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No. 22-1527

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

QUANDRAIKO HAYES,

Petitioner-Appellant,

v.

MIKE BROWN, Warden,

Respondent-Appellee.

ORDER

Before: BOGGS, Circuit Judge.

Quandraiko Hayes, a pro se Michigan prisoner, appeals the district court's denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. Hayes moves for a certificate of appealability (COA) and for leave to proceed in forma pauperis on appeal.

In 2017, at a bench trial, Hayes was found guilty of assault with intent to do great bodily harm less than murder (AWIGBH), Mich. Comp. Laws § 750.84; intentional discharge of a firearm in or at a dwelling causing serious impairment, Mich. Comp. Laws § 750.234b(4); and possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b. He was sentenced as a fourth habitual offender to concurrent terms of 25 to 40 years in prison for the AWIGBH and intentional-discharge convictions, consecutive to a two-year term in prison for the felony-firearm conviction. The Michigan Court of Appeals affirmed, *People v. Hayes*, No. 339563, 2019 WL 208023, at *1 (Mich. Ct. App. Jan. 15, 2019) (per curiam), and the Michigan Supreme Court denied leave to appeal, *People v. Hayes*, 927 N.W.2d 253 (Mich. 2019) (mem.).

Hayes then filed a § 2254 petition, claiming that (1) the evidence was insufficient to sustain his convictions, (2) his trial counsel was ineffective for failing to retain a firearms expert and failing to present a self-defense theory, (3) his enhanced sentence was disproportionate and thus violated the Eighth Amendment's prohibition on cruel and unusual punishment, (4) his trial

counsel was ineffective for failing to impeach witnesses with their prior inconsistent statements, and (5) admission of his prior convictions for sentencing purposes violated the Ex Post Facto Clause.

The district court denied the petition and declined to issue a COA, reasoning that Hayes's claims were reasonably adjudicated on the merits by the state courts or were procedurally defaulted.

Hayes then moved to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), for an evidentiary hearing, and for discovery. The district court denied the motions. Hayes's appeal from the denial of his Rule 59(e) motion "is treated as an appeal from the underlying judgment itself." *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 833 (6th Cir. 1999).

A COA may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The applicant must demonstrate that reasonable jurists would find the district court's assessment of his claims debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). When a district court denies a habeas petition on procedural grounds, the applicant must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* at 484. When a state court previously adjudicated the petitioner's claims on the merits, the district court may not grant habeas relief unless the state court's adjudication 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 "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); *see Harrington v. Richter*, 562 U.S. 86, 100 (2011).

Claim One – Insufficiency of the Evidence

Hayes claims that the evidence was insufficient to support his convictions. In reviewing the sufficiency of the evidence, "the relevant question is whether, after viewing the evidence in the

light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In a federal habeas proceeding, review of an insufficiency claim is doubly deferential: "First, deference should be given to the trier-of-fact's verdict, as contemplated by *Jackson*; second, deference should be given to the Michigan Court of Appeals' consideration of the trier-of-fact's verdict, as dictated by [the Antiterrorism and Effective Death Penalty Act]." *Tucker v. Palmer*, 541 F.3d 652, 656 (6th Cir. 2008).

The only element at issue here, as is relevant to the AWIGBH and intentional-discharge convictions, is intent. "[I]ntent to do great bodily harm [is defined] as 'an intent to do serious injury of an aggravated nature.'" *People v. Brown*, 703 N.W.2d 230, 236 (Mich. Ct. App. 2005) (quoting *People v. Mitchell*, 385 N.W.2d 717, 718 (Mich. Ct. App. 1986)). Given the difficulty in proving intent, "minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v. Kanaan*, 751 N.W.2d 57, 73-74 (Mich. Ct. App. 2008). Intent may be inferred from, for example, the defendant's conduct, the use of a weapon, and the nature of the victim's injuries, if any. *People v. Stevens*, 858 N.W.2d 98, 103-04 (Mich. Ct. App. 2014).

The Michigan Court of Appeals rejected Hayes's insufficiency-of-the-evidence claim. *See Hayes*, 2019 WL 208023, at *2-4. It explained that "Hayes's intent to do serious injury of an aggravated nature can be inferred from Hayes's requests that the victim and his girlfriend leave [his home], followed by his conduct of obtaining a shotgun and then discharging the gun while it was pointed toward the victim," *id.* at *2, who "was struck in the left forearm" and "required multiple surgeries as a result of the gunshot wound," *id.* at *4. The victim's girlfriend also testified that Hayes told them to "get out" of his house as he pointed a shotgun—"a dangerous weapon"—at her, "which reasonably can be interpreted as a threat." *Id.* at *2. In addition, after the shooting, Hayes prevented the victim's girlfriend from calling 911, hid the shotgun behind a couch, and left the scene—all actions that "support an inference that the shooting was not an accident," despite Hayes's and the victim's testimony that it was. *Id.* at *2.

Viewing this and all other evidence in the light most favorable to the prosecution, *see Jackson*, 443 U.S. at 319, reasonable jurists would agree with the district court that the Michigan Court of Appeals reasonably determined that a rational trier of fact could have found Hayes guilty of the crimes for which he was convicted, *see Hayes*, 2019 WL 208023, at *2-4. Although Hayes challenges the trial court's failure to credit testimony that the shooting was accidental and its assessment of the evidence, a federal habeas court "do[es] not reweigh the evidence, re-evaluate the credibility of witnesses, or substitute [its] judgment for that of the [trier of fact]." *Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009). And again, a defendant's intent may be inferred from all of the evidence presented, even if it is "minimal[ly] circumstantial." *Kanaan*, 751 N.W.2d at 73. No reasonable jurist therefore could debate the district court's conclusion that the Michigan Court of Appeals did not unreasonably apply *Jackson* in rejecting this insufficiency-of-the-evidence claim.

The district court also determined that Hayes's insufficiency-of-the-evidence claim contained a second component—namely, that the prosecution failed to disprove his claim of self-defense. The Constitution does not require the prosecution to prove the nonexistence of affirmative defenses. *Smith v. United States*, 568 U.S. 106, 110 (2013); *Patterson v. New York*, 432 U.S. 197, 210 (1977). Self-defense is an affirmative defense under Michigan law, *see People v. Dupree*, 788 N.W.2d 399, 408-09 (Mich. 2010), and, accordingly, any failure by prosecutors to disprove self-defense does not implicate a constitutional concern, *see Caldwell v. Russell*, 181 F.3d 731, 740 (6th Cir. 1999), *abrogated on other grounds by Mackey v. Dutton*, 217 F.3d 399, 406 (6th Cir. 2000). Reasonable jurists therefore could not debate the district court's determination that Hayes's sufficiency challenge to a verdict that rejected self-defense (to the extent that he raised this challenge in his habeas petition) is not cognizable on habeas review.

Claim Two – Ineffective Assistance of Counsel

Next, Hayes claims that his trial counsel was ineffective for failing to call an expert witness and for failing to present a self-defense theory. To establish ineffective assistance of counsel, a defendant must show deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "The standards created by *Strickland* and § 2254(d) are both 'highly

deferential,' and when the two apply in tandem, review is 'doubly' so." *Harrington*, 562 U.S. at 105 (first quoting *Strickland*, 466 U.S. at 689; and then quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)). Thus, on habeas review, "[w]hen § 2254(d) applies, the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.*

The Michigan Court of Appeals rejected these ineffective-assistance claims. *See Hayes*, 2019 WL 208023, at *4-5. As to the claim regarding the failure to call an expert witness, the court rejected Hayes's argument "that an expert 'could have aided the defense theory' that the shotgun accidentally discharged" because he offered no "proof that an expert witness would have testified in a manner favorable to the defense." *Id.* at *5. In other words, he offered no factual predicate for his claim. *Id.* The district court agreed, emphasizing that "[a] habeas petitioner's claim that trial counsel was ineffective for failing to call an expert witness cannot be based on speculation," and citing *Keith v. Mitchell*, 455 F.3d 662, 672 (6th Cir. 2006), which rejected an ineffective-assistance claim based on counsel's failure to call an expert because "[t]he court is not obligated to speculate about how a[n] . . . expert might have swayed the [trier of fact]." As to the claim regarding self-defense, the Michigan Court of Appeals rejected it because "a self-defense theory was not supported by Hayes's testimony or the evidence presented at trial." *Hayes*, 2019 WL 208023, at *5. The district court agreed that "[c]ounsel was not ineffective for failing to advance a meritless self-defense claim." *See Krist v. Foltz*, 804 F.2d 944, 946-47 (6th Cir. 1986) (holding that trial counsel is not ineffective for failing to present a meritless defense). On this record and authority, and in light of the double deference due under *Strickland* and § 2254, no reasonable jurist could debate the district court's conclusion that the Michigan Court of Appeals' rejection of these ineffective-assistance-of-counsel claims was not contrary to or an unreasonable application of *Strickland* or based on an unreasonable determination of the facts.

Claims Three and Five

The district court determined that Hayes's third and fifth claims, which raise sentencing issues, were procedurally defaulted because Hayes did not argue before the trial court that his sentences were cruel and unusual or that the trial court violated the Ex Post Facto Clause when it

sentenced him as a fourth-habitual offender, which resulted in the claims being reviewed by the Michigan Court of Appeals for plain error only. *See Hayes*, 2019 WL 208023, at *5-8.

Federal habeas courts typically may not review a procedurally defaulted claim. *See Martin v. Mitchell*, 280 F.3d 594, 603 (6th Cir. 2002).

> A federal habeas petitioner can procedurally default a claim by "failing to obtain consideration of a claim by a state court, either due to the petitioner's failure to raise that claim before the state courts while state-court remedies are still available or due to a state procedural rule that prevents the state courts from reaching the merits of the petitioner's claim."

Lundgren v. Mitchell, 440 F.3d 754, 763 (6th Cir. 2006) (quoting *Seymour v Walker*, 224 F.3d 542, 549-50 (6th Cir. 2000)). Michigan's contemporaneous-objection rule—which the state court enforced here—is an adequate and independent state procedural rule that bars federal habeas review of a defaulted claim, even if the state court reviewed the prisoner's claim for plain error. *See Taylor v. McKee*, 649 F.3d 446, 450-51 (6th Cir. 2011). Reasonable jurists therefore could not debate the district court's conclusion that Hayes's third and fifth claims were procedurally defaulted. And although a petitioner can overcome a procedural default by showing either cause for the default and prejudice resulting from the alleged constitutional error or that he is actually innocent, *Rust v. Zent*, 17 F.3d 155, 160, 162 (6th Cir. 1994), reasonable jurists could not debate the district court's conclusion that Hayes did not make the necessary showing.[1]

Claim Four

Hayes raises another ineffective-assistance claim in ground four, claiming that trial counsel failed to impeach the perjured testimony of the victim and a "key witness." The Michigan Court of Appeals determined that Hayes "failed to establish the factual predicate for this claim of ineffective assistance of counsel" and failed to "adequately brief this issue." *Hayes*, 2019 WL 208023, at *7. Thus, the court found that Hayes was not entitled to relief on the claim. *Id.* (explaining that an appellant must do more than "simply . . . announce a position or assert an error"

[1] In his reply brief, Hayes articulates the standards for demonstrating cause and prejudice, but he does not attempt to show that he meets those standards as to his defaulted claims.

and then leave the court "to discover and rationalize the basis for his claims" (quoting *People v. Waclawski*, 780 N.W.2d 321, 352 (Mich. Ct. App. 2009))).

The district court concluded that the claim was procedurally defaulted because Hayes failed to comply with Michigan's procedural rule that appellants must adequately brief their arguments on appeal. Indeed, his brief on direct appeal included only three cursory sentences addressing this claim; it stated that "Counsel failed to impeach prior inconsistent statement. Prosecution use of perjured statement. Counsel was ineffective and the conviction should be reversed." Michigan's abandonment rule, described above, "is an adequate and independent state-law basis for prohibiting federal review of a claim." *Theriot v. Vashaw*, 982 F.3d 999, 1005 (6th Cir. 2020). Because Hayes does not argue that actual innocence or cause and prejudice excuse his default of this claim, jurists of reason could not debate the district court's denial of his fourth claim.

Accordingly, the court **DENIES** the motion for a COA and **DENIES** as moot the motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-1527

QUANDRAIKO HAYES,

Petitioner-Appellant,

v.

MIKE BROWN, Warden,

Respondent-Appellee.

Before: BOGGS, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Quandraiko Hayes for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

QUANDRAIKO HAYES,

Petitioner,

v.

CONNIE HORTON,

Respondent.
_____/

Case No. 1:19-cv-13470

Honorable Thomas L. Ludington
United States District Judge

OPINION AND ORDER DIRECTING CLERK OF COURT TO TRANSFER MOTION FOR CERTIFICATE OF APPEALABILITY (ECF No. 21) AND APPLICATION TO PROCEED WITHOUT PREPAYING FEES AND COSTS ON APPEAL (ECF No. 23) TO UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT

Petitioner Quandraiko Hayes filed a *pro se* application for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his conviction for assault with intent to do great bodily harm less than murder, intentionally discharging a firearm in a dwelling causing serious impairment of a body function, felony-firearm, and being a fourth felony habitual offender.

This Court denied the Petition and declined to grant Petitioner a certificate of appealability or leave to appeal *in forma pauperis*. *Hayes v. Horton*, No. 1:19-CV-13470, 2022 WL 989211, at *1 (E.D. Mich. Mar. 31, 2022). This Court later denied Petitioner's motions to alter or to amend the judgment, for an evidentiary hearing, and for discovery. *Hayes v. Horton*, No. 1:19-CV-13470, 2022 WL 1493507 (E.D. Mich. May 11, 2022).

Petitioner concurrently filed a notice of appeal, ECF No. 22, a motion for a certificate of appealability, ECF No. 21, and an application to proceed *in forma pauperis*, ECF No. 23.

When a district court denies a certificate of appealability, the proper procedure for petitioners is to file a motion for a certificate of appealability in the appellate court with their

appeal of the order or judgment that they are appealing. *See Sims v. United States,* 244 F. 3d 509 (6th Cir. 2001) (citing FED. R. APP. P. 22(b)(1)). Petitioner should, therefore, direct his request for a certificate of appealability to the Sixth Circuit. This Court, in the interests of justice, will order that Petitioner's Motion for a Certificate of Appealability be transferred to the United States Court of Appeals for the Sixth Circuit—rather than deny the motion, requiring Petitioner to refile it.

A notice of appeal generally "confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal." *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam)); *see also Workman v. Tate*, 958 F. 2d 164, 167 (6th Cir. 1992). Petitioner's Notice of Appeal divests this Court of jurisdiction to consider his Motion to Proceed *in forma pauperis*. Jurisdiction of this action was transferred to the Sixth Circuit Court of Appeals upon the filing of the Notice of Appeal; thus, Petitioner's Motion may only be addressed by the Sixth Circuit. *See Grizzell v. Tennessee,* 601 F. Supp. 230, 232 (M.D. Tenn. 1984). This Court will, therefore, order that the Clerk of the Court transfer Petitioner's Motion to Procced *in forma pauperis* to the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. § 1631.

Accordingly, it is **ORDERED** that the Clerk of the Court is **DIRECTED** to transfer the Motion for Certificate of Appealability, ECF No. 21, and the Application to Proceed Without Prepaying Fees and Costs on Appeal, ECF No. 23, to the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. § 1631.

Dated: June 8, 2022

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

QUANDRAIKO HAYES,

Petitioner,

v.

CONNIE HORTON,

Respondent.
_____/

Case No. 1:19-cv-13470

Honorable Thomas L. Ludington
United States District Judge

OPINION AND ORDER DENYING PETITIONER'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT, MOTION FOR EVIDENTIARY HEARING, AND MOTION FOR DISCOVERY

Petitioner Quandraiko Hayes filed a *pro se* application for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his conviction for assault with intent to do great bodily harm less than murder, intentionally discharging a firearm in a dwelling causing serious impairment of a body function, felony-firearm, and being a fourth felony habitual offender. ECF No. 1.

This Court denied the Petition and declined to grant Petitioner a certificate of appealability or leave to appeal *in forma pauperis*. *See generally Hayes v. Horton*, No. 1:19-CV-13470, 2022 WL 989211 (E.D. Mich. Mar. 31, 2022).

Petitioner has filed a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e), ECF No. 16; a motion for an evidentiary hearing, ECF No. 17; and a motion for discovery, ECF No. 18. As explained hereafter, Petitioner's three motions will be denied.

Granting a motion to alter or amend judgment under Rule 59(e) is within a district court's discretion. *Davis ex rel. Davis v. Jellico Cmty. Hosp., Inc.*, 912 F. 2d 129, 132 (6th Cir. 1990). A motion to alter or amend judgment will generally be granted if the district court made a clear error of law, there is an intervening change in the controlling law, or granting the motion would prevent

some manifest injustice. *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F. 3d 804, 834 (6th Cir. 1999). "A Rule 59 motion 'may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.'" *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 841 (6th Cir. 2018) (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486, n.5 (2008)). Moreover, a Rule 59(e) motion to alter or amend judgment is not a substitute for an appeal. *See Johnson v. Henderson*, 229 F. Supp. 2d 793, 796 (N.D. Ohio 2002).

District courts "must deny . . . a motion to alter or amend judgment pursuant to Rule 59(e)" if the motion merely presents "the same issues ruled upon by the Court, either expressly or by reasonable implication." *Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999) (citation omitted).

Petitioner's Motion to Alter or Amend Judgment merely re-raises the same arguments from his Petition for a Writ of Habeas Corpus. *Compare* ECF No. 1, *with* ECF No. 16. In denying that Petition, this Court considered and rejected Petitioner's current arguments. *See generally Hayes v. Horton*, No. 1:19-CV-13470, 2022 WL 989211 (E.D. Mich. Mar. 31, 2022). In other words, Petitioner's Rule 59(e) Motion merely "relitigate[s] old matters." *Brumley*, 909 F.3d at 841.

Because Petitioner has merely presented "the same issues ruled upon by the Court, either expressly or by reasonable implication," when it denied the Petition for a Writ of Habeas Corpus, this Court "must" deny Petitioner's Rule 59(e) Motion to Alter or Amend Judgment. *Hence,* 49 F. Supp. 2d at 553; *accord Brumley*, 909 F.3d at 841.

Petitioner also filed a motion for an evidentiary hearing. ECF No. 17. But a habeas petitioner is not entitled to an evidentiary hearing on non-meritorious claims. *See Stanford v. Parker*, 266 F. 3d 442, 459–60 (6th Cir. 2001). Because this Court has already found that

Petitioner's claims are meritless, he is not entitled to an evidentiary hearing. *Id.* For this reason, Petitioner's Motion for Evidentiary Hearing will be denied. Rule 6(a), 28 U.S.C. foll. § 2255.

Finally, Petitioner filed a motion for discovery. ECF No. 18. This Court has already determined that petitioner's allegations, even if true, would not entitle him to habeas relief. *See generally Hayes*, 2022 WL 989211. Because Petitioner's claims are without merit, Petitioner's Motion for Discovery "must be denied." *See Sellers v. United States*, 316 F. Supp. 2d 516, 523 (E.D. Mich. 2004). For this reason, Petitioner's Motion for Discovery will be denied. Rule 6(a), 28 U.S.C. foll. § 2255.

Accordingly, it is **ORDERED** that Petitioner's Motion to Alter or Amend Judgment, ECF No. 16, is **DENIED**.

Further, it is **ORDERED** that Petitioner's Motion for Evidentiary Hearing, ECF No. 17 is **DENIED**.

Further, it is **ORDERED** that Petitioner's Motion for Discovery, ECF No. 18, is **DENIED**.

Dated: May 11, 2022

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

QUANDRAIKO HAYES,

Petitioner,

v.

CONNIE HORTON,

Respondent.
_____/

Case No. 1:19-cv-13470

Honorable Thomas L. Ludington
United States District Judge

JUDGMENT

In accordance with the Opinion and Order Denying Petition for Writ of Habeas Corpus entered on this date:

It is **ORDERED AND ADJUDGED** that the Petition for Writ of Habeas Corpus, ECF No. 1, is **DENIED.**

Further, it is **ORDERED** that a certificate of appealability is **DENIED.**

Further, it is **ORDERED** that permission to appeal *in forma pauperis* is **DENIED.**

Dated: March 31, 2022

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

QUANDRAIKO HAYES,

Petitioner,

v.

CONNIE HORTON,

Respondent.
_____/

Case No. 1:19-cv-13470

Honorable Thomas L. Ludington
United States District Judge

OPINION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS, DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY, AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

Petitioner Quandraiko Hayes was convicted by a judge in the Wayne County Circuit Court of assault with intent to do great bodily harm less than murder (AWIGBH), MICH. COMP LAWS § 750.84; intentionally discharging a firearm in a dwelling causing serious impairment of a body function, MICH. COMP LAWS § 750.234b(4); felony firearm, MICH. COMP LAWS § 750.227b; and being a fourth felony habitual offender, MICH. COMP LAWS § 769.12. *See* ECF No. 1 at PageID.12.

Petitioner, incarcerated at the Kinross Correctional Facility in Kincheloe, Michigan, has filed a *pro se* application for a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. Petitioner contends (1) that there was insufficient evidence to convict him, (2) that he was denied the effective assistance of counsel, (3) that his sentence violated the Eighth Amendment because it was disproportionate, and (4) that the sentencing court violated the Ex Post Facto Clause by using his prior convictions to impose a mandatory minimum of 25 years' imprisonment on the habitual-offender charge.

Respondent filed an answer to the Petition, asserting that Petitioner's claims lack merit, are procedurally defaulted, or both. ECF No. 10. This Court agrees that Petitioner's claims have no merit or are procedurally defaulted. Accordingly, the Petition will be denied.

I.

Petitioner was convicted at a bench trial in the Wayne County Circuit Court. This Court recites the relevant facts upon which the Michigan Court of Appeals relied, which are presumed correct on habeas review under 28 U.S.C. § 2254(e)(1). *See Wagner v. Smith,* 581 F.3d 410, 413 (6th Cir. 2009):

> This case arises from the nonfatal shooting of the victim in the early morning hours of February 7, 2017. The prosecution presented testimony from the victim and his girlfriend. Both witnesses testified that they had been staying with Hayes at his home, but Hayes told them to leave and then retrieved a shotgun. Hayes fired the gun, hitting the victim in the arm. The victim, who the trial court found was reluctant to testify at trial, claimed that the shooting was an accident. The victim's girlfriend denied seeing the shot fired and said she was intoxicated at the time. Hayes testified on his own behalf and claimed that the shooting was accidental. The trial court discredited the testimony indicating that the shooting was accidental and found the testimony offered by the victim's girlfriend unreliable because she was intoxicated. It found beyond a reasonable doubt that Hayes intentionally fired the shotgun at the victim and convicted Hayes of AWIGBH, intentional discharge of a firearm in or at a dwelling causing serious impairment, and felony-firearm. Pursuant to MCL 769.12(1)(a), the trial court sentenced Hayes to mandatory 25-year minimum sentences for the AWIGBH and intentional discharge of a firearm convictions, to be served consecutive to a two-year sentence for the felony-firearm conviction. This appeal followed.

People v. Hayes, No. 339563, 2019 WL 208023, at * 1 (Mich. Ct. App. Jan. 15, 2019) (unpublished) (per curiam).

Petitioner seeks a writ of habeas corpus on the following grounds:

> I. The trial court violated the Fifth and Fourteenth Amendments of the United States Constitution, due process of law and Due Process Clause rights, by admitting legally insufficient evidence to prove beyond a reasonable doubt that Quandraiko Hayes committed the offense of assault with intent to do great bodily harm less than murder.

II. The trial court violated the Sixth and Fourteenth Amendments of the United States and Michigan constitutions, right to effective assistance of counsel and Due Process Clause rights, because Quandraiko Hayes received ineffective assistance of counsel during trial.

III. The trial court violated the Fourteenth and Eighth Amendments of the United States Constitution, Due Process Clause rights and cruel and unusual punishment respectively, where Quandraiko Hayes was improperly enhanced in sentence under Michigan Compiled Laws § 769.12(1)(a), because not all prior offenses could be used, resulting in a disproportionate sentence.

IV. The trial court violated the Sixth and Fourteenth Amendments of the United States and Michigan constitutions, right to effective assistance of counsel and Due Process Clause rights, because Quandraiko Hayes received ineffective assistance of counsel during trial.

V. The trial court violated the *ex post facto* laws of the United States Constitution, articles I and X, by admitting Quandraiko Hayes's prior convictions of amended laws under Michigan Compiled Laws § 769.12(1)(a) to impose a mandatory 25-year sentence.

ECF No. 1 at PageID.14–15, 19.

II.

As amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(d) imposes the following standard of review for habeas cases:

> 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.

28 U.S.C. § 2254(d).

A decision of a state court is "contrary to" clearly established federal law if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law or if the state court decides a case differently than the Supreme Court has on a set of materially

indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000). An "unreasonable application" occurs when "a state court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case." *Id.* at 409. A federal habeas court may not "issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Id.* at 410–11. "[A] state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (*citing Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). In this way, to obtain habeas relief in federal court, state prisoners must show that the state court's rejection of their claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103.

III.

A.

Petitioner first contends that there was insufficient evidence presented at trial for the judge to convict him of the charges: to show that the shooting was intentional rather than accidental. ECF No. 1 at PageID.28–32.

1.

It is beyond question that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship,* 397 U.S. 358, 364 (1970).

But in reviewing the sufficiency of the evidence to support a criminal conviction, the crucial question is "whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318 (1979); *see also* William E. Thro, *No*

Angels in Academe: Ending the Constitutional Deference to Public Higher Education, 5 BELMONT L. REV. 27, 55 (2018) (stating that "beyond a reasonable doubt" means "99% certainty").

The court need not "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." *Id.* Rather, the relevant question is "whether after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 307. The *Jackson* standard applies to bench trials, as well as to jury trials. *See, e.g., United States v. Bronzino*, 598 F. 3d 276, 278 (6th Cir. 2010).

A federal habeas court cannot overturn a state-court decision that rejects a sufficiency of the evidence claim simply because the federal court disagrees with the state court's resolution of that claim. Rather, the federal court may grant habeas relief only if the state-court decision was an objectively unreasonable application of the *Jackson* standard. *See Cavazos v. Smith,* 565 U.S. 1, 2 (2011) ("Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold."). Indeed, "the only question under *Jackson* is whether that finding was so insupportable as to fall below the threshold of bare rationality." *Coleman v. Johnson*, 566 U.S. 650, 656 (2012).

A state court's determination that the evidence does not fall below that threshold is entitled to "considerable deference under AEDPA." *Id.*

Finally, on habeas review, a federal court does not reweigh the evidence or redetermine the credibility of the witnesses observed at trial. *Marshall v. Lonberger*, 459 U.S. 422, 434 (1983). It is the province of the factfinder to weigh the probative value of the evidence and resolve any conflicts in testimony. *Neal v. Morris*, 972 F. 2d 675, 679 (6th Cir. 1992). Therefore, a habeas

court must defer to the factfinder's assessment of the witnesses' credibility. *Matthews v. Abramajtys*, 319 F. 3d 780, 788 (6th Cir. 2003); *see also United States v. Vance*, 956 F.3d 846, 853 (6th Cir. 2020) (holding that in a bench trial, "the district court, as the finder of fact, is best placed to determine witness credibility" (citing *United States v. Bingham*, 81 F.3d 617, 635 (6th Cir. 1996))).

2.

Under Michigan law, the elements of assault with intent to do great bodily harm less than murder are: "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm *less than murder*." *Raybon v. United States*, 867 F.3d 625, 632 (6th Cir. 2017) (quoting *People v. Brown*, 703 N.W.2d 230, 236 (Mich. Ct. App. 2005)). Assault with intent to do great bodily harm is a specific intent crime which requires "an intent to do serious injury of an aggravated nature," but an actual injury need not occur. *Id.* (internal citations omitted).

Under Michigan law, intentionally discharging a firearm into an occupied structure "is a general intent crime that 'only requires proof that defendant intentionally discharged the firearm' and not 'proof of the intent to cause a particular result the intent that a specific consequence occur as a result of the performance of the prohibited act.'" *Henry v. Martin*, 105 F. App'x. 786, 788–89 (6th Cir. 2004) (unpublished) (quoting *People v. Henry*, 239 Mich.App. 140, 607 N.W.2d 767, 770 (1999) (per curiam)). The elements of felony-firearm are that the defendant "possessed a firearm while committing, or while attempting to commit, a felony offense." *See Parker v. Renico*, 506 F. 3d 444, 448 (6th Cir. 2007) (citing MICH. COMP. LAWS § 750.227b).

3.

The Michigan Court of Appeals rejected Plaintiff's claim as follows:

> Hayes argues that there was insufficient evidence to support his conviction of AWIGBH because there was no evidence that he intended to cause great bodily harm. Although Hayes and the victim both testified that the shooting was an accident, the trial court disbelieved that testimony. We defer to the trial court's credibility determinations. The evidence at trial was sufficient to enable the trial court to find that the elements of AWIGBH were proven beyond a reasonable doubt. First, the evidence allowed the trial court to find that Hayes attempted with force or violence to do corporal harm to the victim by firing a shotgun at him. Second, Hayes's intent to do serious injury of an aggravated nature can be inferred from Hayes's requests that the victim and his girlfriend leave, followed by his conduct of obtaining a shotgun and then discharging the gun while it was pointed toward the victim. The victim's girlfriend testified that Hayes told them to "get out" while pointing the shotgun at her, which can reasonably be interpreted as a threat. Further, Hayes's intent can be inferred from his use of a dangerous weapon and the victim's injury. Hayes's actions after the shooting further support an inference that the shooting was not an accident. Hayes prevented the victim's girlfriend from calling 911, put the shotgun behind a couch in another room, and left the location. The trial court reasonably could have found that these actions were inconsistent with Hayes's claim that the shotgun discharged accidently.

People v. Hayes, No. 339563, 2019 WL 208023, at *2 (Mich. Ct. App. Jan. 15, 2019) (unpublished) (per curiam) (internal citations omitted).

The Michigan Court of Appeals used this reasoning to reject Petitioner's sufficiency of evidence challenge to his other two convictions. *People v. Hayes*, 2019 WL 208023, at * 4.

4.

The Michigan Court of Appeals's decision was reasonable, precluding relief. When viewed in a light most favorable to the prosecution, the evidence established that the shooting was intentional—not accidental, as Petitioner claimed. Petitioner became angry at the victim and his girlfriend, obtained a shotgun, pointed it at the victim's girlfriend while telling the victim and his girlfriend to leave, and then discharged the shotgun. Petitioner then prevented the girlfriend from calling 911 before hiding the shotgun behind a couch in another room and leaving the crime scene. From that evidence, this Court concludes that a rational judge not only could have rejected Petitioner's claim that the shooting was accidental, but also could have concluded that the elements

of the charged offenses had been proven beyond a reasonable doubt. Therefore, Petitioner is not entitled to habeas relief on his sufficiency-of-evidence claim. *See, e.g., Draughn v. Jabe*, 803 F. Supp. 70, 79–80 (E.D. Mich. 1992).

Moreover, the judge decided to reject any testimony that the shooting was accidental, which he based on his determination that such testimony was incredible in light of the other evidence. A federal court reviewing a state-court conviction on habeas review "faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." *Cavazos v. Smith,* 565 U.S. 1, 7 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 326 (1979)). Moreover, when evidence in a bench trial "consists largely of contradictory oral evidence, due regard must be accorded the trial court's opportunity to judge the credibility of witnesses." *Bryan v. Virgin Islands,* 150 F. Supp. 2d 821, 827 (D.V.I. 2001) (per curiam), *aff'd sub nom. Virgin Islands v. Bryan*, 29 F. App'x 65 (3d Cir. 2002) (unpublished).

In this case, the trial court judge discredited the Petitioner's and victim's testimony that the shooting was accidental. This Court must defer to the trial court's credibility findings. *Id.* at 828; *United States v. Vance*, 956 F.3d 846, 853 (6th Cir. 2020).

B.

Petitioner also claims that the prosecutor failed to disprove that he shot in self-defense. ECF No. 1 at PageID.28–32.

1.

Petitioner's claim is not cognizable on habeas review. Under Michigan law, self-defense is a common-law affirmative defense. *See People v. Dupree*, 788 N.W.2d 399, 404 (Mich. 2010). "An affirmative defense, like self-defense, 'admits the crime but seeks to excuse or justify its

commission. It does not negate specific elements of the crime.'" *People v. Reese*, 815 N.W.2d 85, 101 n.76 (2012) (quoting *Dupree*, 788 N.W.2d at 405 n.11). Although the prosecutor must disprove a claim of self-defense under Michigan law, *see People v. Watts*, 232 N.W.2d 396, 398 (Mich. Ct. App. 1975), "[p]roof of the nonexistence of all affirmative defenses has never been constitutionally required," *see Smith v. United States*, 568 U.S. 106, 110 (2013) (quoting *Patterson v. New York*, 432 U.S. 197, 210 (1977)). Further, "[i]n those States in which self-defense is an affirmative defense to murder, the Constitution does not require that the prosecution disprove self-defense beyond a reasonable doubt." *Gilmore v. Taylor*, 508 U.S. 333, 359 (1993) (Blackmun, J., dissenting) (citing *Martin v. Ohio*, 480 U.S. 228, 233, 234 (1987)); *see also Allen v. Redman*, 858 F.2d 1194, 1197 (6th Cir.1988) (explaining that habeas review of sufficiency-of-the-evidence claims is limited to elements of the crimes as defined by state law (first citing *Engle v. Isaac*, 456 U.S. 107 (1982); and then citing *Duffy v. Foltz*, 804 F.2d 50 (6th Cir. 1986))). Therefore, "the due process 'sufficient evidence' guarantee does not implicate affirmative defenses." *Caldwell v. Russell,* 181 F.3d 731, 740 (6th Cir. 1999) ("[P]roof supportive of an affirmative defense cannot detract from proof beyond a reasonable doubt that the accused had committed the requisite elements of the crime."). As indicated, Petitioner's claim that the prosecutor failed to disprove his affirmative defense of self-defense is not cognizable on habeas review. *Id.*; *Allen v. Redman,* 858 F. 2d at 1200.

2.

Even if Petitioner's claim was cognizable, he would not be entitled to habeas relief. The Michigan Court of Appeals rejected Petitioner's claim as follows:

> In this case, there was ample evidence to discount Hayes's claim of self-defense. Initially, Hayes testified that he obtained the shotgun in order to scare the victim. Thus, Hayes was engaged in the commission of a crime, felonious assault, and could not justifiably claim self-defense. In addition, although Hayes

> claimed that the victim moved toward him and, at some point, threatened to take the gun from him, the victim was not armed with a weapon and there is no indication that the victim used deadly force against Hayes. Hayes's mere expression of fear did not allow a trier of fact to conclude that Hayes's actions were necessary to prevent imminent death or great bodily harm. Thus, there was sufficient evidence to exclude beyond a reasonable doubt any claim of self-defense.

People v. Hayes, No. 339563, 2019 WL 208023, at *3 (Mich. Ct. App. Jan. 15, 2019) (unpublished) (per curiam) (internal citations and footnote omitted).

Under Michigan law, self-defense requires an honest and reasonable belief of imminent serious bodily harm or death based on the defendant's circumstances at the time of the act. *Blanton v. Elo*, 186 F. 3d 712, 713, n.1 (6th Cir. 1999) (first citing *People v. Heflin*, 456 N.W.2d 10 (1990); and then quoting Mich. Std. Crim. Jury Instr. 2d 7.15(3)). The evidence must show that: (1) the defendant honestly and reasonably believed that he or she was in danger; (2) the danger feared was death or serious bodily harm or imminent forcible sexual penetration; (3) the action taken appeared at the time to be immediately necessary; and (4) the defendant was not the initial aggressor. *Johnigan v. Elo*, 207 F. Supp. 2d 599, 608–09 (E.D. Mich. 2002) (first citing *People v. Barker*, 468 N.W. 2d 492, 494 (Mich. 1991) (Levin, J., dissenting); then citing *People v. Kemp*, 508 N.W.2d 184, 187 (Mich. Ct. App. 1993), *abrogated on other grounds by People v. Reese*, 815 N.W.2d 85 (Mich. 2012); and then citing *People v. Deason*, 384 N.W.2d 72, 74 (Mich. Ct. App. 1985))). Defendants may not use any more force than the amount necessary to defend themselves. *Johnigan,* 207 F. Supp. 2d at 609 (citing *Kemp*, 508 N.W.2d at 187). "[T]he law of self-defense is based on necessity, and a killing or use of potentially lethal force will be condoned only when the killing or use of potentially lethal force was the only escape from death, serious bodily harm, or imminent forcible sexual penetration under the circumstances." *Id.* (internal citation omitted).

The Michigan Court of Appeals' decision was reasonable, precluding relief. Petitioner was not entitled to shoot in self-defense because he was the initial aggressor, as he obtained the shotgun

and pointed it at the victim and the victim's girlfriend. Moreover, defendants cannot claim statutory self-defense if they were committing a crime when they used deadly force. *See* MICH. COMP. LAWS § 780.972(2). Petitioner's act of pointing a shotgun at the victim's girlfriend amounted to a felonious assault, which precluded him from raising statutory self-defense. Further, there was no evidence or testimony that the victim was armed, disproving Petitioner's self-defense claim. *See, e.g., Johnson v. Hofbauer,* 159 F. Supp. 2d 582, 597 (E.D. Mich, 2001) (sufficient evidence demonstrated that the defendant did not act in self-defense, because the defendant had begun shooting as the victim was retreating, there was no evidence that victim was armed, and the evidence of whether the victim appeared to be drawing weapon was conflicting). Finally, self-defense was inconsistent with Petitioner's testimony that he shot accidentally rather than intentionally. *See, e.g., Taylor v. Withrow*, 288 F.3d 846, 853–54 (6th Cir. 2002) (holding that petitioner could not claim self-defense under Michigan law because he testified that he shot accidentally). As indicated, Petitioner is not entitled to relief on this claim.

C.

Petitioner's second claim asserts that he was denied the effective assistance of trial counsel because his trial counsel failed to call a firearms expert and to argue self-defense at trial. ECF No. 1 at PageID.33–36.

To prevail on his ineffective-assistance claims, Petitioner must show that the state court's conclusion regarding these claims was contrary to or an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). *See Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009). *Strickland* established a two-prong test for claims of ineffective assistance of counsel: Petitioner must show (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. *Strickland,* 466 U.S. at 687.

1.

Petitioner first contends that trial counsel was ineffective for failing to call a firearms expert to support his accidental-discharge defense. ECF No. 1 at PageID.34–35.

The Michigan Court of Appeals rejected that claim as follows:

> Hayes argues that an expert "could have aided the defense theory" that the shotgun accidentally discharged. Hayes, however, fails to offer any proof that an expert witness would have testified in a manner favorable to the defense. Accordingly, Hayes has not established the factual predicate for this claim. Therefore, this claim cannot succeed.

People v. Hayes, No. 339563, 2019 WL 208023, at *5 (Mich. Ct. App. Jan. 15, 2019) (unpublished) (per curiam) (internal citation omitted).

The Michigan Court of Appeals's decision was reasonable, precluding habeas relief. A habeas petitioner's claim that trial counsel was ineffective for failing to call an expert witness cannot be based on speculation. *See Keith v. Mitchell*, 455 F.3d 662, 672 (6th Cir. 2006). Petitioner presented no evidence to the Michigan courts or this Court that there was a firearms expert who would testify favorably on his behalf. In the absence of such proof, Petitioner cannot establish that he was prejudiced by counsel's failure to call a firearms expert to testify at trial in support of the second prong of a claim for ineffective assistance of counsel. *See Clark v. Waller,* 490 F. 3d 551, 557 (6th Cir. 2007) ("Indeed, he has offered no evidence, beyond his assertions, to prove what the content of Wafford's testimony would have been; *a fortiori*, he cannot show that he was prejudiced by its omission." (citing *Stewart v. Wolfenbarger*, 468 F.3d 338, 353 (6th Cir.2006))).

2.

Petitioner also contends that trial counsel was ineffective for failing to advance a self-defense theory at trial. ECF No. 1 at PageID.35–36.

The Michigan Court of Appeals rejected that claim as follows:

> As discussed earlier, a self-defense theory was not supported by Hayes's testimony or the evidence presented at trial. Accordingly, trial counsel was not ineffective for failing to pursue a theory of self-defense.

People v. Hayes, 2019 WL 208023, at * 5.

The Michigan Court of Appeals concluded that counsel was not ineffective for failing to present a self-defense claim that was unsupported by the evidence. Counsel was not ineffective for failing to advance a meritless self-defense claim. *See, e.g., Ivory v. Jackson*, 509 F.3d 284, 296 (6th Cir. 2007). Accordingly, Petitioner is not entitled to relief on his second claim.

D.

Respondent contends that, for various reasons, Petitioner procedurally defaulted his remaining claims. ECF No. 10 at PageID.453–59, 469–70, 473–74.

When the state courts clearly and expressly rely on a valid state procedural bar, federal habeas review is also barred unless the petitioner can demonstrate (1) "cause" for the default and actual prejudice as a result of the alleged constitutional violation; or (2) that failure to consider the claim will result in a "fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750–51 (1991). If a petitioner fails to show cause for his procedural default, the court need not reach the prejudice issue. *Smith v. Murray*, 477 U.S. 527, 533 (1986). But in an extraordinary case of a constitutional error that has probably resulted in the conviction of an innocent person, a federal court may consider the constitutional claims presented even without a showing of cause for procedural default. *Murray v. Carrier*, 477 U.S. 478, 479–80 (1986). To be credible, such a claim of innocence requires the petitioner to support the allegations of constitutional error with new reliable evidence that was not presented at trial. *Schlup v. Delo*, 513 U.S. 298, 324 (1995). "'[A]ctual innocence' means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 624 (1998).

But the Sixth Circuit has noted that when "a straightforward analysis of settled state procedural default law is possible, federal courts cannot justify bypassing the procedural default issue." *Sheffield v. Burt*, 731 F. App'x 438, 441 (6th Cir. 2018) (unpublished).

1.

Respondent argues that Petitioner procedurally defaulted his third and fifth claims because he failed to preserve the issues at trial by objecting, and that the Michigan Court of Appeals consequently reviewed these claims for only plain error. ECF No. 10 at PageID.453–59, 473–74.

The Michigan Court of Appeals concluded that Petitioner's third claim (alleging that his sentence violated the Eighth Amendment's ban on cruel and unusual punishment) and fifth claim (that the judge violated due process and the Ex Post Facto Clause of the Fifth Amendment by using prior convictions to sentence him as a fourth habitual offender) would be reviewed for plain error because Petitioner had failed to preserve both issues at the trial-court level. The Michigan Court of Appeals also found no plain error regarding either claim that would justify reversing Petitioner's sentence or habitual-offender conviction. *People v. Hayes*, No. 339563, 2019 WL 208023, at *5–8 (Mich. Ct. App. Jan. 15, 2019) (unpublished) (per curiam).

Michigan law requires defendants in criminal cases to present their claims in the trial court to preserve them for appellate review. *See People v. Carines*, 597 N.W.2d 130, 137–38 (Mich. 1999). Under Michigan law, a defendant must argue in the state trial court that his sentences were unconstitutionally cruel or unusual in order to preserve the issue for appellate review. *See People v. Bowling*, 299 Mich. App. 552, 557, 830 N.W.2d 800, 803 (2013); *see also Jordan v. Warren*, No. 19-2319, 2020 WL 2319125, at * 2 (6th Cir. Feb. 20, 2020) (holding that the habeas petitioner procedurally defaulted his claim that his mandatory-minimum 25-year sentence violated the Eighth Amendment because he failed to raise the claim at sentencing). Likewise, Petitioner did not

preserve his claim that the trial court erred by sentencing him as a fourth-offense habitual offender, because he did not raise this issue in the trial court. *See People v. Siterlet*, 829 N.W.2d 285, 287 (Mich. Ct. App. 2012), *aff'd in part, vacated in part on other grounds*, 840 N.W.2d 372 (Mich. 2013).

Petitioner procedurally defaulted his third and fifth claims. The Michigan Court of Appeals's plain-error review of Petitioner's third and fifth claims "does not constitute a waiver of state procedural default rules." *See Seymour v. Walker*, 224 F.3d 542, 557 (6th Cir. 2000) (citing *Paprocki v. Foltz*, 869 F.2d 281, 284–85 (6th Cir. 1989)). Instead, this Court should view the Michigan Court of Appeals's plain-error review of Petitioner's claims as an enforcement of the State's procedural-default rules. *See Hinkle v. Randle*, 271 F.3d 239, 244 (6th Cir. 2001).

2.

Respondent argues that Petitioner procedurally defaulted his fourth claim because he abandoned the claim on appeal by not adequately briefing it. ECF No. 10 at PageID.469–70.

The Michigan Court of Appeals rejected Petitioner's fourth claim—which he raised in a *pro per* supplemental brief[1]—because he failed to establish a factual basis for his claim and to adequately brief the issue. *People v. Hayes*, No. 339563, 2019 WL 208023, at *7 (Mich. Ct. App. Jan. 15, 2019) (unpublished) (per curiam).

Under Michigan law, "an appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority." *People v. Matuszak*, 687

[1] Standard 4 of Administrative Order 2004-6, 471 Mich. cii (2004), "explicitly provides that a *pro se* brief may be filed within 84 days of the filing of the brief by the appellant's counsel, and may be filed with accompanying motions." *Ware v. Harry*, 636 F. Supp. 2d 574, 594, n.6 (E.D. Mich. 2008) *objections overruled*, No. 06-CV-10553-DT, 2008 WL 4852972 (E.D. Mich. Nov. 7, 2008).

N.W.2d 342, 353 (Mich. Ct. App. 2004) (quoting *People v. Watson*, 629 N.W.2d 411, 421–22 (Mich. Ct. App. 2001)). Such cursory treatment constitutes abandonment of the issue. *Id.* Under Michigan law, parties who fail to develop any argument or cite any authority supporting a claim waive appellate review of the issue. *People v. Griffin*, 597 N.W.2d 176, 186 (Mich. Ct. App. 1999).

A state-court conclusion that an issue was waived is considered a procedural default of the issue. *See, e.g., Shahideh v. McKee*, 488 F. App'x 963, 965 (6th Cir. 2012) (unpublished) (per curiam).

Petitioner waived appellate review of his fourth claim by offering only cursory support for the issue in his appellate brief. As indicated, Petitioner procedurally defaulted the claim.

Petitioner has offered no reason for his failure to preserve his third and fifth claims at the trial level or his failure to brief adequately his fourth issue on his appeal of right. Petitioner did not raise a claim of ineffective assistance of counsel, or any other reason, to excuse the various procedural defaults. By failing to raise any claim or issue to excuse the procedural default, Petitioner "has forfeited the question of cause and prejudice." *Rogers v. Skipper*, 821 F. App'x 500, 503 (6th Cir. 2020) (unpublished).

Additionally, Petitioner has not presented any new reliable evidence to support any assertion of innocence that would allow this Court to consider his defaulted claims grounds for a writ of habeas corpus despite the procedural default. Petitioner's sufficiency-of-evidence claim, his first claim, is insufficient to invoke the actual-innocence doctrine to the procedural-default rule. *See Malcum v. Burt,* 276 F. Supp. 2d 664, 677 (E.D. Mich. 2003). For those reasons, Petitioner is not entitled to relief on his remaining claims.

IV.

Before Petitioner may appeal this Court's dispositive decision, a certificate of appealability must issue. *Phillips v. Pollard*, No. 1:20-CV-13326, 2021 WL 5234507, at *5 (E.D. Mich. Nov. 10, 2021) (first citing 28 U.S.C. § 2253(c)(1)(a); and then citing FED. R. APP. P. 22(b)).

"The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. foll. § 2254.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Skaggs v. Parker*, 235 F.3d 261, 266 (6th Cir. 2000). When a court rejects a habeas claim on the merits, the substantial-showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) ("A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.").

Applying that standard, a district court may not review the full merits and must "limit its examination to a threshold inquiry into the underlying merit of [the petitioner's] claims." *Miller-El*, 537 U.S. at 336–37. Likewise, when a district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, a certificate of appealability should issue if the petitioner demonstrates "that jurists of reason would find it debatable" not only whether the petition states a valid claim of the denial of a constitutional right" but also "whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

Petitioner has failed to make a substantial showing of the denial of a constitutional right. For that reason, a certificate of appealability will not issue. *Williams v. McCullick*, No. 1:19-CV-10416, 2021 WL 5827010, at *6 (E.D. Mich. Dec. 8, 2021). And an appeal of this Order would

not be in good faith because Petitioner's arguments have no merit. *See* FED. R. APP. P. 24(a); *see Royster v. Warden, Chillicothe Corr. Inst.*, No. 17-3205, 2017 WL 8218911, at *2 (6th Cir. Sept. 29, 2017). Consequently, Petitioner may not appeal *in forma pauperis*. 28 U.S.C. § 1915(a)(3).

V.

Accordingly, it is **ORDERED** that the Petition for Writ of Habeas Corpus, ECF No. 1, is **DENIED**.

Further, it is **ORDERED** that a certificate of appealability is **DENIED**.

Further, it is **ORDERED** that permission to appeal *in forma pauperis* is **DENIED**.

Dated: March 31, 2022

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Order

May 28, 2019

159230

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 159230
COA: 339563
Wayne CC: 17-001771-FC

QUANDRAIKO HAYES,
Defendant-Appellant.

/

On order of the Court, the application for leave to appeal the January 15, 2019 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 28, 2019

Clerk

s0520

People v. Hayes, 2019 Mich. App. LEXIS 62

Court of Appeals of Michigan

January 15, 2019, Decided

No. 339563

Reporter

2019 Mich. App. LEXIS 62 * | 2019 WL 208023

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v QUANDRAIKO HAYES, Defendant-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: **[*1]** Wayne Circuit Court LC. No. 17-001771-01-FC.

Core Terms

sentences, trial court, convictions, felony, quotation, marks, self-defense, firearm, juvenile, argues, minimum sentence, ineffective, shotgun, mandatory, shooting, Facto, prior felony conviction, intentional discharge, felony-firearm, offender, assault, cruel, serious impairment, discharged, girlfriend, punishable, inferred, beyond a reasonable doubt, great bodily harm, trial counsel

Judges: Before: LETICA, P.J., and CAVANAGH and METER, JJ.

Opinion

PER CURIAM.

Quandraiko Hayes appeals as of right his bench trial convictions of assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84, intentional discharge of a firearm in or at a dwelling causing serious impairment, MCL 750.234b(4), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.[1] The trial court sentenced Hayes as a fourth-offense habitual offender, MCL 769.12, to concurrent prison terms of 25 to 40 years each for the AWIGBH and intentional discharge of a firearm convictions and a consecutive two-year term of imprisonment for the felony-firearm conviction, with credit for 127 days served. We affirm.

This case arises from the nonfatal shooting of the victim in the early morning hours of February 7, 2017. The prosecution presented testimony from the victim and his girlfriend. Both witnesses testified that they had been staying with Hayes at his home, but Hayes told them to leave and then retrieved a shotgun. Hayes fired the gun, hitting the victim in the arm. The victim, who the trial court found was reluctant to testify at trial, claimed that the shooting was an accident. **[*2]** The victim's girlfriend denied seeing the shot fired and said she was intoxicated at the time. Hayes testified on his own behalf and claimed that the shooting was accidental. The trial court discredited the testimony indicating that the shooting was accidental and found the testimony offered by the victim's girlfriend unreliable because she was intoxicated. It found beyond a reasonable doubt that Hayes intentionally fired the shotgun at the victim and convicted Hayes of AWIGBH, intentional discharge of a firearm in or at a dwelling causing serious impairment, and felony-firearm. Pursuant to MCL 769.12(1)(a), the trial court sentenced Hayes to mandatory 25-year minimum sentences for the AWIGBH and intentional discharge of a firearm convictions, to be served consecutive to a two-year sentence for the felony-firearm conviction. This appeal followed.

I. HAYES'S BRIEF ON APPEAL

Hayes raises three issues on appeal in a brief filed by appointed appellate counsel.

A. SUFFICIENCY OF THE EVIDENCE

First, Hayes argues that there was insufficient evidence to support his convictions. We disagree.

"A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process **[*3]** of law." *People v Lane*, 308 Mich App 38, 57; 862 NW2d 446 (2014). "We review de novo a challenge to the sufficiency of the evidence in a bench trial, viewing the evidence in the light most favorable to the prosecution and determining whether the trial court could have found the essential elements proved beyond a reasonable doubt." *People v Ventura*, 316 Mich App 671, 678; 894 NW2d 108 (2016). As stated by this Court in *People v Murphy*, 321 Mich App 355, 358-359; 910 NW2d 374 (2017):

> When reviewing a challenge to the sufficiency of the evidence, [a]ll conflicts in the evidence must be resolved in favor of the prosecution, and circumstantial evidence and all reasonable inferences drawn therefrom can constitute satisfactory proof of the crime. It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. [Quotation marks and citations omitted; alteration in original.]

"The elements of AWIGBH are (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Stevens*, 306 Mich App 620, 628; 858 NW2d 98 (2014) (quotation marks and citation omitted). "The intent to do great bodily harm less than murder is an intent to do serious injury of an aggravated nature." *Id.* (quotation marks and citation omitted).

> Because **[*4]** of the difficulty in proving an actor's intent, only minimal circumstantial evidence is necessary to show that a defendant had the requisite intent. Intent to cause serious harm can be inferred from the defendant's actions, including the use of a dangerous weapon or the making of threats. Although actual injury to the victim is not an element of the crime, injuries suffered by the victim may also be indicative of a defendant's intent. [*Id.* at 629 (citations omitted).]

Hayes argues that there was insufficient evidence to support his conviction of AWIGBH because there was no evidence that he intended to cause great bodily harm. Although Hayes and the victim both testified that the shooting was an accident, the trial court disbelieved that testimony. We defer to the trial court's credibility determinations. See *People v Barbee*, __ Mich App __, __; __ NW2d __ (2018) (Docket No. 337515); slip op at 6. The evidence at trial was sufficient to enable the trial court to find that the elements of AWIGBH were proven beyond a reasonable doubt. First, the evidence allowed the trial court to find that Hayes attempted with force or violence to do corporal harm to the victim by firing a shotgun at him. See *Stevens*, 306 Mich App at 628. Second, Hayes's intent to do serious injury of an aggravated nature **[*5]** can be inferred from Hayes's requests that the victim and his girlfriend leave, followed by his conduct of obtaining a shotgun and then discharging the gun while it was pointed toward the victim. See *id.* at 628-629. The victim's girlfriend testified that Hayes told them to "get out" while pointing the shotgun at her, which can reasonably be interpreted as a threat. See *id.* at 629. Further, Hayes's intent can be inferred from his use of a dangerous weapon and the victim's injury. See *id.* Hayes's actions after the shooting further support an inference that the shooting was not an accident. Hayes prevented the victim's girlfriend from calling 911, put the shotgun behind a couch in another room, and left the location. The trial court reasonably could have found that these actions were inconsistent with Hayes's claim that the shotgun discharged accidently.

On appeal, Hayes also claims that he acted in self-defense. Hayes did not assert self-defense as a theory at trial. Moreover, a self-defense theory was not supported by the evidence. "A finding that a defendant acted in justifiable self-defense necessarily requires a finding that the defendant acted intentionally, but that the circumstances justified his actions." **[*6]** *People v Guajardo*, 300 Mich App 26, 43; 832 NW2d 409 (2013) (quotation marks and citation omitted). At trial, Hayes testified that he obtained the shotgun in order to scare the victim into leaving because the victim had a look of rage on his face and had previously assaulted Hayes and destroyed Hayes's property. Hayes maintained, however, that he did not intend to shoot the victim. Given Hayes's testimony that he did not act intentionally, his testimony did not support a self-defense theory.

Further, under MCL 780.972(1):

> An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if . . .
>
> (a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

In this case, there was ample evidence to discount Hayes's claim of self-defense. Initially, Hayes testified that he obtained the shotgun in order to scare the victim. Thus, Hayes was engaged in the commission of a crime, felonious assault, 2 and could not justifiably claim self-defense. In addition, although **[*7]** Hayes claimed that the victim moved toward him and, at some point, threatened to take the gun from him, the victim was not armed with a weapon and there is no indication that the victim used deadly force against Hayes. See *Stevens*, 306 Mich App at 630. Hayes's mere expression of fear did not allow a trier of fact to conclude that Hayes's actions were necessary to prevent imminent death or great bodily harm. Thus, there was sufficient evidence to exclude beyond a reasonable doubt any claim of self-defense. See *id.* at 630-631.

Hayes further argues that there was insufficient evidence to sustain his convictions for intentional discharge of a firearm and felony-firearm. However, these additional challenges to the sufficiency of the evidence are outside the scope of the statement of the question presented for review and are, therefore, not properly before this Court. MCR 7.212(C)(5); *People v Mysliwiec*, 315 Mich App 414, 420; 890 NW2d 691 (2016). Even if these arguments had been properly presented, they too lack merit.

MCL 750.234b provides, in relevant part:

> (2) An individual who intentionally discharges a firearm in a facility that he or she knows or has reason to believe is a dwelling or a potentially occupied structure, in reckless disregard for the safety of any individual and whether or not the dwelling or structure **[*8]** is actually occupied at the time the firearm is discharged, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $10,000.00, or both.
>
> * * *
>
> (4) If an individual violates subsection (1) or (2) and causes the serious impairment of a body function of another individual, the individual is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $25,000.00, or both.

"'Serious impairment of a body function' means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c." MCL 750.234b(10)(d). That definition includes loss of use of a hand or finger and loss or substantial impairment of a bodily function. MCL 257.58c(b) and (d). Accordingly, in this case, the elements of the crime of discharge of a firearm in an occupied structure under MCL 750.234b(4) are (1) the intentional discharge of a firearm, (2) in a facility (3) that the defendant knows or has reason to believe is a dwelling or potentially occupied structure, (4) in reckless disregard for the safety of any individual, (5) whether or not the dwelling or structure is actually occupied, and (6) the defendant caused the serious impairment of a body function of another individual.

Hayes only disputes the first element, **[*9]** claiming that there was no evidence that he intentionally discharged the shotgun. For the reasons discussed earlier, the trial court could have reasonably inferred from the evidence that Hayes intentionally discharged the firearm, and the court was free to disbelieve the testimony claiming that the shooting was accidental. The court could have additionally found beyond a reasonable doubt that the intentional discharge occurred in a facility that Hayes knew was occupied because he, the victim, and the victim's girlfriend were staying there. The victim was struck in the left forearm and testified that he required multiple surgeries as a result of the gunshot wound and still lacked feeling in two of his fingers. Thus, the trial court could have also concluded beyond a reasonable doubt that Hayes acted in reckless disregard for the victim's safety and caused serious impairment of a body function. Accordingly, there was sufficient evidence to support Hayes's conviction of intentional discharge of a firearm in a dwelling causing serious impairment.

"The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Hayes **[*10]** only argues that he was not guilty of any underlying felony. For the reasons discussed above, however, there was sufficient evidence that Hayes committed AWIGBH. Moreover, while Hayes argues that self-defense is a valid defense to a charge of felony-firearm, for the reasons stated above, a self-defense theory was not supported by the evidence.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Next, Hayes argues that his trial counsel was ineffective for failing to call an expert witness and failing to argue self-defense. We disagree.

"Generally, whether a defendant had the effective assistance of counsel is a mixed question of fact and constitutional law." *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012) (quotation marks and citation omitted). "This Court reviews findings of fact for clear error and questions of law de novo." *Id.* But because Hayes did not raise his claims of ineffective assistance of counsel before the trial court in a motion for a new trial or evidentiary hearing, 3 our "review is limited to mistakes apparent from the record." *Id.* As explained in *Heft*, 299 Mich App at 80-81:

> A criminal defendant has the fundamental right to effective assistance of counsel. However, it is the defendant's burden to prove that counsel did not provide effective assistance. To **[*11]** prove that defense counsel was not effective, the defendant must show that (1) defense counsel's performance was so deficient that it fell below an objective standard of reasonableness and (2) there is a reasonable probability that defense counsel's deficient performance prejudiced the defendant. The defendant was prejudiced if, but for defense counsel's errors, the result of the proceeding would have been different. [Citations omitted.]

Hayes first argues that trial counsel was ineffective for failing to obtain a firearms expert. "Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim." *People v Jackson (On Reconsideration)*, 313 Mich App 409, 432; 884 NW2d 297 (2015) (quotation marks and citation omitted).

> An attorney's decision whether to retain witnesses, including expert witnesses, is a matter of trial strategy. A defendant must meet a heavy burden to overcome the presumption that counsel employed effective trial strategy. In general, the failure to call a witness can constitute ineffective assistance of counsel only when it deprives the defendant of a substantial defense. [*People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009) (quotation marks and citation omitted).] **[*12]**

Hayes argues that an expert "could have aided the defense theory" that the shotgun accidentally discharged. Hayes, however, fails to offer any proof that an expert witness would have testified in a manner favorable to the defense. Accordingly, Hayes has not established the factual predicate for this claim. See *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). Therefore, this claim cannot succeed.

Hayes also claims that trial counsel was ineffective for failing to argue a self-defense theory. "Trial counsel is responsible for preparing, investigating, and presenting all substantial defenses. A substantial defense is one that might have made a difference in the outcome of the trial." *People v Chapo*, 283 Mich App 360, 371; 770 NW2d 68 (2009) (quotation marks and citation omitted). As discussed earlier, a self-defense theory was not supported by Hayes's testimony or the evidence presented at trial. Accordingly, trial counsel was not ineffective for failing to pursue a theory of self-defense.

C. DUE PROCESS

Lastly, Hayes contends that he is entitled to resentencing because the trial court improperly enhanced his sentences pursuant to MCL 769.12(1)(a), resulting in disproportionate sentences. We disagree.

"In order to preserve an issue for appellate review, it must be raised before and considered by the trial court." **[*13]** *People v Solloway*, 316 Mich App 174, 197; 891 NW2d 255 (2016). Hayes did not argue below that the imposition of mandatory 25-year minimum sentences pursuant to MCL 769.12(1)(a) violated due process, but raised it for the first time in his motion to remand, which this Court denied. Therefore, this issue is unpreserved. Unpreserved issues are reviewed for plain error affecting the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The trial court imposed mandatory 25-year minimum sentences pursuant to MCL 769.12(1)(a), which provides:

> (1) If a person has been convicted of any combination of 3 or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 13 of this chapter as follows:
>
> (a) If the subsequent felony is a serious crime or a conspiracy to commit a serious crime, and 1 or more of the prior felony convictions are listed prior felonies, the court shall sentence the person to imprisonment for not less than 25 years. Not more than 1 conviction arising out of the same transaction shall be considered a prior **[*14]** felony conviction for the purposes of this subsection only.

Hayes does not dispute that his current AWIGBH and discharge-in-a-building convictions are serious crimes under MCL 769.12(6)(c). Nor does he dispute that at least one of his prior felony convictions is for a listed prior felony, MCL 769.12(6)(a)(*iii*). Instead, Hayes argues that the trial court's use of a conviction for an offense committed when he was a juvenile 4 to impose 25-year minimum sentences under MCL 769.12(1)(a) violates due process, resulting in cruel and unusual punishment 5 and disproportionate sentences.

"In deciding if punishment is cruel or unusual, this Court looks to the gravity of the offense and the harshness of the penalty, comparing the punishment to the penalty imposed for other crimes in this state, as well as the penalty imposed for the same crime in other states." *People v Bowling*, 299 Mich App 552, 557-558; 830 NW2d 800 (2013) (quotation marks and citation omitted). "[A] proportionate sentence is not cruel or unusual." *Id.* at 558. A legislatively mandated sentence is presumptively proportionate. *People v Davis*, 250 Mich App 357, 369; 649 NW2d 94 (2002), citing *People v Williams*, 189 Mich App 400, 404; 473 NW2d 727 (1991). "In order to overcome the presumption that the sentence is proportionate, a defendant must present unusual circumstances that would render the presumptively proportionate sentence disproportionate." omitted). *Bowling*, 299 Mich App at 558 **[*15]** (quotation marks and citation

In this case, Hayes's 25-year minimum sentences were legislatively mandated. MCL 769.12(1)(a). Therefore, his sentences are presumptively proportionate and not cruel or unusual. See *Bowling*, 299 Mich App at 558; *Davis*, 250 Mich App at 369. Hayes does not present any unusual circumstances that would render these presumptively proportionate sentences disproportionate, see *Bowling*, 299 Mich App at 558, apart from arguing that relying on a conviction for an offense committed when he was a juvenile is improper and violates due process. But MCL 769.12(1)(a) does not prohibit the use of crimes committed when a defendant was a juvenile. Hayes recognizes our Court has already held that a juvenile convicted as an adult, but sentenced as a juvenile, was properly sentenced as a third-offense habitual offender because the statutory language "focuses only on whether a defendant has been convicted[.]" *People v Jones*, 297 Mich App 80, 86; 823 NW2d 312 (2012). Hayes's contention that *Jones* is distinguishable based on the nature of the mandatory sentence involved fails. The statute at issue here is likewise focused on the fact of a prior conviction, not the defendant's age at the time of the prior conviction.

Hayes, however, argues that juveniles must be treated differently than adult offenders, citing *Miller v Alabama*, 567 U.S. 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012) (holding that mandatory life sentences **[*16]** without parole for juvenile offenders are prohibited under the Eighth Amendment), and *Roper v Simmons*, 543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2005) (holding that execution of individuals who were under 18 years of age at the time of their capital crimes is prohibited by the Eighth and Fourteenth Amendments). Hayes's reliance on these cases is misplaced because he was not a juvenile when he committed the instant offenses. Rather, he was a 43-year-old adult. Thus, the cited cases regarding the sentencing of juvenile offenders are inapplicable.

Moreover, this Court has held that the 25-year mandatory minimum sentence prescribed by MCL 750.520b(2)(b) 6 does not constitute cruel or unusual punishment as applied to a juvenile offender. See *People v Payne*, 304 Mich App 667, 675; 850 NW2d 601 (2014). This Court concluded that while a minimum sentence of 25 years is substantial, it is not comparable to sentences of death and life without parole. *Id.* A 25-year sentence also "allow[s] for review of

an individual defendant's progress toward rehabilitation and provides a meaningful opportunity for release on parole." *Id.* If a juvenile may be permissibly sentenced to a mandatory 25-year minimum sentence, then the imposition of a 25-year mandatory minimum sentence against an adult offender based, in part, on the offender's commission of a crime when he was a juvenile also does **[*17]** not constitute cruel or unusual punishment.

II. HAYES'S STANDARD 4 BRIEF

Hayes raises two additional issues in a brief filed pursuant to Administrative Order No. 2004-6, Standard 4, 471 Mich c, cii (2004).

A. INEFFECTIVE ASSISTANCE

Hayes first raises a claim of ineffective assistance of counsel. Because Hayes did not raise his claim in the trial court, we review it for mistakes apparent from the record. *Heft*, 299 Mich App at 80.

Hayes simply states: "Counsel failed to impeach prior inconsistent statement. Prosecution use of perjured statement. Counsel was ineffective and the conviction should be reversed." He makes no attempt to provide legal analysis of this issue or identify the inconsistent or perjured statements to which he refers. As this Court has often explained:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*People v Waclawski*, 286 Mich App 634, 679; 780 NW2d 321 (2009), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).] attach legal consequences **[*18]** to acts before their effective date, and (2) they work to the disadvantage of the defendant. The crucial question in determining whether a law violates the Ex Post Facto Clause is whether the law changes the legal consequences of acts completed before its effective date. [Quotation marks and citations omitted.]

Because Hayes has failed to establish the factual predicate for this claim of ineffective assistance of counsel, *Jackson*, 313 Mich App at 432, or adequately brief this issue, *Waclawski*, 286 Mich App at 679, he is not entitled to appellate relief.

B. SENTENCING

Hayes also alleges that the enhancement of his sentences pursuant to MCL 769.12(1)(a) violated the prohibition against ex post facto laws. Because Hayes did not raise this argument below, it is unpreserved. See *Solloway*, 316 Mich App at 197. We review unpreserved issues for plain error affecting the defendant's substantial rights. *Carines*, 460 Mich at 763-764.

US Const, art I, § 10 states, in relevant part, "No State shall . . . pass any . . . ex post facto Law . . . ."[7] In *People v Patton*, __ Mich App __, __; __ NW2d__ (2018) (Docket No. 341105); slip op at 7, this Court recently stated:

> There are four categories of ex post facto laws: (1) any law that punishes an act that was innocent when the act was committed, (2) any law that makes an act a more serious criminal offense than when committed, (3) increases the punishment for a crime committed before the **[*19]** law was passed, or (4) any law that allows the prosecution to convict a defendant on less evidence than was required when the act was committed All ex post facto laws share two elements: (1) they

The precise nature of Hayes's argument is difficult to discern, but we nevertheless conclude that MCL 769.12(1)(a), the statute under which Hayes's sentences were enhanced, does not violate the Ex Post Facto Clause. Subsection (1)(a) of MCL 769.12 was added by 2012 PA 319, which became effective on October 1, 2012. There is no indication that the statute was given retroactive effect.

We further reject any argument that the use of Hayes's prior felony convictions to enhance his sentences under MCL 769.12(1)(a) violates the Ex Post Facto Clause even though the prior convictions were obtained before MCL 769.12 was amended in 2012. This Court has concluded that the Ex Post Facto Clause is not violated by the use of convictions obtained before the adoption of a habitual-offender law. See *People v Callon*, 256 Mich App 312, 320-321; 662 NW2d 501 (2003). This is because "it is the second or subsequent offense that is punished, not the first." *People v Palm*, 245 Mich 396, 403; 223 NW 67 (1929) (quotation marks and citation omitted). Accordingly, the use of Hayes's prior felony convictions obtained before the adoption of MCL 769.12(1)(a) to support the imposition of mandatory 25-year minimum sentences for subsequent offenses committed after MCL 769.12 was amended to add Subsection (1)(a) does **[*20]** not violate the Ex Post Facto Clause.

Hayes also argues that only one of his prior felony convictions occurred before the commission of the instant offense. According to the felony information, however, Hayes's prior felony convictions were from 1989, 1991, 1993. Hayes's presentence investigation report (PSIR) confirms the accuracy of these dates. At sentencing, Hayes's trial counsel stated that the PSIR was accurate, and counsel acknowledged that Hayes had four prior felonies and three prior misdemeanors. The offense in this case occurred in 2017. Thus, the record does not support Hayes's contention.

Hayes also complains that he was not aware of the mandatory-minimum law when he committed the prior felonies. However, ignorance of the law is not a defense to a criminal prosecution. *People v Beydoun*, 283 Mich App 314, 334-335; 770 NW2d 54 (2009).

Hayes further argues that there was a gap of 10 years or more between his prior convictions and the instant offenses and, therefore, his prior felonies were not listed on his record when the prosecution filed its notice. In support of this argument, Hayes cites MCL 777.50, which prohibits the use of a conviction more than 10 years old to score prior record variables 1 through 5. However, MCL 769.12(1)(a) has no similar 10-year-gap rule.

Affirmed.

/s/ Anica **[*21]** Letica

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter

Footnotes

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1 The trial court granted defendant's motion for a directed verdict on an additional count of assault with intent to commit murder, MCL 750.83, and found defendant not guilty of carrying a weapon with unlawful intent, MCL 750.226, felonious assault, MCL 750.82, and two additional felony-firearm charges.

2 "The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Urban*, 321 Mich App 198, 217; 908 NW2d 564 (2017) (quotation marks and citation omitted).

3 We recognize that Hayes filed a motion in this Court seeking remand for the purpose of conducting an evidentiary hearing to supplement the existing record, but this Court denied Hayes's motion. *People v Hayes*, unpublished order of the Court of Appeals, entered April 17, 2018 (Docket No. 339563).

4 One of his prior felony convictions was obtained in 1989, when Hayes, who was born in 1973, was 15 years old. The prosecution charged Hayes under the automatic waiver statute then in effect and the court convicted Hayes of a lesser offense. MCL 600.606; *People v Veling*, 443 Mich 23; 504 NW2d 456 (1993); *People v Parrish*, 216 Mich App 178; 549 NW2d 32 (1996).

5 Hayes initially refers to the Eighth Amendment to the United States Constitution, but then also refers to the Michigan Constitution, Const 1963, art 1, § 16. "[T]he Michigan provision prohibits 'cruel *or* unusual' punishments, while the Eighth Amendment bars only punishments that are both 'cruel *and* unusual.'" *People v Bowling*, 299 Mich App 552, 557 n 3; 830 NW2d 800 (2013) (some quotation marks and citation omitted). "If a punishment passes muster under the state constitution, then it necessarily passes muster under the federal constitution." *Id.* (quotation marks and citation omitted).

6 MCL 750.520b(2)(b) requires a mandatory 25-year minimum sentence for first-degree criminal sexual conduct committed by an individual 17 years of age or older against an individual less than 13 years of age.

7 Hayes does not rely on the Michigan Constitution.

Court of Appeals, State of Michigan

ORDER

People of MI v Quandraiko Hayes

Docket No. 339563

LC No. 17-001771-01-FC

Christopher M. Murray
Presiding Judge

Kirsten Frank Kelly

Thomas C. Cameron
Judges

The Court orders that the motion to remand is DENIED for failure to persuade the Court of the necessity of a remand at this time.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 17, 2018
Date

Chief Clerk

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs- Case No. 17-1771-01

QUANDRAIKO HAYES,

Defendant.
_____/

SENTENCE

Proceedings had in the above-entitled cause before the HONORABLE TIMOTHY M. KENNY, Wayne County Circuit Judge, Room 602, Frank Murphy Hall of Justice, Detroit, Michigan, on Wednesday, June 14, 2017.

APPEARANCES:

MATTHEW PENNY, Esq.,
Appearing on behalf of the People.

RICHARD W. GLANDA, Esq.,
Appearing on behalf of the Defendant.

TABLE OF CONTENTS

EXHIBITS

Identification	Marked	Received
NONE		

Detroit, Michigan

Wednesday, June 14, 2017

Approximately 9:15 a.m.

PROCEEDINGS

THE CLERK: Case Number 17-1771-01, People of the State of Michigan versus Quandraiko Hayes.

He's here today to be sentenced.

MR. PENNEY: Good morning, your Honor. Matthew Penney for the People.

MR. GLANDA: Good morning, Judge. Richard Glanda for Mr. Hayes.

THE COURT: Good morning, Mr. Hayes.

DEFENDANT HAYES: Good morning, Judge Kenny.

THE COURT: Mr. Hayes, before we get started, I want to advise you this was a trial that you had in this particular matter. I want you to understand under the laws of the State of Michigan you have the right to file a Claim of Appeal with the Michigan Court of Appeals, where they will hear your case, and they will review it.

And that if you can't afford to hire an attorney, the Court will appoint an attorney and furnish the attorney with portions of the transcripts and records that may be needed. The request for an attorney, as well as your filing your Claim of Appeal

with the Court of Appeals, must be done within 42 days of today's date.

MR. GLANDA: He did sign it. He has his paperwork. I just want him to understand that what he signed that was just his acknowledgement of the appellate papers. He needs to send these back in.

THE COURT: When you get to the Department of Corrections, Mr. Hayes, you need to mail those back.

DEFENDANT HAYES: Mail them back to who?

THE COURT: There is an address.

MR. GLANDA: You got to fill it out, fill out the form, then mail it back to the address.

THE COURT: They know all about that. When you get to the Department of Corrections, make sure you get a copy of the receipt of your mailing it. So in case something gets lost in the paperwork, you have the paperwork, and you don't lose your claim of appeal.

All right.

Mr. Glanda, let's go over the Presentence Report first if we can please.

MR. GLANDA: I have reviewed the Presentence Report, Judge. It is accurate. No omissions, deletions or corrections. Mr. Hayes has the four prior felonies and three misdemeanors.

I'll defer to Mr. Penney regarding the

guideline scoring.

There is 127 days' credit.

THE COURT: All right.

MR. PENNEY: The only points I would take issue with for the Offense Variables would be OV Three. That's scored as ten points for bodily injury. I think that ought to be 25 for life threatening, given the severity of the injuries.

THE COURT: I note your objection, Mr. Penney. I'm going leave it at ten. I think ten is the appropriate scoring value of the particular Offense Variable.

MR. PENNEY: Thank you very much, Judge.

THE COURT: All right. That's fine. Guidelines are 45 to 75.

However, with regards to the scoring, recognizing that they need to be scored under People versus Lockridge the reality is that there is another statute that takes precedence. That is MCL 769.12 (1)(a), the fourth offender habitual in this particular matter.

So let me hear from the People first. I always give the defense the last word with regards to sentencing.

MR. PENNEY: Your Honor, the statute is

clear. Given his record the mandatory minimum needs to apply. So that would be 25 years. We would request 25 to 50 consecutive to the two for the felony firearm.

THE COURT: Mr. Glanda.

MR. GLANDA: Judge, my client does wish, I believe, he does wish to address the Court. I would just indicate that Mr. Hayes does take responsibility for this incident.

However, he does indicate still indicates that it was an accident. I mean both people had been drinking, were intoxicated, and he regrets it, and I'll defer to him now.

THE COURT: All right.

Mr. Hayes, this is the date and time scheduled for sentencing. Anything that you would like to say, sir?

DEFENDANT HAYES: Yes, I would like to apologize to the State, to the People and as well as the victim in this case, which was a total mishap on my behalf, which wasn't planned, which wasn't set out to be intentional on any acts, and I accept responsibility on behalf of me being intoxicated and running and grabbing a gun, which I should have been smart enough to, you know, to grab the phone instead.

But, you know, by him assaulted me before I

did have some type of fear of him in regards to that, and I couldn't know, I didn't know what he was going to do to me that day. So I just tried the best way I could to get him out the house, and that was my only way. I didn't mean it, and I would like to say I ask for forgiveness from him and to you.

THE COURT: All right.

Mr. Hayes, I think in this particular matter that ordinarily my sentence would be considerably lighter in this matter, but I am bound and compelled to follow the statute in this particular matter.

So on the charge of felony firearm it's the sentence of the Court that you be committed to the Michigan Department of Corrections for a period of two years. There is credit for 127 days spent in custody.

On the charge of discharging a firearm in a building causing serious impairment and on the charge of assault with intent to do great bodily harm less than murder, being sentenced pursuant to MCL 769.12 (1)(a), the habitual fourth offense, where at least one of the prior crimes listed found within 769.12(6)(a), it is the sentence of the Court that on each of those Counts that the defendant be committed, as required by statute, to a term not less than 25 years, a period not greater than 40 years.

Those charges will run concurrently with one another at the same time and consecutive to the felony firearm charge.

There is 127 days credit on each of those Counts.

Restitution will be determined at a later date.

$60.00 DNA testing fee, $204.00 state cost, $130.00 crime victim assessment fee, court costs of $1,300.00 and attorney fees of $400.00.

There we go.

MR. GLANDA: Thank you.

MR. PENNEY: Thank you, Judge.

(Whereupon this matter was concluded).

-- -- --

REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

I, SHEDRIA L. BLACKMAN, CSR-0454, Official Court Reporter in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through page 9 inclusive, was reduced to typewritten form by means of Computer-Assisted Transcription and comprise a true and accurate transcript of the proceedings taken in the above-entitled matter, on Wednesday, June 14, 2017.

Shedria L Blackman
SHEDRIA L. BLACKMAN, CRS-0454
Certified Shorthand Reporter

DATED: This 23rd day of October, 2017.

there was some sort or argument going on about the football game the day before, but there was some sort of an argument going on. Whether or not it was actually about football is kind of irrelevant, but she testified that there was an argument going on.

So he gets upset about, either football or them not leaving. Regardless, the defendant did have words prior to the shooting. Maybe he was done talking. Apparently he was done talking when he came out with the shotgun, and he told them to leave again.

They didn't leave fast enough for him unfortunately because that's how we ended up here.

I think those words and the understanding that there was some sort of argument going on again speaks to his intent to fire that gun back in February.

DECISION OF THE COURT

THE COURT: All right.

The Court has to examine all of the evidence and testimony to try to determine whether or not the People have met their burden in proving that what happened on February 7th of 2017 at 18403 Warwick in the City of Detroit was something other than an accident.

Yesterday on the defense' motion for a Directed Verdict on the motion, on the issue of assault

with intent to murder, I granted that motion on this Court's conclusion that there was no intent to kill which could be found, even when looking at the evidence in the light most favorable to the prosecution.

But I do think it's important when looking at the totality of the facts that were presented here in this case to try to discern what exactly happened inside the Warwick residence and also to look at the motivation of the witnesses who testified in this particular case.

It is fair to say yesterday when Mr. Corburn testified, that he probably would have preferred to be at any place on planet earth other than in the courtroom testifying against Mr. Hayes. He was, to put it charitably, a most reluctant witness.

But there were some things that Mr. Corburn mentioned both on direct and I think some on cross-examination that I think were particularly noteworthy.

While Mr. Corburn tried to put a gloss on the testimony that well in his view that it was an accident, I choose not to credit that for a number of reasons.

Mr. Corburn was equivocal in his testimony that he did not at any time grab the barrel of the

weapon. There was no wrestling over this particular weapon that caused its discharge.

Mr. Corburn also was emphatic that he and Ms. Pulliam were ordered to leave the house at about 1:30 in the morning on a winter's night and that Mr. Corburn was pretty upset or irritated about the fact that it was going to be something that couldn't wait until morning.

And Mr. Corburn was, I think, resistant or reluctant to want to leave in the middle of the night on a winter's evening, presumably with no other place to go.

Ms. Pulliam's testimony is pretty unreliable I think. Instead of her being reluctant to give an answer to questions that were presented and pausing for minutes on end before giving an answer, she had an almost instantaneous response that she was drunk. That was the response that pretty much any question that she seemed to provide a fair amount of detail.

So the Court is left to look at and sift the motivation of the witnesses who testified on behalf of the prosecution, also balance it against the testimony of Mr. Hayes in this particular case, Mr. Hayes contending the gun went off accidentally.

Mr. Hayes interestingly enough was unwilling

to be specific really as to where the gun was pointed. He obviously couldn't say it was pointed at the ceiling or that it was pointed at the floor because Mr. Corburn is shot in the arm, and there is evidence of shotgun pellets striking the wall of the dining room. So that would belie any comment that the gun was pointed either directly at the floor or that it was pointed at the ceiling.

It is also I think almost axiomatic to indicate that guns like that don't go off just accidentally just by holding them. Somebody has to pull the trigger for it to go. Whether it's pulled intentionally or whether it's pulled accidentally, the reality is this Court believes beyond any doubt Mr. Hayes had his finger on the trigger when it went off and that he pulled the trigger.

The question is whether or not any of the crimes mentioned by the People have in fact been made out.

In this particular matter it is clear that the defendant's motivation for going and getting the shotgun, the loaded shotgun with six shotgun, live shotgun shells in it was to compel Ms. Pulliam and Mr. Corburn to leave the house, and that they were either reluctant to leave, or they were not leaving

fast enough.

The testimony in this case clearly demonstrates that Mr. Corburn ended up getting shot inside the house, shot in the left arm in the forearm, and it nearly took his arm off.

The testimony is that he has had four surgeries to date already in the hospital with four more. He has no feeling in two of his fingers at this particular point and that he does in fact have some serious impairment for the function of his left arm.

It should be noted for the record that when he testified yesterday, he appeared in a sling that was in fact bandaged when he came in to testify.

The question here with regards to Count Two, assault with intent to do great bodily harm is first of all was there an intent on the part of Mr. Hayes, or did he make an assault upon Mr. Corburn I should say.

The answer to that question is yes. Mr. Hayes in this Court's view in response to Mr. Corburn not leaving immediately, was assaulted by having a shotgun pointed at him. It was pointed at him, and Mr. Hayes did in fact fire that weapon. It was fired one time.

The circumstantial evidence in this case does not indicate that there was some sort of warning shot

that was fired. It doesn't indicate that there were multiple shots that were fired like into the floor, into the ceiling or anything that could be even remotely construed as a warning shot. The object of Mr. Hayes' displeasure was inside the house was within range.

The Court does find that Mr. Hayes did in fact intentionally fire at Mr. Corburn and did so with the intent to do great bodily harm to him.

It's not done with the intent to kill him because as I indicated, there was clearly five other live shotgun shells in the weapon, none of them were used. None of them were fired, but there was one that was fired, and it was fired at Mr. Corbin.

And with regards to that, it was in fact a gun with the intent to do great bodily harm. The use of a shotgun fired at that range clearly would cause great bodily harm, and it did cause great bodily harm as the statute and the case law define it.

So with regards to Count Two, assault with intent to do great bodily harm, I will find the defendant guilty as charged.

With regards to Count Three, the defendant is charged with intentionally discharging a firearm in a facility that he knew or had reason to believe was a

dwelling and acted in reckless, disregard for the safety of another person and caused serious impairment to the body function.

In this particular case, as stated earlier I do conclude beyond any reasonable doubt that the defendant intentionally discharged that shotgun. That he was inside a dwelling. He knew he was in a dwelling because that's where he was living.

That he knew or had reason to know that the structure was in fact occupied because there were others who were inside; specifically, Ms. Pulliam, himself and Mr. Coburn, and that the defendant discharged the firearm in reckless disregard for the safety of another person.

Firing a shotgun inside a house in the same room at another person and being drunk certainly shows a reckless disregard for the safety of Mr. Corburn.

So I find with regards to Count Three, the defendant is guilty as charged.

Count Four, the charge of felonious assault is an alternative verdict. I found the defendant guilty of assault with intent to do great bodily harm. So in Count Four the defendant will be found not guilty.

Count Five is sort of an interesting case.

The charge is that the defendant with intent to use a dangerous weapon unlawfully against the person of another, went armed with a firearm; to wit, a long gun.

In this particular case the defendant walked just a matter of a few feet to gain possession of a firearm and then returned and fired. I don't think that that is what the statute intends with regards to going armed.

I think it has more to do with taking a firearm, getting in your car, driving to a location and using it with some other unlawful intent, rather it's to rob a store or to go shoot up a house or whatever.

I think the mere manner of walking a few feet to grab a loaded weapon to then turn a few feet and then shoot is not meeting the elements of the offense.

So with regards to Count Five I'll find the defendant not guilty.

Count Six the defendant is charged with possessing a firearm; to wit, a long gun at the time he committed or attempted to commit the crime of assault with intent to murder or assault with intent to do great bodily harm less than murder against Courtney Corburn.

Having found the defendant guilty of assault with intent to do great bodily harm, I will find the

defendant guilty of felony firearm in Count Six.

I do believe that with regards to Count Seven and Eight those other felony firearm Counts must fall.

I find the defendant not guilty in Count Seven and Eight.

That's my verdict.

We'll schedule sentencing for?

THE CLERK: The 7th of June.

MR. GLANDA: That's fine.

THE CLERK: Sentence will be set for 14th of June.

Mr. Hayes is remanded awaiting sentence.

Bond is cancelled.

(Whereupon this matter was concluded).

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