APPLICATION FOR EXTENSION OF TIME REQUEST FOR A PETITION FOR WRIT OF CERTIORARI

No. _____

In The Supreme Court of the United States

Adam Dean Brown, Petitioner, v.
Florida Department of Corrections, Respondent.

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

To the Honorable Clarence Thomas:

Petitioner, Adam Dean Brown, respectfully requests an additional thirty days, up to and including November 24, 2022, to file his Petition for Writ of Certiorari. The United States Court of Appeals for the Eleventh Circuit issued an Order denying his request for a certificate of appealability following the denial of Mr. Brown's federal habeas corpus petition brought under 28 U.S.C. § 2254. Absent an extension of time, the Petition for Writ of Certiorari would be due by October 25, 2022. Petitioner is filing this Application more than ten days prior to that due date.

A copy of the decision subject to review is attached. This Court has jurisdiction to review that decision under 28 U.S.C. § 1254(1). An extension of time is warranted because undersigned counsel did not represent Petitioner in the Eleventh Circuit and was negatively impacted by Hurricane Ian, which passed close to the home and office of the undersigned.

Given the disruptions caused by the storm and the press of other client business, the undersigned anticipates that additional time will be necessary to prepare the Petition for Writ of Certiorari. Accordingly, the undersigned respectfully requests an additional thirty days to prepare the Petition for Writ of Certiorari of behalf of the Petitioner, Adam Dean Brown.

Respectfully submitted,

/s/ Andrew B. Greenlee
Andrew B. Greenlee, Esquire
Counsel of Record
401 E. 1st St., Unit 261
Sanford, FL 32772
407-808-6411
andrew@andrewgreenleelaw.com
Counsel for Petitioner

October 4, 2022

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-10084-E

ADAM DEAN BROWN,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

ORDER:

Mr. Adam Brown, a Florida prisoner convicted of driving under the influence causing serious bodily injury, seeks a certificate of appealability ("COA") to appeal from the district court's denial of his amended, counseled 28 U.S.C. § 2254 habeas corpus petition. He argued that his trial counsel performed ineffectively by failing to: (1) object to prosecutorial misconduct; (2) object to the introduction of his statements based on the accident-report privilege; (3) offer evidence that corroborated the proposed testimony of Ms. Sherri Williams, when the court excluded her testimony based on the lack of assurances of reliability; (4) impeach Mr. William Bruce based on prior inconsistent statements; and (5) retain an accident-reconstruction expert for trial. He also alleged actual innocence. As a brief background, the sole issue at trial was whether

Mr. Brown had been the driver of a car that crashed, resulting in serious injury to another occupant of the car.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). If the district court denied a constitutional claim on the merits, the movant must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

Here, reasonable jurists would not debate the district court's denial of Mr. Brown's § 2254 petition. Ground One failed because the state post-conviction court reasonably found that the statement at issue was not improper and, thus, that Mr. Brown's counsel did not perform ineffectively by failing to lodge an objection. *See Bolender v. Singletary,* 16 F.3d 1547, 1573 (11th Cir. 1994) ("[T]he failure to raise nonmeritorious issues does not constitute ineffective assistance."). As to Ground Two, even though this ground asserted a claim of ineffective assistance of counsel, because the validity of the claim turned on state law, specifically, Florida evidentiary-privilege law, the district court properly deferred to the state post-conviction court's conclusion that Mr. Brown's statements did not fall under the protection of the privilege. *See Pinkney v. Sec'y, Dep't of Corr.*, 876 F.3d 1290, 1295 (11th Cir. 2017) (explaining that, although an ineffective-assistance-of-counsel claim is a federal constitutional claim, when the validity of the claim that counsel failed to raise turns on state law, this Court will defer to the state's construction of its own law).

Moreover, as to Grounds Three and Four, reasonable jurists would not debate that the state post-conviction court reasonably concluded that, in light of the evidence against him, Mr. Brown

could not show prejudice. *See Meders v. Warden, Ga. Diagnostic Prison*, 911 F.3d 1335, 1355 (11th Cir. 2019) (holding that the district court did not err in denying the petitioner's § 2254 petition because "a fairminded jurist could agree with the state trial court's decision."); *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1300 n.9 (11th Cir. 2014) ("The overwhelming evidence of Bates's guilt also makes it obvious that Bates cannot show *Strickland* prejudice."). At trial, evidence was presented that: (1) the crashed car was registered to Mr. Brown; (2) Mr. Brown told an Emergency Medical Technician right after the crash that "his foot got stuck on the pedal"; and (3) Mr. Brown told a responding paramedic, "I'm sorry, I never meant for this to happen." Accordingly, the state post-conviction court's conclusion "was not so obviously wrong as to be 'beyond any possibility for fairminded disagreement[,]'" which, in the habeas context, "is 'the only question that matters.'" *See Shinn v. Kayer*, 141 S. Ct. 517, 526 (2020).

As to Ground Five, the state post-conviction court reasonably rejected the claim based on counsel's credible testimony that he decided not to retain an expert for trial because a preliminary expert consultation revealed that an expert likely would have concluded that Mr. Brown had been the driver. Lastly, Mr. Brown's claim of actual innocence failed because he did not prove an accompanying constitutional violation, and "a showing of actual innocence does not by itself provide a basis of relief." *Cunningham v. Dist. Att'y's Off. for Escambia Cnty.*, 592 F.3d 1237, 1273 (11th Cir. 2010) (quotation marks omitted). Accordingly, Mr. Brown's motion for a COA is DENIED.

UNITED STATES CIRCUIT JUDGE