UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: March 10, 2022

Mr. John S. Pallas
Office of the Attorney General
of Michigan
P.O. Box 30217
Lansing, MI 48909

Mr. Anthony J. Springer
Lakeland Correctional Facility
141 First Street
Coldwater, MI 49036

Re: Case No. 21-2608, *Anthony Springer v. Bryan Morrison*
Originating Case No. : 1:15-cv-00808

Dear Counsel and Mr. Springer,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Ryan E. Orme
Case Manager
Direct Dial No. 513-564-7079

cc: Mr. Thomas Dorwin

Enclosure

No mandate to issue

No. 21-2608

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 10, 2022
DEBORAH S. HUNT, Clerk

ANTHONY J. SPRINGER,

Petitioner-Appellant,

v.

BRYAN MORRISON, Warden,

Respondent-Appellee.

ORDER

Before: ROGERS, Circuit Judge.

Anthony J. Springer, a pro se Michigan prisoner, appeals a district court's judgment denying his habeas corpus petition filed pursuant to 28 U.S.C. § 2254. He has applied for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b).

At a joint trial, a jury convicted Springer and his wife of torture and first-degree child abuse after his teen-aged daughter, Calista, died in a house fire in 2008. Calista, who had special needs, could not escape because she had been "secured to her bed by a dog choke chain around her waist that was attached to the bed frame with zip ties." *People v. Springer*, Nos. 298385, 298386, 2012 WL 4039669 (Mich. Ct. App. Sept. 13, 2012) (per curiam), *perm. app. denied*, 827 N.W.2d 723 (Mich. 2013). The trial court sentenced Springer to concurrent terms of ten to fifteen years in prison for the child-abuse conviction and twenty-five to fifty years in prison for the torture conviction. The Michigan Court of Appeals affirmed the trial court's judgment. *Id.*

Springer moved for relief from the judgment, raising claims of ineffective assistance of counsel. *See* Mich. Ct. R. 6.508(D). The trial court denied the motion, and the Michigan Court of Appeals denied Springer's delayed application for leave to appeal. The Michigan Supreme Court initially denied leave to appeal as well but later vacated its order because the lower courts had not addressed Springer's ineffective-assistance-of-counsel issues regarding the lack of a defense of

entrapment by estoppel. *People v. Springer*, 866 N.W.2d 431 (Mich. 2015), *vacated*, 870 N.W.2d 579 (Mich. 2015). Springer had contended that the entrapment defense should have been raised because the Michigan Department of Health and Human Services-Children's Protective Services ("CPS") program and Community Health had advised him to restrain his daughter at night.

On remand, the trial court conducted an evidentiary hearing and began by discussing the defendant's burden of proving ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). Witnesses at the hearing included trial and appellate counsel, Springer, and his wife. Following supplemental briefing, the trial court resumed the hearing and denied relief. The court reasoned that the entrapment defense would not have applied because no reasonable person would have believed that a government official had instructed the Springers to chain their daughter to a bed with a dog chain. Four years before her death, the State had investigated the Springers upon receiving a report alleging that they were restraining Calista in this manner, and the Springers had denied doing so. Although the State had advised restraining Calista with methods such as alarms and belts for her safety, the State had not advised restraining her to the point where she could not get away in case of a fire. Furthermore, the State could not have been aware of and approved the final method of restraint because Springer testified that he had started using it only three days before the fire. Due to the fruitless nature of the defense, counsel did not render ineffective assistance by failing to pursue it. The Michigan Court of Appeals denied Springer's application for leave to appeal, as did the Michigan Supreme Court. *People v. Springer*, 902 N.W.2d 418 (Mich. 2017) (mem.).

In his § 2254 petition, as amended, Springer raised the following claims: (1)(a) trial counsel rendered ineffective assistance by failing to investigate and interview CPS employees, which would have led to the discovery that the State gave the Springers permission to use a home-made chain restraint, and move for a pretrial hearing to present the defense of entrapment by estoppel, and (b) appellate counsel rendered ineffective assistance by failing to challenge trial counsel's performance; (2)(a) the Michigan Supreme Court violated Springer's right to due process and a fair jury by implementing a pilot program that allowed jurors to discuss the case

prior to the close of evidence and to submit questions for the witnesses, (b) trial counsel rendered ineffective assistance by failing to object, and (c) appellate counsel rendered ineffective assistance by failing to challenge trial counsel's performance; (3) appellate counsel rendered ineffective assistance by failing to argue that the trial court violated Springer's right to call witnesses and present a defense by excluding an email from Dr. Jeffrey Kaylor, a psychologist who had evaluated Calista, and by refusing to permit defense witnesses to impeach Dr. Kaylor's testimony; (4) trial counsel rendered ineffective assistance by failing to object to the joint trial, which violated his right to a fair trial and impartial jury and his right to confront his wife about prior statements; and (5) trial counsel rendered ineffective assistance by failing to object to the admission of preliminary testimony by Gustavo Pop, a firefighter, who was not present at trial.

A magistrate judge recommended denying Springer's habeas petition on the merits. Springer filed objections, arguing the merits of his claim regarding the entrapment defense and contesting the magistrate judge's findings that Calista died because of the chain and zip-tie restraint and that the State had not approved that type of restraint. Springer moved to amend his petition to add a "gateway-innocence" claim that trial and appellate counsel rendered ineffective assistance by failing to investigate and discover CPS reports absolving the Springers of wrongdoing. Between 1995 and 2005, CPS investigated complaints that the Springers were restraining Calista with chains and concluded that she had not been harmed. Springer acknowledged that the claim was untimely. In support of his claim, he relied on a discussion of the CPS investigations in the district court's decision in *Langdon v. Skelding*, No. 1:10-cv-985, 2011 WL 4559439 (W.D. Mich. Sept. 30, 2011), a civil action brought by Calista's grandmother against CPS employees. In one investigation report, a CPS worker indicated that Springer stated that Calista was tied to the bed with a device used by nursing homes. *Id.* at *2.

The district court overruled Springer's objections and denied Springer's motion to amend, reasoning in part that Springer had not produced any new evidence. *See Schlup v. Delo*, 513 U.S. 298, 326-27 (1995). The court then adopted the magistrate judge's report, denied Springer's habeas petition, and declined to issue a COA.

In his COA application, Springer argues the merits of his claim that trial counsel rendered ineffective assistance by failing to investigate and present a pretrial defense of entrapment by estoppel. He also advances his "gateway-innocence" claim.

An individual seeking a COA is required to make a substantial showing of the denial of a federal constitutional right. *See* 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating 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 (2003).

As to his first claim, jurists of reason would agree that the district court had to defer to the post-conviction court's determination that the entrapment-by-estoppel defense was not available to Springer under state law. "[I]t is not the province of a federal habeas court to reexamine state-court determinations of state-law questions." *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991); *see also Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) (per curiam). And "States are free to define the elements of, and defenses to, crimes." *Gimotty v. Elo*, 40 F. App'x 29, 32 (6th Cir. 2002). Trial counsel had no duty to raise a meritless defense, and appellate counsel had no obligation to raise a meritless challenge to trial counsel's performance. *See Coley v. Bagley*, 706 F.3d 741, 752 (6th Cir. 2013).

The court declines to consider Springer's remaining claims because he has forfeited them by failing to raise them in his COA application. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam); *Elzy v. United States*, 205 F.3d 882, 886 (6th Cir. 2000). Springer also forfeited the claims by failing to object to the magistrate judge's recommended resolution of them, which caused the district court not to review them. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Berkshire v. Dahl*, 928 F.3d 520, 530 (6th Cir. 2019).

Finally, jurists of reason would agree with the district court's denial of leave to amend the habeas petition by adding the "gateway-innocence" claim. Actual innocence may serve as a gateway to permit review of a claim that is procedurally barred, including a claim barred by the expiration of the statute of limitations. *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). But the

petitioner must "persuade[] the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Id.* (quoting *Schlup*, 513 U.S. at 329). The results of the CPS investigations, which ended years before Calista's death, do not constitute new evidence.

Accordingly, the court **DENIES** Springer's COA application.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Neutral

As of: March 19, 2022 1:13 PM Z

Springer v. Morrison

United States Court of Appeals for the Sixth Circuit

March 10, 2022, Filed

No. 21-2608

Reporter

2022 U.S. App. LEXIS 6302 *

ANTHONY J. SPRINGER, Petitioner-Appellant, v. BRYAN MORRISON, Warden, Respondent-Appellee.

Prior History: *Springer v. Berghuis, 2021 U.S. Dist. LEXIS 100169, 2021 WL 2154117 (W.D. Mich., May 27, 2021)*

Core Terms

render ineffective assistance, investigate, entrapment defense, appellate counsel, trial counsel, chain, trial court, restraining

Counsel: [*1] ANTHONY J. SPRINGER, Petitioner - Appellant, Pro se, Coldwater, MI.

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

Judges: Before: ROGERS, Circuit Judge.

Opinion

ORDER

Anthony J. Springer, a pro se Michigan prisoner, appeals a district court's judgment denying his habeas corpus petition filed pursuant to *28 U.S.C. § 2254*. He has applied for a certificate of appealability ("COA"). *See Fed. R. App. P. 22(b)*.

At a joint trial, a jury convicted Springer and his wife of torture and first-degree child abuse after his teen-aged daughter, Calista, died in a house fire in 2008. Calista, who had special needs, could not escape because she had been "secured to her bed by a dog choke chain around her waist that was attached to the bed frame with zip ties." *People v. Springer, Nos. 298385, 298386, 2012 Mich. App. LEXIS 1740, 2012 WL 4039669 (Mich. Ct. App. Sept. 13, 2012)* (per curiam), *perm. app. denied, 493 Mich. 946, 827 N.W.2d 723 (Mich. 2013)*. The trial court sentenced Springer to concurrent terms of ten to fifteen years in prison for the child-abuse conviction and twenty-five to fifty years in prison for the torture conviction. The Michigan Court of Appeals affirmed the trial court's judgment. *Id.*

Springer moved for relief from the judgment, raising claims of ineffective assistance of counsel. *See Mich. Ct. R. 6.508(D)*. The trial court denied [*2] the motion, and the Michigan Court of Appeals denied Springer's delayed application for leave to appeal. The Michigan Supreme Court initially denied leave to appeal as well but later vacated its order because the lower courts had not addressed Springer's ineffective-assistance-of-counsel issues regarding the lack of a defense of entrapment by estoppel. *People v. Springer, 498 Mich. 865, 866 N.W.2d 431 (Mich. 2015), vacated, 498 Mich.*

APPENDIX (A)

908, 870 N.W.2d 579 (Mich. 2015). Springer had contended that the entrapment defense should have been raised because the Michigan Department of Health and Human Services-Children's Protective Services ("CPS") program and Community Health had advised him to restrain his daughter at night.

On remand, the trial court conducted an evidentiary hearing and began by discussing the defendant's burden of proving ineffective assistance of counsel under *Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)*. Witnesses at the hearing included trial and appellate counsel, Springer, and his wife. Following supplemental briefing, the trial court resumed the hearing and denied relief. The court reasoned that the entrapment defense would not have applied because no reasonable person would have believed that a government official had instructed the Springers to chain their daughter to a bed with a dog chain. Four years before **[*3]** her death, the State had investigated the Springers upon receiving a report alleging that they were restraining Calista in this manner, and the Springers had denied doing so. Although the State had advised restraining Calista with methods such as alarms and belts for her safety, the State had not advised restraining her to the point where she could not get away in case of a fire. Furthermore, the State could not have been aware of and approved the final method of restraint because Springer testified that he had started using it only three days before the fire. Due to the fruitless nature of the defense, counsel did not render ineffective assistance by failing to pursue it. The Michigan Court of Appeals denied Springer's application for leave to appeal, as did the Michigan Supreme Court. *People v. Springer, 501 Mich. 902, 902 N.W.2d 418 (Mich. 2017)* (mem.).

In his *§ 2254* petition, as amended, Springer raised the following claims: (1)(a) trial counsel rendered ineffective assistance by failing to investigate and interview CPS employees, which would have led to the discovery that the State gave the Springers permission to use a home-made chain restraint, and move for a pretrial hearing to present the defense of entrapment by estoppel, and (b) appellate **[*4]** counsel rendered ineffective assistance by failing to challenge trial counsel's performance; (2)(a) the Michigan Supreme Court violated Springer's right to due process and a fair jury by implementing a pilot program that allowed jurors to discuss the case prior to the close of evidence and to submit questions for the witnesses, (b) trial counsel rendered ineffective assistance by failing to object, and (c) appellate counsel rendered ineffective assistance by failing to challenge trial counsel's performance; (3) appellate counsel rendered ineffective assistance by failing to argue that the trial court violated Springer's right to call witnesses and present a defense by excluding an email from Dr. Jeffrey Kaylor, a psychologist who had evaluated Calista, and by refusing to permit defense witnesses to impeach Dr. Kaylor's testimony; (4) trial counsel rendered ineffective assistance by failing to object to the joint trial, which violated his right to a fair trial and impartial jury and his right to confront his wife about prior statements; and (5) trial counsel rendered ineffective assistance by failing to object to the admission of preliminary testimony by Gustavo Pop, a firefighter, **[*5]** who was not present at trial.

A magistrate judge recommended denying Springer's habeas petition on the merits. Springer filed objections, arguing the merits of his claim regarding the entrapment defense and contesting the magistrate judge's findings that Calista died because of the chain and zip-tie restraint and that the State had not approved that type of restraint. Springer moved to amend his petition to add a "gateway-innocence" claim that trial and appellate counsel rendered ineffective assistance by failing to investigate and discover CPS reports absolving the Springers of wrongdoing. Between 1995 and 2005, CPS

investigated complaints that the Springers were restraining Calista with chains and concluded that she had not been harmed. Springer acknowledged that the claim was untimely. In support of his claim, he relied on a discussion of the CPS investigations in the district court's decision in *Langdon v. Skelding, No. 1:10-cv-985, 2011 U.S. Dist. LEXIS 112546, 2011 WL 4559439 (W.D. Mich. Sept. 30, 2011)*, a civil action brought by Calista's grandmother against CPS employees. In one investigation report, a CPS worker indicated that Springer stated that Calista was tied to the bed with a device used by nursing homes. *2012 Mich. App. LEXIS 1740, [WL] at *2.*

The district court overruled Springer's **[*6]** objections and denied Springer's motion to amend, reasoning in part that Springer had not produced any new evidence. *See Schlup v. Delo, 513 U.S. 298, 326-27, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995)*. The court then adopted the magistrate judge's report, denied Springer's habeas petition, and declined to issue a COA.

In his COA application, Springer argues the merits of his claim that trial counsel rendered ineffective assistance by failing to investigate and present a pretrial defense of entrapment by estoppel. He also advances his "gateway-innocence" claim.

An individual seeking a COA is required to make a substantial showing of the denial of a federal constitutional right. *See 28 U.S.C. § 2253(c)(2)*. "A petitioner satisfies this standard by demonstrating 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)*.

As to his first claim, jurists of reason would agree that the district court had to defer to the post-conviction court's determination that the entrapment-by-estoppel defense was not available to Springer under state law. "[i]t is not the province of a federal habeas court to reexamine state-court determinations of state-law **[*7]** questions." *Estelle v. McGuire, 502 U.S. 62, 67-68, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991)*; *see also Bradshaw v. Richey, 546 U.S. 74, 76, 126 S. Ct. 602, 163 L. Ed. 2d 407 (2005)* (per curiam). And "States are free to define the elements of, and defenses to, crimes." *Gimotty v. Elo, 40 F. App'x 29, 32 (6th Cir. 2002)*. Trial counsel had no duty to raise a meritless defense, and appellate counsel had no obligation to raise a meritless challenge to trial counsel's performance. *See Coley v. Bagley, 706 F.3d 741, 752 (6th Cir. 2013)*.

The court declines to consider Springer's remaining claims because he has forfeited them by failing to raise them in his COA application. *See Jackson v. United States, 45 F. App'x 382, 385 (6th Cir. 2002)* (per curiam); *Elzy v. United States, 205 F.3d 882, 886 (6th Cir. 2000)*. Springer also forfeited the claims by failing to object to the magistrate judge's recommended resolution of them, which caused the district court not to review them. *See Thomas v. Arn, 474 U.S. 140, 142, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985)*; *Berkshire v. Dahl, 928 F.3d 520, 530 (6th Cir. 2019)*.

Finally, jurists of reason would agree with the district court's denial of leave to amend the habeas petition by adding the "gateway-innocence" claim. Actual innocence may serve as a gateway to permit review of a claim that is procedurally barred, including a claim barred by the expiration of the statute of limitations. *McQuiggin v. Perkins, 569 U.S. 383, 386, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013)*. But the petitioner must "persuade[] the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Id.* (quoting *Schlup, 513 U.S. at 329*). The results of the

APPENDIX (A)

CPS investigations, which ended years before Calista's [*8] death, do not constitute new evidence.

Accordingly, the court **DENIES** Springer's COA application.

End of Document

APPENDIX (A)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY J. SPRINGER,

Petitioner,

v. Case No. 1:15-CV-808

MARY BERGHUIS, HON. GORDON J. QUIST

Respondent.
_____/

ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING PETITIONER'S HABEAS PETITION

This is a habeas corpus petition brought by state prisoner Anthony Springer pursuant to 28 U.S.C. § 2254. United States Magistrate Judge Ray Kent issued a Report and Recommendation (R & R), recommending that the Court deny Springer's petition, deny a certificate of appealability, and not certify that an appeal would not be taken in good faith. (ECF No. 27.) Springer filed objections to the R & R and also seeks to amend his habeas petition to include a gateway innocence claim. (ECF No. 32.)

Upon receiving objections to an R & R, the district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This Court may accept, reject, or modify any or all of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). After conducting a de novo review of the R & R, the objections, and the pertinent portions of the record, the Court concludes that the R & R should be adopted and Springer's habeas petition should be denied.

Analysis

I. Objections

Springer begins by generally objecting to the R & R for the reasons set forth in his Brief Memorandum of Law in Support of Petition for Writ of Habeas Corpus (ECF No. 2), and Brief (ECF No. 16). Springer filed both of these briefs before the R & R was issued. The Court interprets the reference to these other documents as a general objection. "[A] general objection to a magistrate's report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious." *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). "In general, 'the failure to file specific objections to a magistrate's report constitutes a waiver of those objections.'" *Carter v. Mitchell*, 829 F.3d 455, 472 (6th Cir. 2016), *cert. denied sub nom. Carter v. Jenkins*, 137 S. Ct. 637 (2017) (quoting *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004)). The Court will address only the specific objections.

Springer brings five specific objections. First, Springer objects to the magistrate judge's statement that Calista's death was caused by "the chain and zip tie restraint." (ECF No. 27 at PageID.5120.) According to Springer, Calista's death was caused by an accidental house fire—not the restraints. The Court finds no error in the magistrate judge's statement. Although Calista died in the house fire, the restraints prevented her from escaping the house. Both the fire and the restraints contributed to Calista's death.

The next three objections relate to an entrapment by estoppel defense. Entrapment by estoppel exists "[w]hen a citizen reasonably and in good faith relies on a government agent's representation that the conduct in question is legal." *People v. Woods,* 241 Mich. App. 545, 548-49, 616 N.W.2d 211 (2000). Springer contends that Child Protective Services (CPS) and other

government officials approved the use of the restraints. He argues that the magistrate judge erred by finding otherwise. While CPS Supervisor Cynthia Bare and CPS Caseworker Patricia Skelding may have known or approved the use of restraints in 2004, the trial testimony establishes that they did not approve the specific restraint system that was used the night of the fire in 2008. According to Springer's own testimony, he started using the new restraint system, which included a dog collar, only two or three days before the fire occurred. (ECF No. 23-19 at PageID.3235.) Thus, the magistrate judge correctly concluded that even if Skelding approved the use of restraints in 2004, they were not the same restraints used when the fire occurred in 2008.

Springer next objects to the magistrate judge's "complete deference" to the state trial court's factual findings. This objection is tied to Springer's claim that he received ineffective assistance of counsel when his attorney failed to investigate the entrapment by estoppel defense. In a habeas corpus proceeding, factual determinations made by state courts are presumed correct. 28 U.S.C. § 2254(e)(1). While a petitioner may overcome the presumption of correctness by clear and convincing evidence, Springer has failed to do so in this case. He continues to focus on his belief that government officials approved the restraint system. But, as stated above, there is no evidence that any government official approved the specific restraint system that was used the night of the fire. When addressing whether entrapment by estoppel was a viable defense, the trial court ruled that it would not have applied because "the government official never told [the Springers] that chaining their daughter to a bed with a dog chain and zip ties to the extent where she couldn't lift her body up even a half inch would be legal and would be allowed and there's no reasonable person that could believe that it could." (ECF No. 23-32 at PageID.3815.) Springer's cherry-picked citations to the record do not rebut the presumption of correctness by clear and convincing evidence.

Springer also contends that the magistrate judge erred by finding that that the entrapment by estoppel defense arises under Michigan state law. Although federal courts have recognized an entrapment by estoppel defense to federal offenses, *see United States v. Ormsby,* 252 F.3d 844, 851 (6th Cir. 2001), Springer was charged and convicted of violations of Michigan law in Michigan state court. The Court agrees with the magistrate judge that the state court's interpretation of the scope and viability of the entrapment by estoppel defense are state law issues. Furthermore, Springer has not shown that the state court's factual determinations were unreasonable or that the state court's decision was contrary to, or an unreasonable application of clearly established federal law.

Springer's final objection concerns whether the Court should grant a certificate of appealability. To warrant a grant of the certificate of appealability, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000). In the instant case, the magistrate judge found that reasonable jurists would not have come to a different conclusion. Springer disagrees and cites to the fact that at least one Michigan Supreme Court Justice would have granted Springer leave to appeal his conviction to the Michigan Supreme Court. (ECF No. 23-40.) This Court is not persuaded that this fact has any bearing on whether to grant a certificate of appealability. The legal analysis in this habeas proceeding is significantly different from the legal analysis in state court. The Court finds that reasonable jurists could not find that this Court's denial of Springer's claims were debatable or wrong. Thus, the Court will deny Springer a certificate of appealability.

II. Motion to Amend

Springer also requests to amend his habeas petition to include a gateway innocence claim. A gateway innocence claim is used to overcome a procedural bar to reach the merits of a constitutional claim. *Schlup v. Delo*, 513 U.S. 298, 326-27, 115 S. Ct. 851, 867 (1995). There is no such procedural bar in the instant case. To the extent Springer intended to assert a freestanding innocence claim, the Sixth Circuit "has 'repeatedly indicated that such claims are not cognizable on habeas.'" *Smith v. Nagy*, 962 F.3d 192, 207 (6th Cir. 2020) (quoting *Cress v. Palmer*, 484 F.3d 844, 854 (6th Cir. 2007)). And even if such a claim were cognizable, Springer has not produced any new evidence. Nor has he met the "extraordinarily high" burden of proving his innocence. *Herrera v. Collins*, 506 U.S. 390, 417, 113 S. Ct. 853, 869 (1993).

Conclusion

Having reviewed all of Springer's objections and finding no basis for habeas relief,

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 27) is approved and adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Springer's habeas corpus petition (ECF No. 1) is **DENIED** for the reasons set forth in the Report and Recommendation.

IT IS FURTHER ORDERED that Springer's request to amend his habeas petition is **DENIED**.

A separate judgment will enter.

This case is **concluded**.

Dated: May 27, 2021

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY J. SPRINGER,

Petitioner,

v. Case No. 1:15-CV-808

MARY BERGHUIS, HON. GORDON J. QUIST

Respondent.
_____/

JUDGMENT

Judgment is hereby entered in favor of Respondent and against Petitioner.

Dated: May 27, 2021

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Pro Se,
ANTHONY J. SPRINGER — PETITIONER
(Your Name)

VS.

BRYAN MORRISON, Warden — RESPONDENT(S)

PROOF OF SERVICE

I, Anthony J. Springer, do swear or declare that on this date, _____, 20__, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Attorney for Appellee: John S. Pallas,
Attorney General Office, Appellate Division,
P.O. Box 30217 Lansing, MI. 48909

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2022

Anthony Springer
(Signature)