IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13058-F

ROBERT OULTON, JR.,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

ORDER:

Robert Oulton, Jr., a Florida prisoner serving a term of life imprisonment for second-degree murder seeks a certificate of appealability ("COA") to appeal from the district court's *sua sponte* dismissal in part, and denial in part, of his *pro se* 28 U.S.C. § 2254 habeas corpus petition. He raised ten grounds for relief: (1) the state post-conviction court violated his rights; (2) his counsel's failure to ensure that he receive "psychiatric assistance in preparation for and at trial[,]" and the state post-conviction court's failure to remedy counsel's ineffective performance in that regard, violated his rights; (3) his counsel performed ineffectively by failing to investigate his "clearly declared war-related PTSD history"; (4) his initial counsel had a conflict of interest; (5) the Office of the Public Defender for Broward County ("OPD") deprived him of his right to conflict-free

Appendix A

counsel; (6) he was deprived of his right under Florida law to a "capital-case qualified" judge; (7) there was a "systemic breakdown" in the Broward County's Seventeenth Judicial Circuit Court's Criminal Division; (8) the deprivation of his right to a fair and impartial judge; (9) the trial court violated his rights by failing to address "the specifically cited federal law as determined by the Supreme Court of the United States," in its order denying his motion for a formal hearing to determine whether a hearing, held pursuant to *Nelson v. State*, 274 So. 2d 256 (Fla. 4th Dist. Ct. App. 1973), was a critical stage of the proceedings; and (10) the violation of his right to a speedy trial.

Here, reasonable jurists would not debate the district court's resolution of Oulton's § 2254 petition. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (holding that to obtain a COA, the movant must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further."). As an initial matter, reasonable jurists would not debate the district court's *sua sponte* dismissal of Grounds One and Six because the grounds asserted issues that were not cognizable under § 2254. *See* Rules Governing § 2254 Cases, Rule 4 ("If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner."); *McCullough v. Singletary*, 967 F.2d 530, 535 (11th Cir. 1992) (explaining that a state's interpretation of its own laws or rules provides no basis for federal habeas corpus relief); *Quince v. Crosby*, 360 F.3d 1259, 1262 (11th Cir. 2004) (providing that an error in a state post-conviction proceeding is not a basis for federal habeas relief).

Additionally, reasonable jurists would not debate the district court's denial of the remaining grounds of Oulton's § 2254 petition. Grounds Two, Seven, Eight, and Nine failed because Oulton

did not carry his burden to establish that he was entitled to relief. *See Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (explaining that, when a § 2254 petitioner asserts a claim that has been adjudicated on the merits in state court proceedings, the petitioner bears the burden of proving he is entitled to relief). Ground Three did not entitle Oulton to relief because he did not prove prejudice from his counsel's purported deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687-97 (1984) (holding that an ineffective-assistance claim requires a showing of deficient performance and resulting prejudice). Ground Four failed because Oulton did not satisfy the adverse-effect prong. *See Reynolds v. Chapman*, 253 F.3d 1337, 1342 (11th Cir. 2001) (providing that an ineffective-assistance claim based upon a conflict of interest requires a showing of (1) an actual conflict of interest; and (2) a resulting adverse impact on counsel's performance). Ground Five did not entitle Oulton to relief because, as he failed to establish a claim of ineffective assistance based on a conflict of interest, he could not establish that the OPD deprived him of his right to conflict-free counsel.

Lastly, Ground Ten failed because, as Oulton neither established that the first three *Barker* factors heavily weighed against the state, nor actual prejudice, the state appellate court's rejection of this claim was reasonable. *See Barker v. Wingo*, 407 U.S. 514, 530 (1972) (explaining that when analyzing a speedy-trial claim, a court should consider: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted the right; and (4) any prejudice to the defendant); *United States v. Dunn*, 345 F.3d 1285, 1296 (11th Cir. 2003) (providing that if the first three *Barker* factors do not heavily weigh against the prosecution, the defendant generally must demonstrate actual prejudice). Accordingly, Oulton's motion for a COA is DENIED.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

United States District Court
for the
Southern District of Florida

Robert Oulton, Jr., Petitioner	)	
	)	
v.	)	Civil Action No. 21-60688-Scola
	)	
Mark S. Inch, Respondent.	)	

Final Order Denying Petition for Writ of Habeas Corpus

1. Introduction

The Petitioner has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 ("Petition"). (ECF No. 1). The Petition challenges his conviction for second-degree murder in Case No. 10-6118-CF10A, Seventeenth Judicial Circuit, Broward County. On screening, the Court entered an order dismissing claims 1 and 6. (ECF No. 6). The Court ordered the State to respond to claims 2–5 and 7–10. (ECF No. 7). After amendments irrelevant here, the State filed a Second Amended Response ("SAR"). (ECF No. 21). The Petitioner replied. (ECF No. 35).

2. Relevant Background

On April 21, 2010, a grand jury indicted Petitioner for first-degree murder. (ECF No. 14-1 at 13–14).[1] The indictment alleged that he caused the death of Yvonne Oulton "by inflicting blunt force trauma to [her] head." (*Id.*)

The Petitioner's trial started on August 17, 2015. (ECF No. 15-1 at 1). The evidence against him was overwhelming. The Petitioner was at the scene where the detectives discovered the victim, the Petitioner's wife. (ECF No. 15-1 at 436). The Petitioner told his son to drive the area where the detectives discovered her body. (*Id.* at 547). Video footage contradicted the Petitioner's story that his wife dropped him off at the casino before her murder. (*Id.* at 545–46, 556). Rather, the video footage showed the Petitioner entering the casino 18 minutes after the minivan in which the police discovered his wife's body was abandoned. (*Id.* at 562–63). Det. Kogan testified that the distance between the crime scene and the casino was "a little less than a mile" and that it took him "about 15 minutes" to walk that distance. (*Id.* at 563). A detective found a suicide note from the Petitioner to his son on a computer at their residence, which the jurors read. (*Id.* at 706–08, 717). The Petitioner admitted to his son

[1] All page citations to ECF entries are to the CM/ECF-generated page stamp number at the top, right-hand corner of the page.

Appendix B

in that and other letters that he snapped and killed his wife and further asked for his son's forgiveness. (*Id.* at 775–76).

The Petitioner testified in his defense. He admitted that he "got heated," that he saw her trying to take their son away, and that he beat her with a tool from the tool bag. (*Id.* at 840, 842, 850–51). He conceded that he "was covering things up" and that he knew what he was doing "was dead wrong." (*Id.* at 858). Further, the Petitioner admitted that he wrote his son a letter and that he was going to commit suicide. (*Id.* at 860, 863).

The jury convicted the Petitioner of the "lesser included crime of Murder in the Second Degree." (ECF No. 14-1 at 652). The trial court imposed a life sentence. (*Id.* at 654, 660).

Representing himself, the Petitioner filed a direct appeal. (*Id.* at 667). The State filed a response. (*Id.* at 717). The Fourth District Court of Appeals affirmed without comment. (*Id.* at 777).

The Petitioner filed a motion for postconviction relief. (ECF No. 14-1 at 955). The State responded. (*Id.* at 985). The trial court denied the motion for the reasons in the State's response. (*Id.* at 1011, 1036). The Fourth District affirmed without comment. (*Id.* at 1082).

3. Legal Standard Under § 2254(d)

28 U.S.C. § 2254(d) sets forth the following standards for granting federal habeas corpus relief:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings 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.

Under § 2254(d)(1)'s "contrary to" clause, courts may grant the writ if the state court: (1) reaches a conclusion on a question of law opposite to that reached by the Supreme Court; or (2) decides a case differently than the Supreme Court has on materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 412–13 (2000). Under its "unreasonable application" clause, courts may grant the writ 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 case. *Id.* at 413. "[C]learly established Federal law"

consists of Supreme Court "precedents as of the time the state court renders its decision." *Greene v. Fisher*, 565 U.S. 34, 38 (2011) (citation and emphasis omitted).

An unreasonable application of federal law differs from an incorrect application of federal law. *Renico v. Lett*, 559 U.S. 766, 773 (2010) (citation omitted). Under this standard, "a state prisoner must show that the state court's ruling . . . was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

Courts "apply this same standard when evaluating the reasonableness of a state court's decision under § 2254(d)(2)." *Landers v. Warden*, 776 F.3d 1288, 1294 (11th Cir. 2015) (citations omitted). That is, "a state court's determination of the facts is unreasonable only if no fairminded jurist could agree with the state court's determination." *Holsey v. Warden, Ga. Diagnostic Prison*, 694 F.3d 1230, 1257 (11th Cir. 2012) (cleaned up).

Under § 2254(d), where the decision of the last state court to decide a prisoner's federal claim contains no reasoning, federal courts must "'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale." *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018). "It should then presume that the unexplained decision adopted the same reasoning." *Id.*

A contrastable situation occurs when the decision of the last state court to decide a federal claim contains no reasoning and there is "no lower court opinion to look to." *Id.* at 1195. In this case, "it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Richter*, 562 U.S. at 99 (citation omitted). Thus, "[s]ection 2254(d) applies even [though] there has been a summary denial." *Cullen v. Pinholster*, 563 U.S. 170, 187 (2011) (citation omitted). Because § 2254(d) applies, and because the last state court decision is unreasoned and there is no lower court decision to look to, "a habeas court must determine what arguments or theories . . . could have supported[] the state court's decision[] and . . . ask whether [they] are inconsistent with [Supreme Court precedent]." *Richter*, 562 U.S. at 102.

4. Ineffective Assistance of Counsel Principles

To establish a claim of ineffective assistance of counsel, the Petitioner must show that counsel's performance was deficient and that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

To prove deficiency, he must show that counsel's performance "fell below an objective standard of reasonableness" as measured by prevailing professional norms. *Id.* at 688. Courts must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. "[A]n attorney will not be held to have performed deficiently for failing to perform a futile act, one that would not have gotten his client any relief." *Pinkney v. Sec'y, DOC*, 876 F.3d 1290, 1297 (11th Cir. 2017) (collecting cases).

To prove prejudice, the Petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Counsel's failure to raise a meritless claim is not prejudicial under *Strickland*. *Hittson v. GDCP Warden*, 759 F.3d 1210, 1262 (11th Cir. 2014).

It is "all the more difficult" to prevail on a *Strickland* claim under § 2254(d). *Richter*, 562 U.S. at 105. As the standards that *Strickland* and § 2254(d) create are both "highly deferential," review is "doubly" so when the two apply in tandem. *Id.* (citation omitted). Thus, "[w]hen § 2254(d) applies, the question is not whether counsel's actions were reasonable." *Id.* Rather, "[t]he question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.*

The Petitioner has the burden of proof on his ineffectiveness claim, *Holsey*, 694 F.3d at 1256, as well as the burden of proof under § 2254(d), *Cullen*, 563 U.S. at 181.

5. Discussion

A. Claims 2 and 3

The Petitioner poorly pleads claims 2 and 3. In claim 2, he conclusorily alleges that the trial and postconviction court[2] violated due process by failing to ensure that he received "his required psychiatric assistance in preparation for and at trial." (*See* ECF No. 1 at 5). On the one hand, he states that claim 2 is an "issue [of] ineffective assistance of counsel." (ECF No. 35 at 2). On the other hand, he seems to contend that claim 2 alleges trial court error for failing to ensure that he receive the assistance of a psychiatrist under *Ake v. Oklahoma*, 470 U.S. 68 (1985). (*See id.* at 4). This latter construction of claim 2 comports with his postconviction motion. There, he alleged that: (1) counsel ineffectively failed to ensure that he received such assistance; and (2) the trial

[2] Any claim based on the postconviction court's alleged error is not cognizable. (ECF No. 6 at 2).

court violated due process by failing to ensure that he received such assistance. (ECF No. 14-1 at 961–71).

In claim 3, the Petitioner alleges that counsel ineffectively failed to investigate his "clearly declared war-related PTSD history as mitigation to support his courtroom declaration of responsibility of the crime." (ECF No. 1 at 7). He adds that claim 3 is "tightly intertwined with [claim] 2 . . . , as both arose out of the same incident, sharing all the same facts." (ECF No. 21 at 4).

The trial court rejected these claims on the merits. (*Id.* at 999–1000, 1003–05). Pertinently, it reasoned that he could not show prejudice because he failed to adequately allege how a psychiatrist's testimony would have resulted in "sufficient mitigating considerations to justify a conviction of manslaughter or less." (*Id.* at 1003). Further, the trial court found that "the record conclusively reflect[ed that] the [Petitioner] was not entitled to psychiatric assistance at trial pursuant to *Ake*." (*Id.* at 1004). In support, it stated that his "trial attorney was clear they were not pursuing insanity as a defense" and noted that the Petitioner stated on the record that "counsel had done everything he asked of him in [terms of] preparing, investigating, and trying the case." (*Id.*)

The trial court reasonably rejected these claims. *Ake* held that "when [an indigent] defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense." 470 U.S. at 83. To trigger *Ake*, the defendant's "'sanity at the time of the offense [must be] seriously in question.'" *McWilliams v. Dunn*, 137 S. Ct. 1790, 1798 (2017) (quoting *Ake*, 470 U.S. at 70).

Here, the trial court reasonably concluded that the Petitioner's sanity at the time of the offense was not seriously in question. Although the Petitioner moved the trial court to transfer the case to a South Florida Veteran's Administration Hospital to be evaluated for PTSD, the motion does not link his alleged military-related PTSD to the crime. (ECF No. 14-1 at 27–33).[3][4] Furthermore, the record indicates that trial counsel was in possession of prior mental health examinations but chose not to disclose them. (*See* ECF No. 15-1 at 843–44). Additionally, at trial, counsel stated that he "absolutely" was not "raising an insanity defense." (*Id.* at 844); *see Watts v. Singletary*, 87 F.3d

[3] The Petitioner did not challenge the trial court's failure to rule on this motion. (ECF No. 14-1 at 1004).

[4] The Petitioner testified that he was a clerk typist and served only two years of active duty. (ECF No. 14-1 at 812, 814).

1282, 1288 (11th Cir. 1996) ("Because legal competency is primarily a function of [the] defendant's role in assisting counsel in conducting the defense, the defendant's attorney is in the best position to determine whether the defendant's competency is suspect."). Likewise, the Petitioner stated that he was happy with counsel and that counsel had "[b]asically" done everything that he asked him to do in terms of "preparing, investigating, [and] trying the case." (ECF No. 15-1 at 947–48). Moreover, the Petitioner admitted on the stand that he did not want his wife to take their son, wrongfully murdered her, and tried to cover up the crime. These admissions undercut the Petitioner's suggestion that his sanity at the time of the offense was seriously in question. In short, the trial court reasonably found *Ake* inapplicable.

The trial court also reasonably rejected the derivative ineffectiveness claim. The Petitioner contends that counsel ineffectively failed to ensure that he received psychiatric assistance to support his manslaughter defense. (ECF No. 35 at 2). For the above reasons, however, counsel reasonably could have concluded that the Petitioner did not require such assistance. Furthermore, the Petitioner does not meaningfully explain what a psychiatrist would have testified to or how his/her testimony would have substantiated this theory. *See Streeter v. United States*, 335 F. App'x 859, 864 (11th Cir. 2009) (per curiam) ("In a habeas petition alleging ineffective assistance of counsel, mere speculation that missing witnesses would have been helpful is insufficient to meet the petitioner's burden of proof." (citation omitted)). Based on the brutality of the homicide, the presence of defensive wounds, and the Petitioner's highly incriminating remarks,[5] the jury reasonably could have rejected this putative testimony and found that he committed "an unlawful killing of [the victim] by an act imminently dangerous to [the victim] and demonstrating a depraved mind without regard for human life." (ECF No. 15-1 at 904); (*see also id.* at 910 (instruction that the jury could "believe or disbelieve all or any part of an expert's testimony")).

In sum, the state courts' rejection of claims 2 and 3 was not contrary to, or an unreasonable application of, clearly established federal law or an unreasonable determination of the facts.

B. Claim 4

The Petitioner contends that his initial attorney, Assistant Public Defender H. Dohn Williams ("APD Williams"), had a "conflict of interest due to [an excessive] caseload." (ECF No. 1 at 8). This excessive caseload allegedly caused APD Williams to place other clients' needs ahead of the Petitioner's."

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[5] *See supra* Part 2; (*see also* ECF No. 21 at 11–13 (citing trial transcript)).

(ECF No. 35 at 8). In support, he alleges that APD Williams "routinely claimed [to have] 9 to 11 active capital cases counting" his. (*Id.* at 7). He further alleges that APD Williams stated during hearings that he would not put the Petitioner's case ahead of his other clients' cases. (*Id.* at 9). Additionally, he conclusorily alleges that this conflict of interest resulted in a litany or errors and induced him to waive his procedural speedy trial rights. (*Id.* at 8–9). This alleged conflict of interest violated due process and the Sixth Amendment and constituted ineffective assistance of counsel. (ECF No. 1 at 8; ECF No. 35 at 10).

The Petitioner raised this claim on direct appeal. (ECF No. 14-1 at 677–86). The Fourth District rejected it without comment. (*Id.* at 777).

The Fourth District reasonably rejected this claim. "To establish a violation of the defendant's Sixth Amendment right to counsel based on a conflict of interest, a defendant must demonstrate: (a) that his defense attorney had an actual conflict of interest, and (b) that this conflict adversely affected his attorney's performance." *Tuomi v. Sec'y, Fla. Dep't of Corr.*, 980 F.3d 787, 796 (11th Cir. 2020) (citation and quotation marks omitted). "The mere possibility of conflict of interest does not rise to the level of a Sixth Amendment violation." *Id.* (citation and quotation marks omitted). "To show an actual conflict of interest, a habeas petitioner must make a factual showing of inconsistent interests and must demonstrate that the attorney made a choice between possible alternative courses of action that favors an interest in competition with that of the defendant. If counsel did not make such a choice, the conflict remained hypothetical." *Id.* (cleaned up).

Here, the Fourth District reasonably could have concluded that there was no actual conflict of interest. The Petitioner broadly alleges that APD Williams had an excessive caseload. However, he identifies no facts supporting a finding that, due to his workload, APD Williams favored other clients' competing interests. APD Williams's statement (and similar statements) that the Petitioner could not "*arbitrarily* put himself at the head of the line because of impatience, [his] wanting to get to trial before everyone else" does not reflect that he favored other clients' competing interests. (ECF No. 17-1 at 491–92 (emphasis added)). It simply reflects his professional judgment that pursuing a speedy trial was not a sound strategy under the circumstances and that a motion to dismiss on speedy trial grounds would prove futile. (*See id.*). Furthermore, the record does not support the Petitioner's assertion that APD Williams carried 9 to 11 capital cases. Rather, the evidence indicates that he had around that many first-degree murder cases, but that the State was seeking the death penalty in only two of them, excluding the Petitioner's. (*See id.* at 409, 491; ECF No. 32 at 13); *see also* Fla. Stat. § 27.5304(5)(d) (defining a capital case as "any offense for which the potential sentence is death and the

state has not waived seeking the death penalty").[6] Additionally, while the Petitioner faults APD Williams for waiving his right to a speedy trial, "an attorney, acting without consent from his client, may waive his client's right to a speedy trial because scheduling matters are plainly among those decisions for which agreement by counsel generally controls." *Fayson v. Sec'y, Fla. Dep't of Corr.*, 568 F. App'x 771, 773 (11th Cir. 2014) (per curiam) (cleaned up). So this waiver has little, if any, tendency to show an actual conflict. The Petitioner's remaining criticisms of APD Williams' representation are too conclusory to support a finding that his representation was deficient or that he favored competing interests. (*See* ECF No. 35 at 10); *see also McFarland v. Scott*, 512 U.S. 849, 856 (1994) ("Habeas corpus petitions must meet heightened pleading requirements." (citation omitted)).

In short, the alleged conflicts that the Petitioner describes are "all possible, speculative or merely hypothetical." (ECF No. 21 at 47). Thus, the Fourth District reasonably could have concluded that APD Williams's allegedly excessive caseload did not result in an actual conflict.

The Fourth District also could have reasonably rejected the Petitioner's piggybacked due process and ineffectiveness claims for the same essential reasons. Based on the above analysis, there is no indication that APD Williams's caseload "so infused the trial with unfairness as to deny [the Petitioner] due process of law," *See Estelle v. McGuire*, 502 U.S. 62, 75 (1991) (citation omitted), or fell outside the "wide range of reasonable professional assistance," *Strickland*, 466 U.S. at 687.[7]

In sum, the Fourth District's rejection of claim 4 was not contrary to, or an unreasonable application of, clearly established federal law or an unreasonable determination of the facts.

C. Claim 5

The Petitioner alleges that the Office of the Public Defender for Broward County ("OPD") deprived him of his right to conflict-free counsel because it "had no program, method, or need to know or track individual attorney caseloads, by type or quantity." (ECF No. 1 at 10). He explains that he wrote the OPD, which stated in response that it could not "generate any report"

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[6] The Petitioner was indicted in April 2010. Before March 24, 2011, the State waived the death penalty. (ECF No. 17-1 at 403, 418). That, at one point, he faced the death penalty supports the finding that APD Williams's strategy of not racing to trial was sound. And that the State waived the death penalty during his representation also weakens the contention that his representative was ineffective.

[7] The Fourth District's rejection of the *Strickland* claim is entitled to double deference. *See Richter*, 562 U.S. at 105.

"track[ing] individual attorney caseloads involved in capital cases." (ECF No. 35 at 11).

The Petitioner raised this claim on direct appeal. (ECF No. 14-1 at 685–86). The Fourth District rejected it without comment. (*Id.* at 777).

Here, the Fourth District could have reasonably rejected this claim for the same reasons that it could have rejected claim 4. Even if the OPD could not adequately track the caseloads of attorneys who had capital cases, the Petitioner has not shown that APD Williams had an actual conflict or that the alleged actual conflict adversely affected his performance.

Furthermore, although not essential to the analysis, the Court notes the Plaintiff's assertion that an assistant public defender's caseload should not exceed three capital cases. (ECF No. 35 at 7–8). Yet, as stated above, the Petitioner has not shown that APD Williams carried more than three capital cases, including his. So he has not shown that the OPD's alleged "systemic breakdown" in tracking attorney caseloads caused APD Williams to carry an inordinately high load of capital cases.

In sum, the Fourth District's rejection of this claim was not contrary to, or an unreasonable application of, clearly established federal law or an unreasonable determination of the facts.

D. Claim 7

Similarly to claim 5, the Petitioner contends that there was a "systemic breakdown" in "Broward County's Seventeenth Judicial Circuit Court's Criminal Division." (ECF No. 1 at 13). In support, he contends that the Seventeenth Judicial Circuit has not established specific guideline limitations as to how many capital cases an attorney may represent at one time and does not require certification every time a public defender receives a capital case. (*Id.*) Further, he alleges that the Seventeenth Judicial Circuit failed to ensure that a "capital-case-qualified" judge presided over his trial. (*Id.*) These deficiencies allegedly resulted in "may errors and constitutional violations." (*Id.*)

The Petitioner raised this claim on direct appeal. (*See* ECF No. 14-1 at 685–88). The Fourth District rejected it without comment. (*Id.* at 777).

The State correctly notes that this claim "is a combination of grounds 5 and 6." (ECF No. 21 at 52). The claim-5 component fails for the same reasons as claims 4 and 5. *Supra* Part 5(B)–(C). The claim-6 component fails for the same reasons as claim 6. (ECF No. 6 at 3–4). In short, claim 7 is meritless.

E. Claim 8

The Petitioner contends that Judge Ilona Holmes had a conflict of interest that resulted in her being biased against him. (ECF No. 1 at 14–15).

His reasoning is unclear. (*Id.*) Apparently, the alleged conflict stemmed from the fact that she was a supervising administrative judge in 2009 and 2010 and "openly expressed" her "sufficient concern" that the OPD "may have a potential for exposing their attorneys to excessive caseloads." (*Id.* at 14). This alleged concern for OPD attorney caseloads caused her to issue adverse rulings, fail to appoint conflict-free counsel, and fail to appoint a capital-case-qualified judge. (*Id.*) His supporting allegations are conclusory. (*Id.*)

He raised this claim on direct appeal. (ECF No. 14-1 at 695–96). The Fourth District rejected it without comment. (*Id.* at 777).

Here, the Fourth District reasonably rejected this claim for the reasons in the State's Response, (ECF No. 21 at 52–54), to which the Petitioner failed to reply, (ECF No. 35 at 12–13). This claim would also fail under *de novo* review. A petitioner cannot obtain relief under § 2254 based on such conclusory and unclear allegations. *See Scott*, 512 U.S. at 856 (1994); *see also Garlotte v. Fordice*, 515 U.S. 39, 46 (1995) ("[T]he habeas petitioner generally bears the burden of proof[.]"); *Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991) (habeas petitioner not entitled to evidentiary hearing "when his claims are merely conclusory allegations unsupported by specifics" (citation and quotation marks omitted)).

F. Claim 9

(1) Background

Relevant here, while his prosecution pended, the Petitioner filed several motions and letters attacking the effectiveness of his attorneys' representation. (*See, e.g.*, ECF No. 14-1 at 35, 39, 42, 54). In response, the Court made at least three inquiries under *Nelson v. State*, 274 So. 2d 256, 258 (Fla. 4th DCA 1973). Under *Nelson*, "when a defendant seeks to discharge court-appointed counsel before trial on account of ineffectiveness, 'the trial judge should make a sufficient inquiry of the defendant and his appointed counsel to determine whether or not there is reasonable cause to believe that the court appointed counsel is not rendering effective assistance to the defendant.'" *Holland v. Florida*, 775 F.3d 1294, 1302 n.1 (11th Cir. 2014) (quoting *Nelson*, 274 So. 2d at 258–59); (*see also* ECF No. 17-1 at 263–64, 402–03, 474 (*Nelson* hearings)). The trial court found counsel effective at each hearing. (ECF No. 17-1 at 291–93, 417–18, 496–501).

After these hearings, the Petitioner filed a motion to determine whether a *Nelson* hearing is a critical stage of the proceedings. (ECF No. 14-1 at 396). He argued that, if it were a critical stage, he would be entitled to legal representation seeing that the hearing required him to "self-represent, confronting his attorney." (*See id.* at 397).

The court denied the motion, ruling that: (1) there was no basis for such a hearing under Florida law; and (2) the Court already determined that he was receiving effective assistance. (*Id.* at 402).

The Petitioner raised the same essential claim on direct appeal, alleging violations of due process and the Sixth Amendment. (ECF No. 14-1 at 693–94). The Fourth District affirmed without comment. *(Id.* at 777).

(2) Analysis

The Petitioner raises the same claim in his Petition. (ECF No. 1 at 16). The Fourth District reasonably rejected it. The Petitioner has not identified any Supreme Court cases clearly establishing that courts must appoint new counsel for the defendant if the defendant files a motion to discharge counsel or challenges the effectiveness of counsel's representation.

Furthermore, the Court assumes, without deciding, that the *Nelson* hearing was a critical stage of the proceedings. *See generally Woods v. Donald*, 575 U.S. 312, 315 (2015) (characterizing "a critical stage as one that held significant consequences for the accused" (citation and quotation marks omitted)). Even so, counsel was present at all the *Nelson* hearings.

Apparently, the Petitioner contends that the "adversarial nature of the [*Nelson*] proceeding" virtually deprived him of counsel. (*See* ECF No. 35 at 14). Again, however, no Supreme Court case so establishes.

Moreover, after thorough inquires, the Court found at each hearing that counsel was effective. Far from demonstrating that counsel was the Petitioner's adversary or had impaired interests, the *Nelson* hearings indicated that counsel was "investigating, conducting discovery, preparing pretrial motions, and attempting to develop a plausible defense, all while handling other cases." (ECF No. 21 at 48 (citing hearing transcript)).

In sum, the Fourth District's rejection of this claim was not contrary to, or an unreasonable application of, clearly established federal law or an unreasonable determination of the facts.

G. Claim 10

The Petitioner alleges a violation of his constitutional right to a speedy trial. (ECF No. 1 at 17–18; ECF No. 35 at 15–18). The Petitioner alleges that he was charged on April 6, 2010. (ECF No. 1 at 8). A grand jury indicted him on April 21, 2010. (ECF No. 14-1 at 13–14). His trial started on August 17, 2015. (ECF No. 15-1 at 1). He attributes this delay to the errors that he has alleged in his other claims in his Petition. (ECF No. 1 at 18).

The Petitioner moved to dismiss the indictment on speedy trial grounds. The trial court denied it in a reasoned order. (ECF No. 14-1 at 619–21).

He also raised this claim on appeal. (*Id.* at 699–711). The Fourth District rejected it without comment. (*Id.* at 777). Because the Fourth District's rejection is silent, and because the trial court rejected this claim in a reasoned order, the Court presumes that the Fourth District adopted its reasoning. *Wilson*, 138 at 1192.

To determine whether a defendant's right to a speedy trial has been violated, courts consider: (1) the length of delay; (2) the reasons for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

Here, because more than five years elapsed between indictment and trial, the Court assumes that factor one favors the Petitioner. *See United States v. Oliva*, 909 F.3d 1292, 1298 (11th Cir. 2018) ("A post-indictment delay exceeding one year is generally sufficient to trigger the analysis.").

Regarding factor two, however, the trial court found that "every continuance was requested by defense counsel" and that "the weight of the reasons for the delay comes down solely upon the defense." (ECF No. 14-1 at 620). The Petitioner concedes that the "vast majority of delays had been initiated by the defense." (ECF No. 35 at 16 (emphasis omitted)). To circumvent this fact and the rule that assigned counsel's delay is attributable to the defendant, the Petitioner alleges a "a systemic breakdown in the public defender system." *Vermont v. Brillon*, 556 U.S. 81, 94 (2009); (*see also* ECF No. 1 at 18). Again, however, the Court has already rejected this argument. Factor two overwhelming factors the State.[8]

Factor three favors the Petitioner. The Petitioner repeatedly requested a speedy trial in his correspondence with the trial court and at the *Nelson* and other hearings. (*See, e.g.*, ECF No. 14-1 at 35; ECF No. 17-1 at 495).

Factor four favors the State. The trial court found that the Petitioner did not allege "any oppression or impropriety in his incarceration" and that his attorney's continuances benefited his defense. (ECF No. 14-1 at 621). The Petitioner has not challenged the trial court's finding that there was no oppression or impropriety in his incarceration. (ECF No. 1 at 18; ECF No. 35 at 17). Although on direct appeal he complained about the conditions of his confinement, (ECF No. 14-1 at 707–08), he has not shown "that these were the result of the delay in his trial rather than simply the result of the charges against him." *See Jackson v. Benton*, 315 F. App'x 788, 793 (11th Cir. 2009) (per curiam). Further, counsel sought the continuances "to investigate the case, conduct discovery, prepare pretrial motions, [and] develop a defense" in a

[8] The Petitioner's extensive pretrial filings certainly contributed to the delay as well. At one point, he convinced the trial court to allow him to represent himself only to turn around and ask for the reappointment of counsel. (ECF No. 14-1 at 374–75).

difficult case for the Petitioner both in terms of the State's overwhelming evidence and the magnitude of the charge. (*See* ECF No. 14-1 at 620); (*see also, e.g.*, ECF No. 21 at 48 (citing hearing transcript)). In short, when assessing prejudice, the most important consideration is whether the delay has impaired the defense. *Barker*, 407 at 532. Because the delay here benefited the Petitioner's defense, this factor favors the State.

Accordingly, the *Barker* factors favor the State. Although factors one and three favor the Petitioner, factors two and four favor the State with greater force. At the very best, the *Barker* factors are in equipoise. This being so, the state courts' rejection of claim 10 was not contrary to, or an unreasonable application of, clearly established federal law or an unreasonable determination of the facts.[9]

6. Conclusion

For the foregoing reasons, the Court **denies** the Petition (ECF No. 1) and **denies** a certificate of appealability. The clerk is directed to **close** the case.

Done and ordered, in chambers, in Miami, Florida, on August 5, 2021.

Robert N. Scola, Jr.
United States District Judge

Copies, via U.S. Mail, to
Robert Oulton, Jr.
I48297
Zephyrhills Correctional Institution
Inmate Mail/Parcels
2739 Gall Boulevard
Zephyrhills, FL 33541
PRO SE

[9] The Petitioner is not entitled to an evidentiary hearing. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing [under § 2254].").

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13058-F

ROBERT OULTON, JR.,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

Before: NEWSOM and BRANCH, Circuit Judges.

BY THE COURT:

Robert Oulton, Jr. has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated March 22, 2022, denying his motion for a certificate of appealability to appeal from the district court's denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition. Because Oulton has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, his motion for reconsideration is DENIED.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2022

ROBERT OULTON

Petitioner,

v.

RICKY DIXON,
Secretary of the Florida
Department of Corrections,

Respondent.

On Petition for Writ of Certiorari to the
United States Eleventh Circuit Court of Appeals

PROOF OF SERVICE

I, Robert Oulton, do swear or declare that on this 20th day of July, 2022, as required by Supreme Court Rule 29 I have served the enclosed **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** and **PETITION FOR 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:

Ashley Moody
Attorney General
The Capitol
Tallahassee, FL 32399-1050

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of July, 2022.

Robert Oulton, DC #I48297
Union Correctional Institution
P.O. Box 1000
Raiford, FL 32083-1000

Petitioner, pro se

Additional material from this filing is available in the Clerk's Office.