

Petitioner—Appellant,

versus

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent—Appellee.

Application for Certificate of Appealability
from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:19-CV-13061

ORDER:

A jury convicted Dante Milon (Louisiana prisoner #562330) of second-degree murder and he was sentenced to life in prison. Now, after the district court denied Milon's habeas corpus petition, he asks this court for a certificate of appealability (COA) and moves for leave to appeal in forma pauperis (IFP). He contends that insufficient evidence supported his conviction and that his receiving an incomplete trial transcript denied him a proper appeal. He also argues that he received ineffective assistance of counsel because his attorney failed to: (1) adequately investigate his claims; (2) object to jurors' using cell phones, taking notes, and looking at transcribed

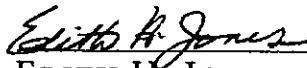
notes in the deliberation room; (3) object to a juror's continued service on the jury after he allegedly saw Milon in handcuffs during a recess; (4) object to the prosecutor's improper statements during opening and closing; (5) strike a juror allegedly related to the judge; and (6) object to the testimony of the doctor who performed an autopsy on Milon's victim regarding the results of lab tests done by another person on Confrontation Clause grounds. Furthermore, Milon asserts the accumulation of those errors shows he received ineffective assistance of counsel.

To obtain a COA, Milon must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). That depends on whether he can show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 1034 (2003) (citation omitted). Milon cannot make that showing.

First, his insufficient evidence claim, premised on the idea that the evidence conclusively shows he acted in self-defense, is belied by the record. Notably, the state offered evidence showing Milon shot his victim in the back. Second, his incomplete record theory is meritless because the record the state provided was wholly adequate for resolution of his claims. Finally, his ineffective assistance claims do not meet the *Strickland* standard because he cannot show prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984).

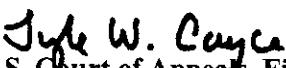
Accordingly, his motion for a COA is DENIED and the motion to appeal IFP is therefore DENIED as moot.




 EDITH H. JONES
United States Circuit Judge

Certified as a true copy and issued
 as the mandate on Dec 28, 2021

Attest:


 Clerk, U.S. Court of Appeals, Fifth Circuit