

No. 21-1347

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 18, 2022
DEBORAH S. HUNT, Clerk

LEVONNE JOMARRIO GREER,

Petitioner-Appellant,

V.

KRISTOPHER TASKILA,

Respondent-Appellee.

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ORDER

Before: NALBANDIAN, Circuit Judge.

Levonne Jomarrio Greer, a Michigan prisoner proceeding through counsel, appeals the district court's judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Greer moves this court for a certificate of appealability as to his involuntary confession claim. *See* Fed. R. App. P. 22(b). Greer also moves this court for leave to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5).

In 2013, a jury in the Saginaw County Circuit Court convicted Greer of one count of first-degree premeditated murder, one count of conspiracy to commit first-degree premeditated murder, eight counts of possession of a firearm when committing a felony, five counts of assault with intent to commit murder, one count of carrying a concealed weapon, one count of carrying a dangerous weapon with unlawful intent, and one count of discharging a firearm from a vehicle. These charges arose out of a drive-by shooting, during which a six-year-old girl was shot and killed. The trial court sentenced Greer to life imprisonment without the possibility of parole for the murder and conspiracy counts. On direct appeal, the Michigan Court of Appeals remanded for correction of Greer's sentence for the conspiracy count to indicate the possibility of parole and otherwise affirmed. *People v. Greer*, No. 318286, 2015 WL 302684 (Mich. Ct. App. Jan. 22, 2015), *perm. app. denied*, 864 N.W.2d 576 (Mich. 2015) (mem.).

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Greer subsequently filed a motion for relief from judgment, which the trial court denied. The Michigan appellate courts denied Greer leave to appeal. *People v. Greer*, No. 339442 (Mich. Ct. App. Jan. 25, 2018), *perm. app. denied*, 919 N.W.2d 250 (Mich. 2018) (mem.).

Greer filed a pro se habeas petition. Counsel later made an appearance on Greer's behalf and filed a brief raising five grounds for habeas relief. The district court denied Greer's habeas petition and declined to issue a certificate of appealability. This timely appeal followed.

Greer moves this court for a certificate of appealability as to his involuntary confession claim, expressly abandoning his other claims. 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). To obtain a certificate of appealability, Greer must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Greer "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).

Greer claimed that the trial court's admission of his statements to Detective Andrew Carlson violated his right to due process because his statements were involuntary. Greer asserted that he relied on Detective Carlson's unfulfilled promises of leniency before he cooperated.

In determining whether a confession was voluntary or coerced, "the question . . . is whether the defendant's will was overborne at the time he confessed." *Lynum v. Illinois*, 372 U.S. 528, 534 (1963). "In determining whether a defendant's will was overborne," courts assess "the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). "[P]romises of leniency may be coercive if they are broken or illusory." *United States v. Johnson*, 351 F.3d 254, 262 (6th Cir. 2003). But "promises to recommend leniency and speculation that cooperation will have a positive effect do not make subsequent statements involuntary." *United States v. Binford*, 818 F.3d 261, 271 (6th Cir. 2016) (quoting *United States v. Delaney*, 443 F. App'x 122, 129 (6th Cir. 2011)).

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The Michigan Court of Appeals determined that, after reviewing the totality of the circumstances, Greer's confession was voluntary:

At the time he made the challenged statements, defendant was 22 years old, of at least average intelligence, and, by his own admission, experienced with the police. After being apprised of his *Miranda* rights, defendant voluntarily waived them, and although the interview lasted over three hours, the length was not per se unreasonable. There is no evidence he was injured, intoxicated, drugged, or in ill health. He had something to eat at the police station prior to the interview, was not denied sleep or medical attention, and at no time was he physically abused or threatened with abuse. The record simply does not support the conclusion that defendant's will was overborne or his capacity for self-determination critically impaired.

It is true that some of the statements Detective Carlson made could be interpreted as promises of leniency, suggesting defendant would achieve a more favorable outcome if he cooperated than otherwise. That defendant hoped for the detective's help is indisputable; that he confessed in reliance on it is not. Detective Carlson made no specific promises regarding charges or sentencing. For these reasons, we conclude that defendant's confession was voluntary, and affirm the trial court's admission of the taped confession into evidence.

Greer, 2015 WL 302684, at *3 (internal citation and footnote omitted). On habeas review, the district court concluded that the Michigan appellate court reasonably determined from the totality of the circumstances that Greer's confession was voluntary and admissible.

In support of his motion for a certificate of appealability, Greer argues that his confession was involuntary because Detective Carlson "guaranteed" him a substantially reduced sentence. The one time that Detective Carlson used the word "guarantee" came in the context of how long Greer would be detained in jail, and the detective avoided making any specific promise. The interview transcript demonstrates that Detective Carlson did not otherwise "guarantee" Greer a substantially reduced sentence. As the Michigan Court of Appeals correctly noted, Detective Carlson made no specific promises when Greer asked about prison time:

A I won't have to do no years?

Q Yeah. I told you I'd help you. I told you I'd help you, and all I can say is examples for you. You got to make a decision. What happened?

....

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A I'm just saying could you get me out of prison for sure, Andy?

Q If you're honest with me and you help me, all I can do is tell you that I can help you and cite you examples, and I think that you're smart enough to take it from there.

Jurists of reason would not debate the district court's conclusion that the Michigan Court of Appeals reasonably determined that Detective Carlson's vague statements about helping Greer did not render the confession involuntary. *See United States v. Charlton*, 737 F. App'x 257, 261 (6th Cir. 2018) (holding that non-committal offers to help were not objectively coercive).

Greer also argues in his motion for a certificate of appealability that the district court failed to analyze the totality of the circumstances. But federal habeas courts do not apply de novo review to a claim adjudicated on the merits by a state court, as was Greer's involuntary confession claim. *See English v. Berghuis*, 900 F.3d 804, 811 (6th Cir. 2018). The federal habeas court instead defers to the state court decision: "[T]he central inquiry is whether the state court decision was objectively unreasonable and not simply erroneous or incorrect." *Ayers v. Hudson*, 623 F.3d 301, 308 (6th Cir. 2010) (quoting *Harris v. Haeblerlin*, 526 F.3d 903, 910 (6th Cir. 2008)). Here, the district court concluded that the Michigan Court of Appeals reasonably determined from the totality of the circumstances that Greer's confession was voluntary and admissible. Jurists of reason could not disagree with that conclusion.

Accordingly, this court **DENIES** Greer's motion for a certificate of appealability and **DENIES** as moot his motion for leave to proceed in forma pauperis on appeal.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk