

SUPREME COURT OF THE UNITED STATES
NO. 22-5629

May 19, 2023

Henry Crawford
Petitioner,

-against-

Kevin Mazza
Respondent,

REQUEST FOR EXTENTION OF TIME

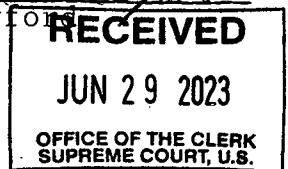
Comes now the Petitioner, Henry Crawford hereby ask this Honorable court to grant permission for an extention of time not to exceed 30 days. This 30 days will allow Petitioner to profect an presentable Petition for a writ of certiorari, as grounds for this motion the petitioner states the following.

- 1.) Petitioner is incarcerated at Green River Correctional Complex, and there is limited access to the legal library due to staff shortage.
- 2.) Petitioner has limited knowledge of the law, which will take more time.
- 3.) This institution is limited with assigned legal aides. Which is three legal aides for 450 inmates.
- 4.) Inmates are not permitted to do research on the legal computers, which has lexis nexis case law on it.

For the foregoing reasons, Petitioner asked that he be granted permission of 30 days to file his Petition for writ of certiorari.

Respectfully Submitted

Henry Crawford
Henry Crawford



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expert, Stephanie Beine, to testify. *Crawford v. Commonwealth*, No. 2013-CA-000816-MR, 2015 WL 1968775, at *4-5 (Ky. Ct. App. May 1, 2015). After the trial court conducted an evidentiary hearing on remand, it concluded that counsel's decision not to call Beine to testify was strategic and denied Crawford's motion to vacate. The Kentucky Court of Appeals affirmed. *Crawford v. Commonwealth*, No. 2017-CA-001354-MR, 2019 WL 1870672 (Ky. Ct. App. Apr. 26, 2019). The Kentucky Supreme Court denied discretionary review.

In this § 2254 habeas corpus petition, Crawford asserted two discovery claims, three ineffective-assistance-of-trial-counsel claims, and one cumulative-error claim. On the recommendation of a magistrate judge and over Crawford's objections, the district court denied Crawford's habeas corpus petition and denied a certificate of appealability. The district court also denied Crawford's motion for reconsideration.

A certificate of appealability may issue only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). A certificate of appealability analysis is not the same as "a merits analysis." *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Instead, the certificate of appealability analysis is limited "to a threshold inquiry into the underlying merit of the claims," and whether "the District Court's decision was debatable." *Id.* at 774 (quoting *Miller-El*, 537 U.S. at 327, 348) (cleaned up).

Crawford's first claim is that the prosecution violated state discovery rules by failing to provide the defense with the victim's sexual assault kit for independent DNA testing. The district court concluded that federal habeas corpus relief is not available for this claim because it does not assert a violation of a federal constitutional right. Reasonable jurists would not debate the district court's conclusion. "There is no general constitutional right to discovery in a criminal case." *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977); see also *Lorraine v. Coyle*, 291 F.3d 416, 441

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(6th Cir.), *corrected on reh'g*, 307 F.3d 459 (6th Cir. 2002) (holding that a prosecutor's violation of a state discovery rule is not cognizable on federal habeas corpus review).

In his second claim, Crawford asserts that the prosecution's failure to provide the victim's sexual assault kit to the defense violated *Brady v. Maryland*, 373 U.S. 83 (1963). The Kentucky Supreme Court rejected this claim on direct review. *Crawford*, 2012 WL 601248, at *2-3. It concluded that, despite the State's concession that the victim's sexual assault kit was not disclosed to the defense, Crawford did not show either that the non-disclosed evidence was exculpatory or that the non-disclosure prejudiced him. *Id.* It found purely speculative any suggestion that the non-disclosed evidence might have been exculpatory for Crawford. *Id.* at *2. It also found that admission of "extremely damning" DNA evidence collected from a blanket linking Crawford to the crimes "removed any *reasonable* probability that [he] would have been acquitted." *Id.* at *3.

"[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. To establish a *Brady* violation, the defendant must demonstrate that (1) the non-disclosed evidence is favorable, "either because it is exculpatory, or because it is impeaching," (2) the evidence was suppressed "either willfully or inadvertently," and (3) prejudice resulted. *Strickler v. Greene*, 527 U.S. 263, 282 (1999). A *Brady* violation occurs "when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Smith v. Cain*, 565 U.S. 73, 75 (2012) (quoting *Cone v. Bell*, 556 U.S. 449, 469-70 (2009)).

The district court concluded that the Kentucky Supreme Court's rejection of this claim was neither contrary to nor an objectively unreasonable application of clearly established federal law. Crawford failed to demonstrate that the evidence at issue was favorable to him. Rather, he simply speculates that independent testing of DNA from the victim's sexual assault kit would exonerate him. Moreover, Crawford fails to show that disclosure of the evidence would have changed the result of his trial given that independent DNA evidence collected from a blanket linked him to the crimes. *See Crawford*, 2012 WL 601248, at *1, *3. Because Crawford failed to show that the

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non-disclosed evidence was favorable and that it would have affected his case, *see Smith*, 565 U.S. at 75; *Strickler*, 527 U.S. at 281-82, reasonable jurists would not disagree with the district court's resolution of Crawford's second claim. *See Miller-El*, 537 U.S. at 327.

Crawford's third through fifth claims allege the denial of effective assistance of trial counsel. He claims that trial counsel was ineffective for moving to exclude the victim's sexual assault kit, failing to call Beine to testify about DNA evidence, and failing to object to the prosecution's closing arguments regarding DNA statistics.

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 performance inquiry requires the defendant to "show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. The prejudice inquiry requires the defendant to "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. When reviewing a habeas corpus petition under § 2254(d), the district court must apply a doubly deferential standard of review: "the question is not whether counsel's actions were reasonable" but "whether there is any reasonable argument that counsel satisfied *Strickland's* deferential standard." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

The Kentucky Court of Appeals concluded that trial counsel was not ineffective in any of the ways alleged by Crawford. It found that counsel's motion to exclude the victim's sexual assault kit was clearly strategic and non-prejudicial because that evidence was not provided to the defense before trial, and it initiated the case against Crawford. *Crawford*, 2015 WL 1968775, at *3. It concluded, based on Crawford's and counsel's testimony and the trial court's credibility determination, to which it deferred, that counsel's determination that the defense would not benefit from Beine's DNA testimony was strategic. *Crawford*, 2019 WL 1870672, at *2-4. Finally, it found that counsel lacked grounds to object to the prosecution's closing arguments because those arguments were based on evidence presented during the trial. *Crawford*, 2015 WL 1968775, at *4.

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The district court determined that the state appellate court reasonably rejected Crawford's ineffective-assistance-of-trial-counsel claims and reasonably applied *Strickland* when doing so. Reasonable jurists would not debate that determination. See *Miller-El*, 537 U.S. at 327. Counsel's decision to seek exclusion of the victim's sexual assault kit was strategic and non-prejudicial given that the DNA from the victim's sexual assault kit initiated the criminal investigation that led to Crawford's convictions and had not been disclosed to the defense before trial. See *Crawford*, 2012 WL 601248, at *1. Likewise, counsel's decision not to call Beine to testify as an expert DNA witness at trial was strategic and non-prejudicial given counsel's determination, after consultation with Beine, that she could not provide any favorable testimony for the defense. See *Crawford*, 2019 WL 1870672, at *2-4. See *Strickland*, 466 U.S. at 690, 694; *Tinsley v. Million*, 399 F.3d 796, 810 (6th Cir. 2005). And because the prosecution's closing arguments regarding DNA statistics were based on properly admitted evidence presented during the trial, counsel was not ineffective for failing to object. See *Crawford*, 2012 WL 1968775, at *3-4; *Sutton v. Bell*, 645 F.3d 752, 755-56 (6th Cir. 2011) (noting that trial counsel is not ineffective for failing to raise a meritless objection).

Crawford also claims that the cumulative effect of trial counsel's errors denied him effective assistance of trial counsel. Because Crawford's individual ineffective-assistance-of-trial-counsel claims each lack merit, the district court concluded that they could not be combined to establish cumulative error. Reasonable jurists would not debate that conclusion. See *Williams v. Anderson*, 460 F.3d 789, 816 (6th Cir. 2006).

The application for a certificate of appealability is **DENIED** and the motion to proceed in forma pauperis is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk