APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-10914-J

ANGEL DANIEL CARABALLO,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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

ORDER:

Angel Daniel Caraballo moves for a certificate of appealability ("COA") in order to appeal the denial of his habeas corpus petition, filed pursuant to 28 U.S.C. § 2254. To merit a COA, Caraballo must show that reasonable jurists would find debatable both: (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Because Caraballo has failed to make the requisite showing, the motion for a COA is DENIED. His motion for leave to proceed *in forma pauperis* on appeal is DENIED AS MOOT.

UNITED STATES CIRCUIT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-10914-J

ANGEL DANIEL CARABALLO,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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

Before: JILL PRYOR and LAGOA Circuit Judges.

BY THE COURT:

Angel Daniel Caraballo has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated February 8, 2022, denying his motion for a certificate of appealability and denying as moot his motion for leave to proceed *in forma pauperis* on appeal, following the district court's denial of his *pro se* 28 U.S.C. § 2254 federal habeas corpus petition. Because Caraballo has offered no new evidence or arguments of merit to warrant relief, his motion for reconsideration is DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ANGEL DANIEL CARABALLO,

Petitioner,

v. **Case No: 6:19-cv-497-Orl-41LRH**

SECRETARY, DEPARTMENT OF CORRECTIONS and ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.
_____/

ORDER

THIS CAUSE is before the Court on Angel Daniel Caraballo's Petition for Writ of Habeas Corpus ("Petition," Doc. 1) filed pursuant to 28 U.S.C. § 2254. Respondents filed a Response to Amended Petition ("Response," Doc. 7) in compliance with this Court's instructions. Petitioner filed a Reply to the Response ("Reply," Doc. 8). Petitioner asserts four claims in the Petition. For the reasons set forth below, the Petition will be denied.

I. PROCEDURAL HISTORY

Petitioner was charged by information in the Ninth Judicial Circuit in and for Osceola County, Florida,

Petitioner filed a petition for writ of habeas corpus with the appellate court in which he alleged one claim of ineffective assistance of appellate counsel. (*Id.* at 68-76). The Fifth DCA denied the petition without discussion. (*Id.* at 118).

Petitioner subsequently filed a motion for post-conviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. (Doc. Nos. 7-7 at 134-45; 7-8 at 1-6). The trial court summarily denied several of Petitioner's claims and granted leave to amend Claim One. (Doc. 7-10 at 53-56). Petitioner filed an Amended Rule 3.850 motion. (*Id.* at 60-78). After holding an evidentiary hearing on Petitioner's claim that counsel was ineffective for failing to request a competency hearing, the trial court denied relief. (Doc. 7-11 at 98-101). Petitioner appealed, and the Fifth DCA affirmed *per curiam*. (Doc. 7-12 at 179).

II. LEGAL STANDARDS

A. Standard Of Review Under The Antiterrorism Effective Death Penalty Act

Pursuant to the Antiterrorism Effective Death Penalty Act ("AEDPA"), a federal court may not grant federal habeas relief with respect to a claim adjudicated on the merits in state court 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.

28 U.S.C. § 2254(d). The phrase "clearly established Federal law," encompasses only the holdings of the United States Supreme Court "as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000).

"[S]ection 2254(d)(1) provides two separate bases for reviewing state court decisions; the 'contrary to' and 'unreasonable application' clauses articulate independent considerations a federal court must consider." *Maharaj v. Sec'y for Dep't of Corr.*, 432 F.3d 1292, 1308 (11th Cir. 2005). The meaning of the clauses was discussed by the Eleventh Circuit Court of Appeals in *Parker v. Head,* 244 F.3d 831, 835 (11th Cir. 2001):

> Under the "contrary to" clause, a federal court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a

> question of law or if the state court decides a case differently than [the United States Supreme Court] has on a set of materially indistinguishable facts. Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from [the United States Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case. *Id.* (quoting *Williams*, 529 U.S. at 412–13). Even if the federal court concludes that the state court applied federal law incorrectly, habeas relief is appropriate only if that application was "objectively unreasonable."[1] *Id.* (quotation omitted).

Finally, under § 2254(d)(2), a federal court may grant a writ of habeas corpus if the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." However, the state court's "determination of a factual issue . . . shall be presumed correct," and the habeas petitioner "shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); *see also Parker*, 244 F.3d at 835–36.

B. Standard For Ineffective Assistance Of Counsel

In *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court established a two-part test for determining whether a convicted person is entitled to relief on the ground that his counsel rendered ineffective assistance: (1)

[1] In considering the "unreasonable application inquiry," the Court must determine "whether the state court's application of clearly established federal law was objectively unreasonable." *Williams*, 529 U.S. at 409. Whether a state court's decision was an unreasonable application of law must be assessed in light of the record before the state court. *Holland v. Jackson*, 542 U.S. 649, 652 (2004) (per curiam); *see also Bell v. Cone*, 535 U.S. 685, 697 n.4 (2002) (declining to consider evidence not presented to state court in determining whether the state court's decision was contrary to federal law).

whether counsel's performance was deficient and "fell below an objective standard of reasonableness"; and (2) whether the deficient performance prejudiced the defense. *Id.* at 687–88. A court must adhere to a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689–90. "Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *see also Gates v. Zant*, 863 F.2d 1492, 1497 (11th Cir. 1989) ("*Strickland* teaches that courts must judge the reasonableness of the challenged conduct on the facts of the particular case, viewed as of the time of the conduct.").

III. ANALYSIS

A. Claim One

Petitioner asserts that trial counsel was ineffective for failing to request a competency hearing prior to trial. (Doc. 1 at 4). Petitioner raised this claim in his Rule 3.850 motion, and the trial court held an evidentiary hearing on the claim. (Doc. Nos. 7-10 at 110-119; 7-11 at 1-95).

Petitioner testified that he was initially represented by Gustavo Padron ("Padron"). (Doc. 7-11 at 5). Petitioner stated that he immediately told counsel that he needed medication and could not function properly without it. (*Id.*). Petitioner explained that he was suffering from depression, anxiety for at least four years prior to trial, had been suicidal, and was involuntarily committed in the past. (*Id.* at 5 and

30). Petitioner also told counsel that he had been previously treated by the Department of Veteran's Affairs, and his records related to his mental health care were available. (*Id.* at 6).

Petitioner testified that he was detained in jail prior to his trial, and he did not have access to his mental health medication. (*Id.* at 7). According to Petitioner, he had several symptoms from the lack of medication, including shaking, loss of focus, hearing voices, and being "out of control." (*Id.* at 7-8). Petitioner stated that he had trouble remembering facts and communicating with people. (*Id.* at 9). Petitioner testified that he was later represented by Kelley Collier ("Collier"), and he told Collier about his mental health issues; however, Collier never followed up on the matter. (*Id.* at 10-12). A competency evaluation was never performed, and Petitioner stated he could not remember anything that occurred at trial. (*Id.* at 13-16). Petitioner testified that he obtained medication from a fellow inmate that he used to stay calm during the trial. (*Id.* at 17).

Padron testified that he represented Petition for a very short amount of time, and he did not recall any concerns related to Petitioner's mental health. (*Id.* at 35-36). Padron noted that if he had thought Petitioner's mental health was at issue, he would have moved for a competency evaluation. (*Id.* at 38).

Collier testified that he met with Petitioner several times prior to trial and he did not have any concerns regarding Petitioner's mental competency. (*Id.* at 42). Therefore, Collier did not seek a competency evaluation. (*Id.*). Collier stated he did

recall the fact that Petitioner had been treated for mental health issues prior to the crimes. (*Id.* at 43). Collier testified that when he moved for bond, he noted that there were concerns about Petitioner receiving medication at the jail; however, he reiterated that he did not have any concerns about Petitioner's competency. (*Id.* at 43-44). According to Collier, although Petitioner seemed depressed, he did not have any trouble understanding the charges, the adversarial nature of the proceedings, the penalties he was facing, and he was able to communicate and behave appropriately in court. (*Id.* at 44-45).

On cross-examination, Collier testified that he had previously represented clients for whom he had sought competency evaluations. (*Id.* at 47). Collier stated that he was familiar with the legal standard for competency, and Petitioner did not exhibit any behaviors that would lead Collier to believe he was incompetent. (*Id.* at 47-49). Collier testified that he spoke to Petitioner's mother on several occasions and she also did not raise any concerns regarding Petitioner's competency or mental health. (*Id.* at 50).

Margarita Nuqui ("Nuqui"), Petitioner's sister, testified that although she was aware of Petitioner's mental health issues, she did not have any discussions with Collier about Petitioner's mental health. (*Id.* at 55-56). Nuqui observed the trial, and she noticed that Petitioner was mostly unresponsive or acted "like a zombie." (*Id.* at 56). What Nuqui observed during trial led her to be concerned that Petitioner was not taking his mental health medication. (*Id.* at 58). Nuqui testified that she

expressed her concerns to Collier during the jury deliberations. (*Id.*). Irene Lanzot ("Lanzot"), also Petitioner's sister, corroborated Nuqui's testimony regarding Petitioner's demeanor during trial. (*Id.* at 67 and 75). Blanca Caraballo ("Caraballo"), Petitioner's mother, testified that she never discussed Petitioner's mental health history with Collier prior to trial. (*Id.* at 74).

The trial court found that Collier's testimony was credible. (*Id.* at 101). The trial court denied the claim, concluding that counsel did not act deficiently because Collier had no basis to request a mental health evaluation. (*Id.* at 102).

Petitioner has not demonstrated that he is entitled to relief on this claim. The trial court found that Collier's testimony was credible. This Court must accept the state court's credibility determinations. *See, e.g., Baldwin v. Johnson*, 152 F.3d 1304, 1316 (11th Cir. 1998) ("We must accept the state court's credibility determination and thus credit [counsels'] testimony over [petitioner's]."); *Consalvo v. Sec'y for Dep't of Corr.*, 664 F.3d 842, 845 (11th Cir. 2011). Petitioner has not demonstrated that Collier was ineffective for failing to request a competency evaluation because he had no basis to do so. According to Collier, Petitioner was alert and appeared to understand the nature of the proceedings, the charges against him, the penalties he faced, and was able to communicate and behave appropriately. Furthermore, Petitioner fails to show that but for Collier's actions, the result of the proceeding would have been different. The state court's denial of this claim was

neither contrary to, nor an unreasonable application of, clearly established federal law. Accordingly, Claim One is denied pursuant to § 2254(d).

B. Claim Two

Petitioner argues that the testimony and evidence presented at trial regarding his drug use, domestic violence, restraining order, and his wife's flight for safety reasons was prejudicial and violated his Fifth and Sixth Amendment rights. (Doc. 1 at 12). Respondents assert that this claim is unexhausted because Petitioner did not raise the federal constitutional basis of the claim on direct appeal. (Doc. 7 at 8-9).

Pursuant to the AEDPA, federal courts are precluded, absent exceptional circumstances, from granting habeas relief unless the petitioner has exhausted all means of available relief under state law. 28 U.S.C. § 2254(b); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842–44 (1999). In order to satisfy the exhaustion requirement a "petitioner must 'fairly present[ ]' every issue raised in his federal petition to the state's highest court, either on direct appeal or on collateral review." *Isaac v. Augusta SMP Warden*, 470 F. App'x 816, 818 (11th Cir. 2012) (quoting *Castille v. Peoples*, 489 U.S. 346, 351 (1989)). A petitioner must apprise the state court of the federal constitutional issue, not just the underlying facts of the claim or a similar state law claim. *Snowden v. Singletary*, 135 F.3d 732, 735 (11th Cir. 1998).

A review of the record reveals that Petitioner raised this claim on direct appeal, however, he did not cite to any federal constitutional issue. (Doc. 7-7 at 10-12). Therefore, this claim remains unexhausted. *See Snowden*, 135 F.3d at 735.

Moreover, Petitioner agrees in his Reply that this claim is unexhausted and procedurally defaulted. (Doc. 8 at 11); *see also Snowden*, 135 F.3d at 736 (noting that if it is obvious that an unexhausted claim would be procedurally defaulted if a petitioner returned to the state court, a federal court may treat the claim as barred). Furthermore, Petitioner has not alleged cause and prejudice for the default, nor has he demonstrated the applicability of the actual innocence exception. *See Murray v. Carrier*, 477 U.S. 478, 496 (1986); *Wright v. Hopper*, 169 F.3d 695, 703 (11th Cir. 1999). Accordingly, Claim Two is procedurally barred.

C. Claim Three

Petitioner contends that the prosecutor's closing argument improperly shifted the burden of proof and commented on his right to remain silent. (Doc. 1 at 18). Petitioner raised this claim on direct appeal, and the Fifth DCA affirmed *per curiam*. (Doc. 7-7 at 55).

Claims based on statements of a prosecutor are assessed using a two-pronged analysis: first, a court must determine whether the comments at issue were improper, and, second, whether any comment found to be improper was so prejudicial as to render the entire trial fundamentally unfair. *Spencer v. Sec'y, Dep't of Corr.*, 609 F.3d 1170, 1182 (11th Cir. 2010); *see also Cargill v. Turpin*, 120 F.3d 1366, 1379 (11th Cir. 1997). A trial is rendered fundamentally unfair only where there is a reasonable probability that the outcome of the trial would have been different or a

probability sufficient to undermine confidence in the outcome. *Spencer*, 609 F.3d at 1182; *Williams v. Kemp*, 846 F.2d 1276, 1283 (11th Cir. 1988).

The Court has reviewed the closing argument and concludes that Petitioner's claim is without merit. During closing argument, the prosecutor discussed the victim's testimony and her credibility. (Doc. 7-5 at 54). In doing so, the prosecutor noted that Petitioner never spoke with police and canceled his appointment with law enforcement. (*Id.* at 54-55). Petitioner asserts that this was an improper comment on his right to remain silent. However, the prosecutor's comment was in direct response to the defense argument that Petitioner never admitted to committing the crimes. (*Id.* at 46) (defense counsel stating, "Mr. Caraballo has never said to anyone that he did anything wrong or inappropriate . . . .").

Although the Fifth Amendment prohibits a prosecutor from commenting directly or indirectly on defendant's right to remain silent, the "comment must be examined in context, in order to evaluate the prosecutor's motive and to discern the impact of the statement." *See Al-Amin v. Warden Ga. Dep't of Corr.*, 932 F.3d 1291, 1299 (11th Cir. 2019) (citations omitted). "It is not erroneous, for example, for a prosecutor 'to comment on the failure of the defense, as opposed to the defendant, to counter or explain the evidence.'" *Id.* (quoting *United States v. Griggs*, 735 F.2d 1318, 1321 (11th Cir. 1984)). The prosecutor's comment was not improper because it was made to counter or explain the defense argument that Petitioner had never admitted to committing the crimes.

Petitioner has not shown that the comment improperly appealed to the juror's emotions or that it was in some way derogatory or inflammatory. Florida courts allow attorneys wide latitude during closing arguments. *Thomas v. State*, 748 So. 2d 970, 984 (Fla. 1999) (stating that "[l]ogical inferences may be draw, and counsel is allowed to advance all legitimate arguments."). Additionally, the closing argument did not shift the burden of proof. The closing argument consisted of a fair interpretation made by the prosecutor based on the testimony presented at trial. To the extent any comment can be read as shifting the burden of proof, the trial court instructed the jury on the burden of proof standard. (Doc. 7-5 at 65-76). Jurors are presumed to follow the court's instructions. *See Brown v. Jones*, 255 F.3d 1273, 1280 (11th Cir. 2001).

There is no indication that the prosecutor's comment was improper or that it rendered the trial fundamentally unfair. The state court's denial of this claim was not contrary to, or an unreasonable application of, *Strickland*. Claim Three will therefore be denied pursuant to § 2254(d).

D. Claim Four

Petitioner contends that counsel was ineffective for allowing him to appear before the jury in shackles. (Doc. 1 at 23). In his Reply, Petitioner agrees that he is not entitled to relief on this claim. Therefore, the Court will not address Claim Four.

Any of Petitioner's allegations not specifically addressed herein have been found to be without merit.

IV. CERTIFICATE OF APPEALABILITY

This Court should grant an application for certificate of appealability only if Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing "the 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 (2000); *see also Lamarca v. Sec'y Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). However, a prisoner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

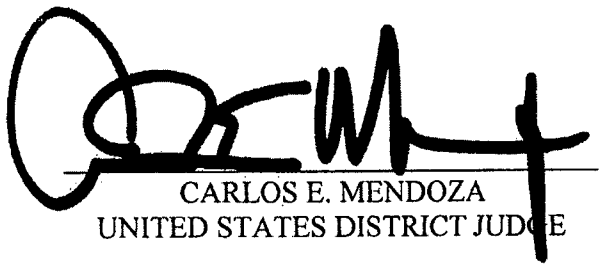
Petitioner has not demonstrated that reasonable jurists would find the district court's assessment of the constitutional claims and procedural rulings debatable or wrong. Further, Petitioner has failed to make a substantial showing of the denial of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

V. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED**:

1. The Petition for Writ of Habeas Corpus (Doc. 1) is **DENIED**, and this case is **DISMISSED with prejudice**.
2. Petitioner is **DENIED** a certificate of appealability.
3. The Clerk of Court shall enter judgment accordingly and is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on February 16, 2021.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party