

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10029

FARES MUSTAFA,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
Secretary, Florida Department of Corrections,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:22-cv-80949-RAR

ORDER:

Fares Mustafa moves for a certificate of appealability ("COA"), in order to appeal a district court order denying in part and dismissing in part his 28 U.S.C. § 2254 petition, which raised ten claims. To merit a COA, Mustafa must show that reasonable jurists would debate the district court's rulings on his claims. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, reasonable jurists would not debate the district court's denial of Mustafa's first claim, which alleged that counsel should have moved to suppress his confession as the fruit of the poisonous tree, on the ground that officers illegally arrested him in South Carolina. *See id.* The state post-conviction court properly applied federal law in rejecting the claim, as it considered whether a suppression motion would have lacked merit, and "it is axiomatic that the failure to raise nonmeritorious issues does not constitute ineffective assistance." *See Bolender v. Singletary*, 16 F.3d 1547, 1573 (11th Cir. 1994). The state court also reasonably concluded that a suppression motion would have been meritless because, given that a felony warrant had been issued for Mustafa in Florida, officers lawfully arrested him in South Carolina, pursuant to South Carolina law. *See* S.C. Code Ann. §§ 17-13-10; 17-9-10 (providing that warrantless arrests are permitted where police have obtained "certain information that a felony has been committed," and that an individual may be arrested and jailed, based on an out-of-state felony arrest warrant).

With respect to the other nine claims in Mustafa's § 2254 petition, reasonable jurists would not debate that the district court properly dismissed them on procedural grounds. *See Slack*, 529 U.S. at 484. Specifically, his second claim raised an issue of state law, to the extent that he alleged that the trial court erred in allowing his ex-girlfriend to translate a recorded conversation, and "federal habeas relief does not lie for errors of state law." *See Wilson v. Corcoran*, 562 U.S. 1, 5 (2010).

Moreover, Mustafa's third through tenth claims were all subject to procedural default, because the state courts either denied them based on adequate and independent state rules of procedure, or he did not raise them in state court altogether. *See Bailey v. Nagle*, 172 F.3d 1299, 1302-03 (11th Cir. 1999) (explaining that federal habeas claims are subject to procedural default where: (1) the state court denied the claims based on adequate and independent state grounds; or (2) the claims were never raised in state court). Because he did not proffer any grounds to excuse procedural default, the district court properly dismissed those claims as procedurally barred. *See id.*; 28 U.S.C. § 2254(b), (c). Therefore, reasonable jurists would not debate the district court's rulings on Mustafa's claims, and his motion for a COA is DENIED. *See Slack*, 529 U.S. at 484.


UNITED STATES CIRCUIT JUDGE