

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TYSON MARTIN,
Petitioner,

v.

RICKY D. DIXON,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT
COURT OF APPEALS

APPENDIX TO APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Michael Ufferman Law Firm
Florida Bar # 114227
2202-1 Raymond Diehl Road
Tallahassee, Florida 32308
Phone (850) 386-2345
Email: ufferman@uffermanlaw.com

Counsel for the Petitioner

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-14217-J

TYSON MARTIN,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS
STATE OF FLORIDA,

Respondent-Appellee.

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

ORDER:

Mr. Tyson Martin, a Florida prisoner convicted of attempted sexual battery when the victim was physically helpless, seeks a certificate of appealability (“COA”) to appeal from the district court’s denial of his counseled 28 U.S.C. § 2254 habeas corpus petition. While Mr. Martin previously raised seven grounds for relief, he only seeks a COA on Ground 1. In Ground 1A, he argued that the trial court erred by prohibiting the defense from introducing the full recording of Sergeant Greg Wilder’s interview with him, the exclusion of which he asserted deprived him of a fair trial. In Ground 1B, he argued that his trial counsel performed ineffectively by failing to appropriately object to the state’s mischaracterization of his statement to Sergeant Wilder.

Here, reasonable jurists would not debate the district court's denial of Ground 1 of Mr. Martin's § 2254 petition. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (holding that to obtain a COA, 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."). As to Ground 1A, the district court properly applied deference under § 2254(d) to the state appellate court's denial of the claim because, as the state appellate court rejected the claim without comment, federal courts presume that the adjudication was on the merits. *See Harrington v. Richter*, 562 U.S. 86, 99 (2011). Mr. Martin's reliance on the content of the parties' arguments, and the panel's questions, on direct appeal about procedural default to overcome this presumption failed because the merits of the claim were also at issue, and the state appellate court's *per curiam* affirmance provided no indication of why it rejected the claim. *See Pittman v. Sec'y, Fla. Dep't of Corr.*, 871 F.3d 1231, 1245 (11th Cir. 2017) (providing that the presumption "stands unless rebutted by evidence from the state court's decision and the record that 'leads very clearly to the conclusion that the federal claim was inadvertently overlooked in state court.'").

Further, in light of the proper deference applied to the state appellate court's decision, reasonable jurists would not debate the district court's rejection of Ground 1A. Mr. Martin based his argument on the trial court's purported error under state evidentiary law, which typically is not a basis for habeas relief. *See Alderman v. Zant*, 22 F.3d 1541, 1555 (11th Cir. 1994) ("As a general rule, a federal court in a habeas corpus case will not review the trial court's actions concerning the admissibility of evidence."). That said, he also argued that the evidentiary error deprived him of his right to a fair trial, which is a cognizable federal claim. *See Felker v. Turpin*, 83 F.3d 1303, 1311 (11th Cir. 1996) (explaining that habeas relief is warranted "when evidentiary errors so

infused the trial with unfairness as to deny due process of law.”). Nonetheless, reasonable jurists would not debate that the trial court’s refusal to admit the entirety of Mr. Martin’s statements to Sergeant Wilder, even if a violation of state evidentiary law, did not render his trial fundamentally unfair. The jury was exposed to the portion of Mr. Martin’s statement that he contended had been mischaracterized and that he asserted was crucial for his defense of lack of intent. Because the jury was exposed to the portion of Mr. Martin’s statement at issue, and he was able to argue in closing arguments that his statement to Sergeant Wilder showed his lack of intent, the trial court’s refusal to admit his entire statement did not render his trial fundamentally unfair.

As to Ground 1B, to the extent that Mr. Martin argued that his counsel performed ineffectively by failing to preserve the issue for appeal through a proper objection, the claim failed because, regardless of whether an objection was needed to preserve the issue for appeal, the objection would have lacked merit. *See Denson v. United States*, 804 F.3d 1339, 1342 (11th Cir. 2015) (explaining that the failure to raise a meritless objection is not deficient performance). The state post-conviction court found that any objection to the purported mischaracterization of Mr. Martin’s statement would have lacked merit because “nothing was ‘mischaracterized.’” Mr. Martin offered nothing to establish that this factual finding was incorrect, such that this Court must presume that the finding was accurate. *See Nejad v. Att’y Gen., State of Ga.*, 830 F.3d 1280, 1289 (11th Cir. 2016) (explaining that habeas courts must presume that factual findings made by state courts are correct unless the habeas petitioner rebuts that presumption). Moreover, a review of the record supports the state post-conviction court’s finding that the state had not mischaracterized his statement. Accordingly, Mr. Martin’s motion for a COA is DENIED.


UNITED STATES CIRCUIT JUDGE