

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543-0001



Case No.: 8:19-CV-00775-WFS-SPF

DUANE E. ARMSTRONG,
Petitioner,

v.

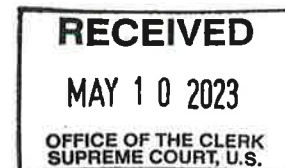
SECRETARY, FLA. DEPT. OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,
Respondent's

MOTION TO ENLARGEMENT OF TIME

COMES NOW, Petitioner Duane E. Armstrong, *Pro se*, and pursuant to Supreme Court Rule and Procedure Rule (13.5) moves this Honorable Court for an enlargement of Time in the amount of (60) days to file his Petition for a Writ of Certiorari.

In support petitioner would show the following:

1. Petitioner Appeal of the Eleventh Circuit Court Final Judgment 02/09/2023 due to very limited access to the law Library at the time to obtain the assistance of a Certified Law Clerk to help Petitioner with the research needed and composition of the legal document.



2. Even though the Petitioner already made some preparing for his Writ of Certiorari due to the opening and closing of the law library petitioner still has difficulties to meet this deadline.
3. The Petitioner has all intentions to file his Writ of Certiorari, Petitioner has a limited knowledge of the law and court procedures. As such, he would be at an unfair disadvantage should he be compelled to present his Writ of Certiorari with the presently imposed deadline.
4. The issues that will be presented are of such nature that Petitioner must rely on prison law library clerks to perfect his certiorari and to grasp the understanding of what they are telling Petitioner is far beyond his comprehension.
5. (60) days appears to be reasonable and sufficient to perfect his Writ of Certiorari.
6. The Petitioner is proceeding *Pro se* and has no means to contact the opposing party regarding any objections to an extension, but it seems unlikely that a (60) day extension would cause any prejudice to the Respondent.
7. This motion for Enlargement of Time is filed in good faith and not as abuse of process.

WHEREFORE, based upon the foregoing, the petitioner requests an Enlargement of Time in the amount of (60) days to file his Writ of Certiorari.

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11296

Non-Argument Calendar

DUANE E. ARMSTRONG,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:19-cv-00775-WFJ-SPF

Before JORDAN, GRANT, and BLACK, Circuit Judges.

PER CURIAM:

Duane E. Armstrong, a Florida prisoner serving a 20-year sentence for burglary of an unoccupied dwelling, dealing in stolen property, and providing false information on a pawn broker form (over \$300), appeals the district court's denial of his 28 U.S.C. § 2254 petition. We granted a certificate of appealability on the issue of "[w]hether Armstrong had shown that trial counsel was ineffective for failing to object to the forensic print analyst's testimony that a second analyst had verified her comparison of Armstrong's fingerprints with the latent print found in the burglarized home." Armstrong asserts he was prejudiced by counsel's error, as the hearsay testimony from Nicole Jarvis, the forensic print analyst, bolstered the only state witness testimony that directly connected him to the burglary offense and the jury showed interest in whether there had been any cases where a fingerprint expert had been proven unreliable. After review,¹ we affirm the district court.

¹ We review *de novo* a district court's decision about whether a state court acted contrary to or unreasonably applied clearly established federal law. *Reed v. Sec'y, Fla. Dep't of Corr.*, 593 F.3d 1217, 1239 (11th Cir. 2010). Thus, we review the district court's grant or denial of a § 2254 petition *de novo* but owe deference to the state court's judgment. *Id.*

A federal court cannot grant habeas relief on a claim that was “adjudicated on the merits in State court proceedings” unless the state court’s decision was (1) “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States” or (2) “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). “Deciding whether a state court’s decision involved an unreasonable application of federal law requires the federal habeas court to train its attention on the particular reasons—both legal and factual—why state courts rejected a state prisoner’s federal claims, and to give appropriate deference to that decision.” *Meders v. Warden, Ga. Diagnostic Prison*, 911 F.3d 1335, 1349 (11th Cir. 2019) (quotation marks and ellipsis omitted).

Under *Strickland v. Washington*, to succeed on an ineffective-assistance-of-counsel claim, a petitioner must show that (1) his counsel’s performance was deficient and (2) the deficient performance prejudiced his defense. 466 U.S. 668, 687 (1984). If the movant fails to establish either prong, we need not address the other prong. *Id.* at 697.

To prove the prejudice prong, the defendant must show a reasonable probability that, but for counsel’s deficient performance, the result of the proceeding would have been different. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome of trial. *Id.* It is not enough for the defendant to show that the error had some conceivable effect on the

outcome of the proceeding. *Id.* at 693. Rather, counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (quotation marks omitted). Thus,

a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. Some of the factual findings will have been unaffected by the errors, and factual findings that were affected will have been affected in different ways. Some errors will have had a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture, and some will have had an isolated, trivial effect. Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support. Taking the unaffected findings as a given, and taking due account of the effect of the errors on the remaining findings, a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.

Strickland, 466 U.S. at 695-96.

The district court did not err in denying Armstrong's § 2254 petition because the state court reasonably applied *Strickland* in determining Armstrong had not shown prejudice from counsel's alleged deficient failure to object to Jarvis's hearsay testimony that a second analyst had verified her determination the fingerprint found

21-11296

Opinion of the Court

5

on the victim's dresser was a match to Armstrong. *See* 28 U.S.C. § 2254(d). Two pieces of evidence strongly supported the jury's verdict: (1) the fingerprint on the dresser Jarvis concluded was a match to both the print she took from Armstrong and to the print from the pawn ticket that Armstrong admitted was his, and (2) Armstrong's sale of the stolen jewelry to the pawn shop on the morning of the burglary. Notably, the state described the fingerprint evidence in closing as the "most important evidence" in the case. And the jury asked questions about the accuracy of fingerprint results before returning its verdict, reflecting the jury understood the significance of that evidence.

As the postconviction court reasoned in denying relief to Armstrong, even if counsel had objected to Jarvis's statement that her results were verified by a second analyst and the court had excluded that testimony, the jury still would have heard her testimony the fingerprint on the victim's dresser matched Armstrong. Armstrong concedes this point, but argues the statements at issue improperly bolstered the only state witness testimony that directly connected him to the burglary. Even assuming Armstrong is correct, the effect of the bolstering was trivial, as the jury's verdict was supported by the unaffected evidence (1) that a credentialed analyst found the print on the dresser matched the prints she had taken from Armstrong and his print on the pawn form and (2) his possession and sale of the stolen jewelry soon after the burglary. *See Strickland*, 466 U.S. at 695-96.

As to Armstrong's possession and pawning of stolen jewelry, the state postconviction court reasoned the jury would still have heard these facts regardless of counsel's alleged deficient performance. Additionally, the jury must not have believed Armstrong's testimony that he bought the jewelry on the street for \$30 and had never been inside the victim's home because it convicted him of stealing the jewelry and burglarizing the home. That evidence standing alone would have been sufficient to support his burglary conviction, as the jury was instructed that proof of possession by an accused of property recently stolen by means of a burglary, unless satisfactorily explained, may justify a conviction for burglary. While Armstrong contends he satisfactorily explained his possession of the stolen jewelry, a fair-minded jurist could agree with the state court that, if he had satisfactorily explained it, the jury would not have found him guilty, even in light of the assertedly improper bolstering of the fingerprint expert's testimony. *See Strickland*, 466 U.S. at 694; *Harrington*, 562 U.S. at 104.

The totality of the evidence presented at trial supports the state court's decision that counsel's performance, if deficient, was not prejudicial. *Strickland*, 466 U.S. at 694-96. The jury heard testimony that jewelry was stolen during a burglary, Armstrong pawned the jewelry on the morning it was stolen, investigators found a fingerprint on the dresser where the jewelry had been kept that matched Armstrong's in the print database, and a fingerprint expert took Armstrong's fingerprint, compared it with a fingerprint on the pawn transaction form that Armstrong admitted was his,

21-11296

Opinion of the Court

7

compared both fingerprints to the fingerprint found on the victim's dresser, and concluded that all three fingerprints were the same and belonged to Armstrong. Considering the strength of this evidence, the fingerprint examiner's statement that a second analyst had verified her findings did not alter the evidentiary picture such as to undermine confidence in the jury's verdict. *See Strickland*, 3466 U.S. at 695-96. Because Armstrong has failed to show the state court unreasonably applied *Strickland* in concluding Armstrong had failed to show prejudice, it is unnecessary for us to analyze whether Armstrong has shown counsel was deficient. *See id.* at 697.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 09, 2023

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-11296-CC

Case Style: Duane Armstrong v. Secretary, Florida Department, et al

District Court Docket No: 8:19-cv-00775-WFJ-SPF

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information	404-335-6100
New / Before Briefing Cases	404-335-6135
Cases in Briefing / After Opinion	404-335-6130
Cases Set for Oral Argument	404-335-6141
Capital Cases	404-335-6200
Attorney Admissions	404-335-6122
CM/ECF Help Desk	404-335-6125

OPIN-1 Ntc of Issuance of Opinion

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of Enlargement of Time, was placed in the hands of mail room personal at Liberty Correctional Institution for mailing to the United States Court of Appeal, Eleventh Circuit, Office of the Clerk, 56 Forsyth St. N.W. Atlanta, Georgia 30303; and to Supreme Court of the United States, 1 First Street, N.E. Washington, D.C. 20543. On this 1 day of MAY 2023.

Respectfully Submitted,

/s/ Duane Armstrong 541371
Duane E. Armstrong, DC# 541371
Liberty C.I
11064 N.W. Dempsey Barron Rd.
Bristol, Florida 32321