IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-12154-J

ANDREW MICHAEL GOMEZ,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

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:

Andrew Gomez has filed a motion for reconsideration of this Court's October 19, 2021, order denying a certificate of appealability, leave to proceed on appeal *in forma pauperis*, and appointment of counsel in his underlying habeas corpus petition, 28 U.S.C. § 2254. Upon review, Gomez's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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ORDER:

Andrew Gomez is a Florida prisoner serving two consecutive life sentences after pleading guilty to two counts of murder in the second degree. In the instant, *pro se* 28 U.S.C. § 2254 petition, contending that: (1) counsel failed to adequately advise him of his right to an insanity defense; (2) counsel failed to adequately advise him of his ability to suppress statements made to the police while he was on anti-psychotic medication; (3) counsel failed to object to the acceptance of his guilty plea without first requiring the court to follow through on its *sua sponte* order for a competency evaluation; (4) the trial court violated his due process rights and clearly established federal law by accepting his guilty plea without a finding on the factual basis when he indicated he was innocent of the crimes charged; and (5) the court violated his due process and trial rights

by accepting an involuntary and unknowing plea that was made when he was unaware that Florida's death penalty scheme was unconstitutional and would be retroactively amended.

The district court denied the petition, finding that Mr. Gomez had waived Grounds 3 and 5. It further found that the state court's previous denial of Mr. Gomez's Grounds 1, 2, and 4 was neither contrary to, nor an unreasonable application of, clearly established federal law, nor was it an unreasonable determination of the facts. Mr. Gomez now seeks a certificate of appealability ("COA"), leave to proceed on appeal *in forma pauperis* ("IFP"), and appointment of counsel.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner satisfies this requirement by demonstrating 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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted). A federal court may grant habeas relief only if the decision of the state court (1) "was contrary to, or involved an unreasonable application of, clearly established [f]ederal law," or (2) "was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(1), (2).

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a "highly deferential standard for evaluating state-court rulings . . . and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotation marks omitted). When a state court does not explain its decision, federal courts should "look through" to the last state court decision that provides a relevant rationale and presume that the unexplained decision adopted the same reasoning. *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018).

Here, reasonable jurists would not debate the district court's determination that the state court's resolution of Ground 1 was not contrary to, or an unreasonable application of, *Strickland*

v. Washington, 466 U.S. 668 (1984). Mr. Gomez was well-advised of his possible insanity defense based on his testimony and the testimony of his counsel. Further, counsel's decision to advise a guilty plea was not "patently unreasonable" as the experts disagreed on the defense and he had an interest in avoiding trial and the death penalty. *See Adams v. Wainwright*, 709 F.2d 1443, 1445 (11th Cir. 1983) (holding that counsel's strategic decisions are ineffective when they are "so patently unreasonable that no competent attorney would have chosen it"). Accordingly, Mr. Gomez failed to show that his counsel was deficient.

As to Ground 2, counsel's strategic decision to forego a motion to suppress was reasonable, given that the motion would have required proof that Mr. Gomez's anti-psychotic medication prevented him from understanding the nature of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). *See United States v. Barbour*, 70 F.3d 580, 585 (11th Cir. 1995) (holding that an individual with an impaired mental state may be unable to waive his *Miranda* rights). The district court also properly denied Grounds 3 and 5, as Mr. Gomez conceded that he has not met the required standards to obtain relief on these grounds.

Finally, reasonable jurists would not debate the district court's determination that the state court's resolution of Ground 4 was not contrary to, or an unreasonable application of federal law. The government provided a sufficient factual basis for the charges. Mr. Gomez's assertion that he did not feel that he was guilty did not invalidate his plea, as he indicated that he still wanted to move forward with the plea and the plea was made knowingly and voluntarily based on his testimony. *See North Carolina v. Alford*, 400 U.S. 25, 37 (1970). Accordingly, Mr. Gomez's motion for a COA is DENIED, and his motions for IFP and counsel are DENIED AS MOOT.

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE