

APPENDIX A
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-1599

Robert Henry Steele

Petitioner - Appellant

v.

Dan Redington

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:21-cv-03283-BP)

JUDGMENT

Before LOKEN, GRUENDER, and ERICKSON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

August 04, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

ROBERT H. STEELE,)
Petitioner,)
v.) Case No. 21-3283-CV-S-BP
DAN REDDINGTON, Warden,)
Northeast Correctional Center,)
Respondent.)

ORDER (1) DENYING PETITION FOR WRIT OF HABEAS CORPUS AND (2)
DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he is being held in violation of his rights under the Fifth, Sixth, and Fourteenth Amendments to the Constitution. Generally, he alleges that he was (1) denied a right to a speedy trial and (2) denied his right to effective assistance of counsel. For the reasons discussed below, the Court denies the Petition and declines to issue a Certificate of Appealability.

I. BACKGROUND

Petitioner was convicted in state court on one count each of involuntary manslaughter and assault. His convictions were affirmed on direct appeal in an unpublished opinion. (Doc. 6-6.) Petitioner then filed a Motion for Postconviction Relief; his initial pro se motion was followed by an Amended Motion that was also filed pro se. Later, retained counsel filed another Amended Motion, which the trial court denied. Petitioner appealed the denial of the motion filed by retained counsel, but the Missouri Court of Appeals dismissed the appeal after holding that the Amended Motion filed by retained counsel was untimely and that the trial court should have ruled on the last timely motion – which was Petitioner’s pro se Amended Motion. *Steele v. State*, 555 S.W.3d 486

APPENDIX B

(Mo. Ct. App. 2018). On remand, the trial court denied Petitioner’s pro se Amended Motion, and that decision was affirmed on appeal. (Doc. 6-17.)

The details of Petitioner’s crimes are not critical to his legal claims, and a summary for context is sufficient. The manslaughter and assault charges arose from an auto accident in Ripley County. Petitioner was driving while intoxicated and he collided with a car driven by Regina Roberts. Derrick Fox was a passenger in Roberts’s car, as was Roberts’s and Fox’s two-year-old son, Devin. Roberts and Fox were seriously injured, and Devin died as a result of the injuries he sustained. Petitioner was injured as well, and he was taken to a hospital in Cape Girardeau. While there, he was charged with different crimes in both Ripley County and Cape Girardeau County. In Ripley County, he was charged with involuntary manslaughter and assault – the charges at issue in this case. In Cape Girardeau County, he was charged with possession of a controlled substance.

Additional facts relevant to Petitioner’s claims will be set forth below.

I. DISCUSSION

Pursuant to the Antiterrorism and Effective Death Penalty Act, (“AEDPA”), a writ of habeas corpus shall not be issued on a claim litigated on the merits in state court unless the state court’s decision

- 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 “contrary to” and “unreasonable application” provisions in the first subsection have independent meaning. The “contrary to” provision applies “if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law, or

APPENDIX B

reached a decision contrary to Supreme Court precedent when confronting facts that were materially indistinguishable.” *Jackson v. Norris*, 651 F.3d 923, 925 (8th Cir. 2011), *cert. denied*, 565 U.S. 1203 (2012). “A federal court may grant relief under the ‘unreasonable’ application clause if the state court correctly identified the governing legal principle, but unreasonably applied it to the facts of the particular case.” *Id.*

Two of Petitioner’s arguments include claims of ineffective assistance of counsel, and they are governed by the Supreme Court’s decision in *Strickland v. Washington*, 466 U.S. 668 (1984). “*Strickland* established the principle that in order to prevail on an ineffective assistance of counsel claim, a petitioner must show that counsel’s performance was deficient and that the deficient performance prejudiced the defense.” *Williams v. Bowersox*, 340 F.3d 667, 670 (8th Cir. 2003) (cleaned up). The performance prong requires the petitioner to show “counsel’s representation fell below an objective standard of reasonableness,” *Strickland*, 466 U.S. at 688, and the prejudice prong requires a showing that “the decision reached would reasonably likely have been different absent the errors.” *Id.* at 696. “A deficiency is prejudicial when there is a reasonable probability, that is, ‘one sufficient to undermine confidence in the outcome,’ that the result of the trial would have been different but for the deficiency.” *Close v. United States*, 679 F.3d 714, 716 (8th Cir.), *cert. denied*, 568 U.S. 957 (2012) (quoting *Strickland*, 466 U.S. at 694). A petitioner must satisfy both prongs, and a court may reject a claim of ineffective assistance based on the failure to satisfy either one. *E.g., Ford v. United States*, 917 F.3d 1015, 1020 (8th Cir. 2019); *Taylor v. Kelley*, 825 F.3d 466, 470 (8th Cir.), *cert. denied*, 137 S. Ct. 387 (2016).

APPENDIX B

A. Speedy Trial Issues

Petitioner's first three grounds for relief all relate to his assertion that he was denied his right to a speedy trial. Therefore, a timeline of relevant events is necessary before the particulars of Petitioner's claims are discussed.¹

1. Timeline of Events

After he was released from the hospital in late November 2009, Petitioner was taken to the Cape Girardeau jail. While there, on March 26, 2010, he filed a motion for a speedy trial on the Ripley County charges. On April 12, 2010, Petitioner pleaded guilty to the charge in Cape Girardeau and was sentenced to two years in the Missouri Department of Corrections, ("MDOC"). The next day he was taken to the Doniphan City Jail in Ripley County. The day after that, he filed a motion for change of venue. An amended complaint was filed on April 22, and on June 14 (and again on June 16) Petitioner's attorney filed a motion for a continuance. The preliminary hearing was reset for July 28.

At the hearing on July 28, Petitioner's attorney from the public defender's office announced that he likely had a conflict of interest. Petitioner's motion for a speedy trial and Missouri's Uniform Mandatory Disposition of Detainers Law ("UMDDL") were also discussed. Generally, the UMDDL provides a mechanism whereby a person in MDOC's custody can demand that other charges be disposed of within 180 days. *See* MO. REV. STAT. §§ 417.450, 417.460. However, in their briefs filed on direct appeal the parties agreed that the trial judge held that the

¹ The parties have not provided the docket sheets or a clear description of the sequence of events. However, the Court can take judicial notice of court records and has examined CaseNet, the electronic docketing system used in Missouri. The Ripley County case consists of records under three different case numbers. The first two are 09RI-CR00606 and 09RI-CR00606-01. The case was transferred to Oregon County in October 2010; there, the case number is 10AM-CR00274. In compiling the timeline, the Court has relied on these docket sheets, the briefs Petitioner and the State filed on the direct appeal, (Doc. 6-4; Doc. 6-5), and the Missouri Court of Appeals' decision, (Doc. 6-6).

APPENDIX B

UMDDL did not apply because Petitioner was taken from the Cape Girardeau Jail to Ripley County and had never been in MDOC's custody; the parties further agree that Petitioner was told that if he wanted a continuance so that his attorney could further investigate whether a conflict of interest existed he would have to waive his right to a speedy trial. On advice of counsel, Petitioner waived his right to a speedy trial. (*See* Doc. 6-4, p. 11; Doc. 6-5, pp. 11-12.)²

A new attorney entered his appearance on August 11 and the preliminary hearing was reset for September 21. Petitioner's counsel sought a brief continuance due to a death in his family, and the preliminary hearing was held on September 23. At the preliminary hearing Petitioner was bound over. On October 4 he waived formal arraignment and his motion to change venue was granted; the case was transferred to Oregon County where trial was set for May 18, 2011.

In March and April 2011, Petitioner filed two pro se motions to dismiss and a pro se motion for new counsel. A hearing was held on April 27, 2011, at which time Petitioner requested a continuance so that a mental examination could be conducted. Thereafter, Petitioner (acting both through counsel and pro se) filed additional motions. The mental exam was completed and the motions were ruled, with the last motion ruled on August 2, 2012. Trial commenced on August 29, 2012.

On direct appeal, Petitioner argued that his rights under the UMDDL and his right to a speedy trial were violated when (1) he was taken from the Cape Girardeau jail to Ripley County instead of being taken to the MDOC and (2) the case was delayed from April 13, 2010, to the start of trial on August 29, 2012. The Missouri Court of Appeals recognized that a delay of less than eight months was not presumptively prejudicial under either state law or the Sixth Amendment,

² All page numbers for documents filed with the Court are those generated by the Court's CM/ECF system.

APPENDIX B

but twenty-eight months passed from the date Petitioner was held to answer the Ripley County charges to the date his trial started. (Doc. 6-6, p. 2.) The question then became whether any of that delay was attributable to the defense. (*Id.*) The court documented the time as follows:

Dates	Days	Delay Days Attributable to [Petitioner]	Reason
4/13/10 – 6/16/10	64	0	Awaiting preliminary hearing
6/17/10 – 9/23/10	98	98	Continuances requested by [Petitioner] (preliminary hearing on 9/23)
9/24/10 – 10/4/10	10	0	Awaiting arraignment in circuit Court (hearing 10/4)
10/5/10 – 4/26/11	203	203	Change of venue resulting in trial setting in May 2011
4/27/11 – 11/21/11	208	208	Mental examinations and resolution of <i>pro se</i> motions
11/22/11 – 8/2/12	254	254	Resolution of <i>pro se</i> motions
8/3/12 – 8/28/12	25	0	Awaiting trial
TOTALS	862	763	

(Doc. 6-6, p. 4.) The Missouri Court of Appeals held that Petitioner's speedy trial rights were not violated because the delay not attributable to him was less than eight months.

2. Petitioner's Speedy Trial Arguments

Grounds I, II and III all relate to speedy trial issues. These arguments were presented on direct appeal or as part of Petitioner's postconviction motion in state court, and for various reasons the Court concludes that the state court's resolution of federal issues was not (1) contrary to or an unreasonable application of federal law or (2) based on an unreasonable determination of the facts. One issue involves a purely state law question and is not cognizable in this proceeding.

Determining whether the Sixth Amendment has been violated requires a court to "balance four factors: (1) length of delay; (2) reason for the delay; (3) defendant's assertion of the right; and

APPENDIX B

(4) prejudice.” *United States v. Rodriguez-Valencia*, 753 F.3d 801, 805 (8th Cir.), *cert. denied*, 574 U.S. 946 (2014) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). There is no bright line test for when a delay is presumed prejudicial. *E.g.*, *United States v. Erenas-Luna*, 560 F.3d 772, 779-80 (8th Cir. 2009). However, the Eighth Circuit has held that “[a] delay approaching one year may meet the presumptively prejudicial delay requiring application of the *Barker* factors.” *United States v. Jeanetta*, 533 F.3d 651, 656 (8th Cir.), *cert. denied*, 555 U.S. 1079 (2008).

Ground I simply contends that Petitioner’s speedy trial rights were violated, and in a conclusory manner asserts that the Missouri Court of Appeals’ decision “was an unreasonable application of [Barker], as well as an unreasonable determination of the facts in the record.” (Doc. 5, p. 8.) However, Petitioner does not explain exactly what was unreasonable about the decision. He describes the timeline in a slightly different manner by focusing on different events, (Doc. 5, p. 9 n.2), but does not account for the various motions Petitioner filed and other actions Petitioner took to delay the process. More importantly, Petitioner does not dispute the calculation conducted by the Missouri Court of Appeals and its assessment explaining why various delays were attributable to Petitioner, leaving only ninety-nine days of delay that were not attributable to him. The Court concludes that Ground I provides no basis for concluding that the Missouri Court of Appeals’ resolution was an unreasonable application of the law or involved an unreasonable determination of the facts.³

³ The Court further observes that Petitioner does not explain how the delay prejudiced him, as required by *Barker*’s fourth factor. “In the sphere of Sixth Amendment analysis, we assess prejudice in light of defendants’ interests that the constitutional speedy trial right was designed to protect. Those interests are: preventing oppressive pretrial incarceration, minimizing anxiety and concern of the accused, and limiting the possibility that the defense will be impaired—with the last being the most serious.” *United States v. Sprouts*, 282 F.3d 1037, 1043 (8th Cir. 2002) (citation omitted). In this regard, the Court notes that for at least a period of this time Petitioner would have been incarcerated on his conviction in Cape Girardeau, which obviates concerns about pretrial incarceration. *See id.* Petitioner also has not suggested that his defense was impaired in any way.

APPENDIX B

Ground II focuses on the UMDDL instead of the Sixth Amendment. Petitioner claims that after he was sentenced in Cape Girardeau County, the Ripley County Sheriff's Department had no legal authority to take him to Ripley County; instead, the Sheriff was legally obligated to take Petitioner to the MDOC. And, if that had happened, Petitioner's March 26, 2010, request for a speedy trial would have triggered the UMDDL's requirement that he be tried within 180 days. But not only does Petitioner fail to explain why he could not be transported to Ripley County, the purported violation Petitioner describes is purely a violation of state law and the Court is empowered to grant a writ of habeas corpus "only on the ground that [Petitioner] is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *see also Swarthout v. Cooke*, 562 U.S. 216, 219 (2011) ("We have stated many times that federal habeas corpus relief does not lie for errors of state law." (quotations omitted)). Therefore, even if the UMDDL was violated, Petitioner cannot obtain relief from this Court.

Finally, Ground Three contains two arguments. First, Petitioner contends that his waiver of his speedy trial rights on July 28, 2010, was invalid because he was placed in the position of either (1) proceeding with counsel despite counsel's conflict of interest or (2) waiving his speedy trial rights. Second, he contends that when his new attorney entered his appearance on August 11, that attorney provided ineffective assistance by not filing a new motion to enforce his speedy trial rights. Neither aspect of Ground Three justifies relief. First, as noted earlier, the Missouri Court of Appeals determined that there were ninety-nine days of delay that were not attributable to Petitioner. Even if the time from July 28 to August 11 is included, the total would increase by only fourteen days. Moreover, much if not all the delay attributed to Petitioner is unrelated to his lack of a formal request for a speedy trial. More particularly, with respect to the new attorney's failure to "renew" his request, the Court concludes that even if this was deficient performance

APPENDIX B

under *Strickland*, there was no prejudice because filing such a motion would not have affected the speedy trial analysis. The fact that a defendant did or did not specifically invoke his speedy trial rights is a factor under *Barker* but it is not an overly important one. Even if Petitioner had made a formal request it would have been easily outweighed by other factors, particularly the fact that he filed motions necessitating delays (including a motion for a mental exam, in connection with the Missouri Court of Appeals noted he specifically requested a continuance). *See, e.g., Barker*, 407 U.S. at 529 (“We hardly need add that if delay is attributable to the defendant, then his waiver may be given effect under standard waiver doctrine, the demand rule aside.”); *United States v. Flores-Lagonas*, 993 F.3d 550, 563-64 (8th Cir. 2021) (defendant’s invocation of speedy trial right was outweighed by the fact that he requested continuances and most of the delay was attributable to the defendant); *United States v. Richards*, 707 F.2d 995, 997 (8th Cir. 1983) (explaining that the *Barker* factors are not elements and they are to be considered together.).

For these reasons the Court concludes that Grounds I, II and III do not entitle Petitioner to habeas relief.

B. Ineffective Assistance of Counsel/Prosecutorial Misconduct

Petitioner’s last two grounds relate to a separate civil suit. The circumstances of that suit must be described before Petitioner’s arguments can be analyzed.

The Ripley County Prosecuting Attorney was Christopher Miller, and he was a member of the law firm of Maness & Miller. Another attorney in the firm, Randolph Maness, had been retained by Lester Daniels in a dispute with Petitioner that predated the November 2009 accident. Apparently, Petitioner acquired some real property from Daniels, and for reasons that are not clear Daniels believed there were grounds for invalidating Petitioner’s purchase of the property. At

APPENDIX B

some point (also for reasons that are not clear) Petitioner gave his power of attorney to Lowell Puryear.

On December 18, 2009, Maness – as Daniels’s attorney – wrote to Puryear and expressed his understanding that there were plans to sell some of the property and timber other parts of the property. Maness “advised that an investigation is now under way on Mr. Daniels’ behalf to determine whether legal action should be instituted to seek to invalidate the deed transfers into Mr. Steele’s name.” (Doc. 5-1.) Petitioner alleges that “Mr. Puryear declined to sell the property, depriving Mr. Steele of the proceeds.” (Doc. 5, p. 16.) Eventually Daniels’ representation was transferred to another firm, and in August 2010 a lawsuit was filed on Daniels’ behalf by an attorney from that firm – not by an attorney from Maness & Miller. Petitioner complains that Puryear’s decision not to sell the property deprived him of “access to his assets which would have permitted him to retain counsel of choice for his criminal case, rather than to be represented by [a public defender], and would have permitted him to retain counsel to defend the civil case.” (Doc. 5, p. 17.)

Separately, but also related to Daniels’s dispute with Petitioner, Count V contends that Miller arranged for Petitioner to be transported from Cape Girardeau to Ripley County to procure Petitioner’s agreement to settle the dispute with Daniels. Petitioner advances this theory “[u]pon information and belief” and relates that on an unspecified date his attorney in the Cape Girardeau case visited him in Ripley County to get him to sign a settlement agreement. (Doc. 5, p. 19; *see also* Doc. 5-2.)

2. Petitioner’s Ineffective Assistance of Counsel Claims

Petitioner contends that his trial counsel was ineffective for failing to seek dismissal of the charges because the prosecutor (1) denied Petitioner access to funds with which he could pay for

APPENDIX B

retained counsel and (2) arranged for Petitioner to be brought to Ripley County for false pretenses. These claims are analyzed for deficient performance and prejudice under *Strickland*, as discussed above. In addition, the Court must consider the fact that these claims were not asserted in Petitioner's postconviction proceeding. Ordinarily, a claim that is not presented to the state courts is procedurally defaulted and cannot be considered. *E.g., Coleman v. Thompson*, 501 U.S. 722, 729-30 (1991). However, in narrow circumstances, an attorney's ineffectiveness in the postconviction proceeding can excuse the default and permit consideration of a defaulted claim of ineffective assistance of counsel at trial. These circumstances occur when "(1) the claim of ineffective assistance of trial counsel was a substantial claim; (2) the cause consisted of there being . . . ineffective counsel during the state collateral review proceeding; (3) the state collateral review proceeding was the initial review proceeding in respect to the ineffective-assistance-of-trial-counsel claim; and (4) state law requires that an ineffective assistance of trial counsel claim be raised in an initial-review collateral proceeding." *Trevino v. Thaler*, 569 U.S. 413, 423 (2013) (citing *Martinez v. Ryan*, 566 U.S. 1, 13-17 (2012) (cleaned up)). With respect to the first requirement, "[a] 'substantial' ineffective-assistance claim is one that has some merit." *Dansby v. Hobbs*, 766 F.3d 809, 834 (8th Cir. 2014), *cert. denied*, 577 U.S. 828 (2015) (citing *Martinez*, 566 U.S. at 14). Thus, the issue of whether the procedural default can be excused is closely related to the merits of the underlying claim of ineffective assistance. Moreover, "judicial economy sometimes dictates reaching the merits if the merits are easily resolvable against a petitioner while the procedural bar issues are complicated." *Barrett v. Acevedo*, 169 F.3d 1155, 1162 (8th Cir.) (en banc), *cert. denied*, 528 U.S. 846 (1999).

The Court concludes that neither claim Petitioner believes should have been raised by trial counsel had merit; therefore trial counsel did not violate either *Strickland* prong and postconviction

APPENDIX B

counsel did not omit a substantial claim of ineffective assistance. With respect to the lack of funds, Petitioner cites no authority to support his argument that a constitutional violation resulted from Daniels's decision to file (with counsel unaffiliated with the prosecutor) a lawsuit against Petitioner. Petitioner's speculation that the prosecutor's firm benefitted financially, (Doc. 9, p. 16), does not change the fact that Daniels, represented by a different attorney, elected to file suit against Petitioner.

With respect to Count V, trial counsel was not ineffective for failing to raise an argument based on Petitioner's speculation as to Miller's ulterior motive in arranging for Petitioner to be brought to Ripley County to face charges. Petitioner simply has not explained why Miller's alleged motivation mattered. As stated earlier, Petitioner believes that some aspect of Missouri law required that he be taken to MDOC instead of Ripley County and that if he had been taken to MDOC he could have invoked his rights under the UMDDL. However, this argument was raised and rejected, and Petitioner does not explain why arguments about the *reason* he was transported to Ripley County would have affected the disposition of this issue. Moreover, according to the Missouri Court of Appeals even if the UMDDL had been violated, Petitioner would not have been entitled to relief unless his right to a speedy trial was also violated, and it found that Petitioner had not been deprived of a speedy trial. (Doc. 6-6, p. 4.) Therefore, even if trial counsel had developed facts establishing that Petitioner was brought to Ripley County so that the settlement of his dispute with Daniels could be discussed, Petitioner would not have been entitled to relief because his speedy trial rights were not violated.

D. Certificate of Appealability

In order to appeal Petitioner must obtain a Certificate of Appealability, which should be issued only if he "has made a substantial showing of a denial of a constitutional right." 28 U.S.C.

APPENDIX B

§ 2253(c)(2). This showing is established if reasonable jurists could disagree as to how the issue should be resolved. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). The Court does not believe that the issues Petitioner has raised are subject to debate among reasonable jurists, so the Court declines to issue a Certificate of Appealability.

III. CONCLUSION

The Petition for Writ of Habeas Corpus is **DENIED** and the Court declines to issue a Certificate of Appealability.

IT IS SO ORDERED.

DATE: February 16, 2022 /s/ Beth Phillips _____
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT