United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 14, 2022
Decided February 28, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 21-3277

ZOHN WANG KUB YANG,
Petitioner-Appellant,

v.

DAN CROMWELL,
Respondent-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 21-C-780

William C. Griesbach,
Judge.

ORDER

Zohn Wang Kub Yang seeks to appeal the denial of his petition under 28 U.S.C. § 2254, which he cannot do without a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is **DENIED**. The motion for leave to appeal *in forma pauperis* and all other motions are **DENIED**.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ZOHN WANG KUB YANG,

Petitioner,

v. Case No. 21-C-780

DAN CROMWELL,

Respondent.

DECISION AND ORDER

Petitioner Zohn Wang Kub Yang filed a petition for federal relief from his state court conviction pursuant to 28 U.S.C. § 2254 on June 23, 2021. Yang was convicted in Outagamie County Circuit Court of one count of attempted first-degree intentional homicide, one count of aggravated battery, one count of strangulation and suffocation, three counts of disorderly conduct, two counts of criminal damage to property, and one count of endangering safety, and was sentenced to 20 years of initial confinement and 20 years of extended supervision, to run consecutive to his sentence of two years and three months in the local jail.

On July 19, 2021, the Court screened the petition pursuant to Rule 4 of the Rules Governing § 2254 Cases and allowed Yang to proceed on his claim that his Fifth Amendment rights were violated because law enforcement used "tactics to overcome his ability to voluntarily remain silent" when he was interviewed at a hospital. Dkt. No. 1 at 5. The Court ordered Respondent to either file an appropriate motion seeking dismissal or answer the petition and Yang to file a reply within 30 days following the filing of Respondent's answer. Respondent filed an answer on October 15, 2021, and Yang filed a reply on November 10, 2021. The Court finds that no further

briefing is required and will resolve the petition on the record as it now stands. For the following reasons, the petition will be denied and the case will be dismissed.

BACKGROUND

On April 27, 2015, police were dispatched to a medical emergency at the home of Pachia Lor and her husband Zohn Yang in Little Chute, Wisconsin. Lor's leg had been amputated when she was struck by a car in the couple's garage. Ms. Lor was transported to Theda Clark hospital for treatment. While in transport to the hospital, Ms. Lor told law enforcement that she thought her husband had intentionally struck her with the car.

Later that evening, between 11:30 and midnight, Yang was driven by his pastor to the hospital where his wife had been taken. Prior to Yang's arrival, the hospital contacted the Neenah Police Department to initiate lockdown procedures based on Ms. Lor's statements to the effect that Yang had intentionally struck her with the car and intended to harm her. Under the lockdown procedures, "not everybody was free to walk around the hospital at their will." Dkt. No. 12-7 at ¶ 5. Once Yang arrived at the hospital, the hospital took measures to limit his movements to ensure that he could not visit with or see his wife. Law enforcement officers contributed to the hospital's efforts to safeguard Ms. Lor by monitoring Yang in the waiting room area and restricting his contact with his wife's family members. Two officers also accompanied Yang to the restroom.

Sometime later, Yang was admitted to the hospital for testing or observation relating to complaints of chest pain. Between 2:30 a.m. and 4:30 a.m., Investigator Daniel Running interviewed Yang in his hospital room with the door closed. Running advised Yang that he did not have to speak to him, but he did not advise Yang of his right to counsel. During the interview, Running did not make promises or threats to Yang, did not handcuff or physically restrain him,

did not place him under formal arrest, and did not tell him that he could not leave the room or the hospital.

Yang received discharge paperwork from the hospital between 4:30 a.m. and 4:45 a.m. Hospital personnel dictated the timing of Yang's medical discharge, not law enforcement. Shortly thereafter, Running left Yang's hospital room. Sometime following Yang's medical discharge shortly after 4:45 a.m., Sergeant Wang Lee entered the room, intending to question Yang about his wife's injuries. Although Lee was wearing plain clothes, Lee identified himself as a police officer and advised Yang that he was not under arrest. Yang recognized Lee from church. Lee's one-hour interrogation of Yang was conducted in a conversational manner, in both English and Hmong, and was free from threats or promises. Yang made incriminating statements during this interrogation.

Before trial, Yang moved to suppress the incriminating statements he made to Lee. The trial court held a suppression hearing and concluded that Lee's questioning did not constitute a custodial interrogation because a reasonable person in Yang's position would have felt free to leave the hospital after being discharged and told that he was not under arrest. The trial court denied the suppression motion and subsequently denied reconsideration. The matter proceeded to trial, and Yang was convicted on all charges.

Yang appealed the judgment of conviction. The Wisconsin Court of Appeals affirmed Yang's conviction. *State v. Yang*, 2019AP617-CR (Wis. Ct. App. Mar. 9, 2021), Dkt. No. 12-7. The Wisconsin Supreme Court denied Yang's petition for review on May 19, 2021.

ANALYSIS

This petition is governed by the Antiterrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2254. Under AEDPA, a federal court may grant habeas relief only when a state court's

decision on the merits was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by" decisions from the Supreme Court, or was "based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d); *see also Woods v. Donald*, 575 U.S. 312, 315–16 (2015). A state court decision is "contrary to . . . clearly established Federal law" if the court did not apply the proper legal rule, or, in applying the proper legal rule, reached the opposite result as the Supreme Court on "materially indistinguishable" facts. *Brown v. Payton*, 544 U.S. 133, 141 (2005). A state court decision is an "unreasonable application of . . . clearly established federal law" when the court applied Supreme Court precedent in "an objectively unreasonable manner." *Id.* This is, and was meant to be, an "intentionally" difficult standard to meet. *Harrington v. Richter*, 562 U.S. 86, 102 (2011). "To satisfy this high bar, a habeas petitioner is required to 'show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'" *Woods*, 575 U.S. at 316 (quoting *Harrington*, 562 U.S. at 103).

Yang asserts that the state courts made an unreasonable determination of fact in light of the evidence presented. To prevail under § 2254(d)(2), a petitioner must show that the state court decision "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)(2). "[A] determination of a factual issue made by a State court shall be presumed to be correct" unless the petitioner can rebut the "presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). "Unreasonableness also serves as the touchstone against which state court decisions based upon determinations of fact in light of the evidence presented are evaluated." *Ward v. Sternes*, 334 F.3d 696, 703–04 (7th Cir. 2003) (citing § 2254(d)(2)). "[A] state-court factual determination is not

unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010). Instead, unreasonableness may be established if "a petitioner shows that the state court determined an underlying factual issue against the clear and convincing weight of the evidence." *Morgan v. Hardy*, 662 F.3d 790, 798 (7th Cir. 2011).

Yang claims that the trial court incorrectly found Yang was not in custody during the questioning conducted by law enforcement in his hospital room and made inadequate findings of fact in support of its ruling. Based on the evidence before the state court, including the testimony of Investigator Daniel Running and Sergeant Wang Lee, I cannot conclude that its findings are "an unreasonable determination of the facts." § 2254(d)(2). This Court must defer to the trial court's findings of fact because Yang has not presented clear and convincing evidence to rebut them. §§ 2254(d), (e)(1). In short, the state courts did not violate § 2254(d)(2).

Yang also asserts that the statements he made to police without having been advised of his constitutional rights should have been suppressed under *Miranda v. Arizona*, 384 U.S. 436 (1966). The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. To protect the right against self-incrimination, the Supreme Court has established procedural safeguards requiring law enforcement to advise a person of his Fifth Amendment right prior to any custodial interrogation. *See Miranda*, 384 U.S. at 468–77. In particular, before the start of a custodial interrogation, law enforcement must advise the person of his right to remain silent, that any statements he makes can be used as evidence against him, and that he has the right to the advice of an attorney during questioning, whether he can afford to hire one or not. *Id.* at 479. But these warnings are not required before any questioning by police. "*Miranda* warnings are due only when a suspect interrogated by the police is 'in

custody.'" *Thompson v. Keohane*, 516 U.S. 99, 102 (1995). In determining whether a person is "in custody," "the initial step is to ascertain whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *Howes v. Fields*, 565 U.S. 499, 509 (2012) (internal quotation marks, alterations, and citations omitted). Even if the person would not have felt free to leave, the court must ask "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.*

Focusing on the time period when Yang made the incriminating statements during his interview with Lee, the Wisconsin Court of Appeals concluded Yang was not in custody. The court noted that Yang was advised that he was not under arrest and was free to leave multiple times during his interviews with Running and Lee. Dkt. No. 12-7, at ¶ 17. The court explained that, during the one-hour interview with Lee, Yang was not under a degree of restraint comparable to a formal arrest. *Id.* ¶ 19. In particular, the court observed that Yang "was not handcuffed or otherwise physically restrained, did not have a weapon pointed at him, and was not frisked." *Id.* ¶ 18. In addition, the court noted that the police did not move Yang to the hospital room where he was interviewed and that the hospital room was not inherently coercive like a police station or squad car. *Id.* The court concluded that, based on the totality of the circumstances, "a reasonable person in Yang's position would have felt free to leave the hospital after two officers subsequently informed him that he was free to leave and after any medical need for him to be at the hospital had dissipated." *Id.* ¶ 19. The court held that the trial court properly denied Yang's suppression motion and affirmed the judgment of conviction. The Wisconsin court's determination was not contrary to or an unreasonable application of clearly established Supreme Court law. Because the state court's decision was not an unreasonable application of clearly established law and did not involve

an unreasonable determination of fact in light of the evidence, Yang's petition must be denied. *See Stechauner v. Smith*, 852 F.3d 708, 716 (7th Cir. 2017) ("On these facts, reasonable jurists could conclude that Stechauner was not in custody at the hospital. Though some of the interrogation circumstances suggest that Stechauner's freedom of movement was restricted, the duration of the questioning was relatively short, Stechauner was not placed in handcuffs or other restraints, and there is no indication of coercion, deception, or use of force on the part of the police.").

CONCLUSION

For these reasons, Yang is not entitled to federal habeas relief on his claim. His petition for writ of habeas corpus is therefore **DENIED**, and the clerk is directed to enter judgment dismissing the case. A certificate of appealability is **DENIED**. I do not believe that reasonable jurists would find that Yang has made a substantial showing of the denial of a constitutional right.

Yang is advised that the judgment entered by the clerk is final. A dissatisfied party may appeal this Court's decision to the Court of Appeals for the Seventh Circuit by filing in this Court a notice of appeal within 30 days of the entry of judgment. *See* Fed. R. App. P. 3, 4.

SO ORDERED at Green Bay, Wisconsin this 17th day of November, 2021.

s/ William C. Griesbach
William C. Griesbach
United States District Judge

United States District Court

EASTERN DISTRICT OF WISCONSIN

ZOHN WANG KUB WANG,

Petitioner,

v.

JUDGMENT IN A CIVIL CASE
Case No. 21-C-780

DAN CROMWELL,

Respondent.

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict

☒ **Decision by Court.** This action came before the Court for consideration.

IT IS HEREBY ORDERED AND ADJUDGED that the Petition for Writ of Habeas Corpus filed by Zohn Wang Kub Yang is DENIED and this case is DISMISSED.

Approved: s/ William C. Griesbach
WILLIAM C. GRIESBACH
United States District Judge

Dated: November 17, 2021

GINA M. COLLETTI
Clerk of Court

s/ Terri Lynn Ficek
(By) Deputy Clerk