Appendix A

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United States Court of Appeals for the Fifth Circuit

No. 21-10460

MARK DEWAYNE HALLCY,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:18-CV-180

ON PETITION FOR REHEARING EN BANC

Before STEWART, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 27, 2021
Lyle W. Cayce
Clerk

No. 21-10460

MARK DEWAYNE HALLCY,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice, Correctional Institutions Division,*

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Northern District of Texas
USDC No. 5:18-CV-180

ORDER:

Mark DeWayne Hallcy, Texas prisoner # 2149848, pleaded guilty to aggravated assault with a deadly weapon and was sentenced to eight years of imprisonment. He now moves for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 petition. Hallcy asserts that (1) his due process rights were violated by the trial court's denial of his motion for a reduced bond amount, (2) he received ineffective assistance of counsel at his bond hearing, (3) the district court erred by denying his motion to amend his petition, and (4) he was denied his right to hire counsel of his choice. Hallcy has also filed two motions for leave to

supplement his COA motion and a motion to take judicial notice. The two motions to supplement Hallcy's COA are GRANTED; the motion to take judicial notice is DENIED.

To obtain a COA, Hallcy must make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). To meet that standard, a movant must demonstrate that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted). Hallcy has not made the requisite showing. Accordingly, Hallcy's motion for a COA is DENIED.

/s/ Catharina Haynes
CATHARINA HAYNES
United States Circuit Judge

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

MARK DEWAYNE HALLCY,

Petitioner,

v.

LORIE DAVIS-DIRECTOR, TDCJ-CID,

Respondent.

No. 5:18-CV-00180-H

ORDER

Petitioner filed a motion to supplement his reply to the Respondent's answer (Dkt. No. 33) and a motion for reconsideration of the Court's earlier denial of his attempt to supplement his petition and reply (Dkt. No. 31). As explained below, the motions are denied.

Briefing in this action was completed well over a year ago. Now, Petitioner seeks to supplement his pleadings with new claims and additional arguments in support of his original claims. Petitioner offers no explanation for the significant delay in raising these arguments and claims. He relies on no intervening change in law, nor does he rely on newly discovered evidence. Petitioner's proposed supplemental arguments and claims rely exclusively on facts known to him before his guilty plea.

First, Petitioner attempts to rehash arguments already raised in his original petition and in his reply to Respondent's answer. Primarily, Petitioner reasserts that his attorney was ineffective in his performance at Petitioner's bond hearing. Petitioner's repeated attempts to re-urge this claim are unnecessary. Petitioner's motion to supplement his reply is denied.

Second, Petitioner attempts to raise new claims, primarily other instances of ineffective assistance of counsel (IAC). He relies on Rule 15(c) and argues that the new claims relate back to his original petition. He asserts that because he raised IAC with respect to his attorney's performance at the bond hearing, the Court should inquire into the "actual performance of counsel . . . as a whole" and examine "the totality of the circumstances in the entire record," regardless of whether the State has addressed the concerns. (Dkt. No. at 2.)

"New claims of ineffective assistance of counsel do not automatically relate back to prior ineffective assistance claims simply because they violate the same constitutional provision." *United States v. Gonzalez*, 592 F.3d 675, 680 (5th Cir. 2009). Plaintiff's proposed supplemental claims—that his attorney rendered ineffective assistance of counsel from October 8, 2016 to April 10, 2017—present new grounds for relief, which are untimely. Petitioner's motion for reconsideration is denied.

So ordered.

Dated June 30, 2020.

James W. Hendrix

JAMES WESLEY HENDRIX
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

MARK DEWAYNE HALLCY,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

No. 5:18-CV-00180-H

JUDGMENT

For the reasons stated in the Court's order entered today, it is ordered, adjudged, and decreed that this petition for writ of habeas corpus is dismissed with prejudice.

Dated April 20, 2021.

JAMES WESLEY HENDRIX
United States District Judge

Appendix C

SELF March 18th, 2022

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

MARK DEWAYNE HALLCY,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

No. 5:18-CV-00180-H

ORDER

Petitioner Mark Dewayne Hallcy, proceeding pro se and *in forma pauperis*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 to challenge his state-court conviction and sentence. Respondent filed an answer with copies of Petitioner's relevant state-court records. Petitioner filed a reply. As explained below, the Court finds that the petition should be denied and dismissed with prejudice.

1. Background

Petitioner challenges his guilty-plea conviction and eight-year prison sentence out of the 64th District Court of Hale County, Texas. In cause number A20335-1612, styled *State of Texas v. Mark Dewayne Hallcy*, Petitioner was charged by indictment with the second-degree felony offense of aggravated assault with a deadly weapon. (Dkt. No. 15-1 at 8–10.) He pled guilty on July 13, 2017, and the trial court sentenced him to eight years in the Texas Department of Criminal Justice (TDCJ) in accordance with his plea agreement. (*Id.*) His direct appeal was dismissed by the Amarillo Court of Appeals because Petitioner reserved no right to appeal under the terms of his plea agreement. (*See* Dkt. No. 15-1 at 28–29.) Petitioner did not file a petition for discretionary review with the Texas Court of Criminal Appeals (TCCA).

Petitioner's first state application for writ of habeas corpus was dismissed by the TCCA on November 22, 2017 because his conviction was not yet final. (Dkt. No. 15-1 at 2.) He filed his second state habeas application on March 20, 2018, and it was denied by the TCCA without written order on June 13, 2018.

Petitioner filed his federal petition on July 18, 2018.[1] The Court understands Petitioner to challenge his conviction on these grounds:

1) The State violated his due-process rights by detaining him for more than 90 days before charging him by indictment, in violation of Texas Code of Criminal Procedure art. 17.151;

2) The trial court denied him equal protection and due process when it failed to act on his motion for bond reduction until after he was indicted, but considered the State's motion for bond increase at the same time;

3) He received ineffective assistance of counsel when his attorney failed to invoke art. 17.151 in his motion for bond reduction; and

4) The trial court used excessive bail as an instrument of oppression and abused its discretion by increasing Petitioner's bond amount after he was indicted.

Respondent argues that the petition lacks merit and should be denied and dismissed with prejudice. Specifically, Respondent argues that Petitioner's first ground is not cognizable on federal habeas review, and his remaining claims were waived by his guilty plea. Thus, Respondent argues that Petitioner is not entitled to federal habeas relief.

2. Legal Standard

Section 2254 provides federal courts with an important, but limited opportunity to review a state prisoner's conviction and sentence. *See Harrington v. Richter*, 562 U.S. 86, 103 (2011) (explaining that the statute is "designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions"). This statute, as

[1] *See Spotville v. Cain*, 149 F.3d 374, 378 (5th Cir. 1998) (providing that a prisoner's habeas petition is deemed to be filed when he delivers the papers to prison authorities for mailing).

amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) creates a "highly deferential standard for evaluating state-court rulings, . . . which demands that state-court decisions be given the benefit of the doubt." *Woodford v. Viscotti*, 537 U.S. 19, 24 (2002) (per curiam) (internal quotation marks omitted).

Once a state a state court has rejected a claim on the merits, a federal court may grant relief on that claim only if the state court's decision was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) 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); *Adekeye v. Davis*, 938 F.3d 678, 682 (5th Cir. 2019). And "[t]he question under AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007).

A state-court decision is "contrary" to clearly established federal law if "it relies on legal rules that directly conflict with prior holdings of the Supreme Court or if it reaches a different conclusion than the Supreme Court on materially indistinguishable facts." *Busby v. Dretke*, 359 F.3d 708, 713 (5th Cir. 2004). A decision constitutes an "unreasonable application" of clearly established federal law if "the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Williams v. Taylor*, 529 U.S. 362, 413 (2000); *see also Pierre v. Vannoy*, 891 F.3d 224, 227 (5th Cir. 2018) (explaining that a petitioner's lack of "Supreme Court precedent to support" a ground for habeas relief "ends [his] case" as to that ground).

"[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010). Federal habeas relief is precluded even when the state court's factual determination is debatable. *Id.* at 303. State-court factual determinations are entitled to a "presumption of correctness" that a petitioner may rebut only by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). This "deference extends not only to express findings of fact, but to the implicit findings of the state court." *Ford v. Davis*, 910 F.3d 232, 234–35 (5th Cir. 2018).

Moreover, "federal habeas relief does not lie for errors of state law," and "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle v. McGuire,* 502 U.S. 62, 67–68 (1991); *West v. Johnson,* 92 F.3d 1385, 1404 (5th Cir. 1996). AEDPA "modified a federal habeas court's role in reviewing state prisoner applications in order to prevent federal habeas 'retrials' and to ensure that state court convictions are given effect to the extent possible under law." *Bell v. Cone*, 535 U.S. 685, 693 (2002). Federal habeas review is reserved only as a "guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal." *Richter*, 562 U.S. at 102–03. This standard is intentionally "difficult to meet." *Id.*

Finally, federal habeas review is limited "to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 181–82 (2011). In short, to overcome AEDPA's highly deferential, difficult standard, a petitioner "must show, based on the state-court record alone, that any argument or theory the state habeas court could have relied on to deny . . . relief was contrary to or an unreasonable application

of clearly established federal law as determined by the Supreme Court." *Evans v. Davis*, 875 F.3d 210, 217 (5th Cir. 2017).

3. Analysis

A. Petitioner's state-law claims are not subject to federal habeas review.

Petitioner focuses much of his petition on his claim that the state court failed to properly apply state procedural rules to his case. Specifically, he alleges that the State detained him longer than permitted under Texas Code of Criminal Procedure art. 17.151 before charging him by indictment. He claims that his attorney was ineffective for not seeking his release under that provision, that the judge abused his discretion by not enforcing the provision, and that the prosecutor unfairly delayed the proceedings by not timely charging him by indictment under that provision. As argued by Respondent, the Court finds that to the extent Petitioner complains about rights existing solely under the state procedural rules, or the state-court's misapplication of those rules, his claims are not cognizable under Section 2254. *See Estelle,* 502 U.S. at 67–68; *Manning v. Blackburn*, 786 F.2d 710, 711 (5th Cir. 1986).

B. Petitioner waived his remaining claims by pleading guilty.

Additionally, Petitioner's guilty plea further limits the scope of possible review in this federal habeas proceeding. "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Stated differently, "[b]y pleading guilty to an offense, . . . a criminal defendant waives all non-jurisdictional defects preceding the plea." *United States v. Owens*, 996 F.2d 59, 60 (5th Cir. 1993).

The Fifth Circuit has identified "three core concerns" when reviewing a guilty plea proceeding: (1) the absence of coercion; (2) the defendant's full understanding of the charges; and (3) the defendant's realistic appreciation of the consequences of the plea. *See United States v. Gracia*, 983 F.2d 625, 627–28 (5th Cir. 1993). These core concerns are addressed by the admonishments routinely given during Texas state plea proceedings. *See Parker v. Davis*, No. 3:17-CV-2905-B-BN, 2020 WL 5127778, at *4 (N.D. Tex. July 9, 2020), *rec. adopted*, No. 3:17-CV-2905-B, 2020 WL 5106794 (N.D. Tex. Aug. 31, 2020).

"A guilty plea will be upheld on habeas review if entered into knowingly, voluntarily, and intelligently." *Montoya v. Johnson,* 226 F.3d 399, 405 (5th Cir. 2000). The record here reflects that Petitioner entered his guilty plea knowingly, voluntarily, and intelligently. (*See* Dkt. No. 15-1 at 12–17.) He signed written admonishments stating that he understood the nature of the charges against him and the consequences of entering a guilty plea. (*Id.* at 15–16.) And the state trial court entered a finding that Petitioner's plea was entered knowingly, voluntarily, and intelligently, with full knowledge of the consequences of waiving his right to a jury trial. (*Id.* at 17.) These records "are entitled to the presumption of regularity and are accorded great evidentiary weight." *Hobbs v. Blackburn*, 752 F.2d 1079, 1081–82 (5th Cir. 1985).

Petitioner's conclusory assertions that his plea was coerced as a result of his pretrial detention, his excessive pretrial bond, and his attorney's ineffective assistance, are not enough to overcome the record evidence in this case. He has also failed to show that, but for his counsel's alleged errors, he would not have pleaded guilty but would have insisted on going to trial. *See Hill v. Lockhart*, 474 U.S. 52, 58–59 (1985). The record reflects that he fully understood the charges and the consequences of his plea, and he voluntarily chose to

plead guilty. Petitioner's claims here all relate to non-jurisdictional defects that occurred before his guilty plea. Thus, he waived these challenges by pleading guilty.

Additionally, Petitioner's complaint that he was subjected to excessive pretrial bail was rendered moot by his conviction. *See Parker*, 2020 WL 5127778, at *4 (citing *Yohey v. Collins*, 985 F.2d 222, 228–29 (5th Cir. 1993)).

C. Petitioner has failed to overcome AEDPA's deferential standard.

Finally, the Court notes that Petitioner raised these claims in his state habeas proceedings, and the TCCA denied them on the merits.[2] Petitioner has failed to show that the state-court's adjudication of his claims resulted in a decision contrary to clearly established federal law or resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. 28 U.S.C. § 2254(d). Thus, the Court finds that the petition should be denied.

4. Conclusion

After carefully reviewing the state court records and the pleadings, the Court finds that an evidentiary hearing is not necessary to resolve the instant petition. *See Young v. Herring*, 938 F.2d 543, 560 n. 12 (5th Cir. 1991) ("[A] petitioner need not receive an evidentiary hearing if it would not develop material facts relevant to the constitutionality of his conviction."). The Court thoroughly examined Petitioner's pleadings, Respondent's answer, the relevant state court records, and the applicable law. For the reasons discussed above and based on the facts and law set forth in Respondent's answer, the Court finds Petitioner's claims should be denied.

The Court therefore orders:

[2] Under Texas law, denial of a habeas petition, rather than a dismissal, suggests that the state habeas court's adjudication of claims was on the merits. *See Salazar v. Dretke*, 419 F.3d 384, 398–99 (5th Cir. 2005).

(1) The petition for writ of habeas corpus is denied and dismissed with prejudice.

(2) All relief not granted is denied, and any pending motions are denied.

(3) Under Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), this Court finds that a certificate of appealability should be denied. For the reasons set forth above and in Respondent's answer, Petitioner has failed to show that reasonable jurists would find (1) this Court's "assessment of the constitutional claims debatable or wrong," or (2) "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel,* 529 U.S. 473, 484 (2000).

The Court will enter judgment accordingly.

Dated April 20, 2021.

JAMES WESLEY HENDRIX
United States District Judge