APPENDIX

- Appendix A - District Court opinion and order denying petition for writ of habeas corpus and granting a certificate of appealability in part dated November 17, 2022
- Appendix B - District Court judgment dated November 17, 2022
- Appendix C - Sixth Circuit Court of Appeals opinion affirming the District Court judgment dated January 4, 2024
- Appendix D - Sixth Circuit Court of Appeals judgment affirming the District Court dated January 4, 2024
- Appendix E - Sixth Circuit Court of Appeals order denying petition for rehearing dated January 29, 2024

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDREW FRANKLIN WOODBURN,

Petitioner,

Civil Action No. 19-cv-12901
HON. BERNARD A. FRIEDMAN

vs.

BRYAN MORRISON[1],

Respondent.

_____/

OPINION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS AND GRANTING A CERTIFICATE OF APPEALABILITY IN PART

This matter is before the Court on Petitioner Andrew Franklin Woodburn's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Woodburn was convicted by a jury on charges of assault with intent to murder and felon in possession of a firearm. Woodburn seeks relief on the grounds that he received ineffective assistance of trial and appellate counsel. For the following reasons, the

[1] **Error! Main Document Only.**The proper respondent in a habeas case is the state officer having custody of the petitioner. See Rules Governing Section 2254 Cases, R.2. The warden of the facility where Woodburn is currently incarcerated is Bryan Morrison. The Court orders the case caption amended to substitute Bryan Morrison as the respondent.

Court shall deny the petition, but grant a certificate of appealability for Woodburn's claim of ineffective assistance of trial counsel.

I. Background

Woodburn's convictions arise from a motor vehicle collision outside his parents' home. The Michigan Court of Appeals outlined the circumstances leading to Woodburn's convictions as follows:

> On June 23, 2013, defendant's mother, Sharon Woodburn, called 911 and reported that her son was not in his right mind and violent, and that she needed police assistance at her home. She, her husband, and defendant lived on Black River Trail. She informed the 911 dispatcher that she had lied to defendant and told him that certain guns he was looking for were in Gaylord and that he was going to go to Gaylord to get them. She testified that she had turned two pistols and a rifle belonging to her and her husband over to a neighbor for safekeeping two days before the incident. She told the dispatcher that defendant was "going through like a psychotic episode" and said "he will kill anybody that's in his way...." She stated that "[h]e's gonna try to have the officers kill him.... Because it's like a suicide." She also said that defendant "has a machete and he probably has knives.... [H]e'll want to go down shooting; although he doesn't have his guns, so—he'll expect you guys to shoot him." Sharon told the dispatcher that defendant was driving a Ford F250 pickup truck with a camper shell on the back. Defendant can be heard on the tape of the 911 call saying, "I tell you what: You call the cops on me, (inaudible) dead. Dead. (Inaudible)."
>
> Deputy Darren LaChapelle responded to the 911 call in a marked Crown Victoria patrol car. When he arrived near Black River Trail, he turned off his siren and overhead lights and pulled off to the side of Black River Road, just north of Black River Trail, to wait for an additional unit before responding directly to the residence. LaChapelle described Black River Trail as a private one-lane gravel driveway that dead-ends into Black River Road. LaChapelle could see defendant's pickup truck traveling

down Black River Trail toward Black River Road. LaChapelle pulled his patrol car one or two vehicle lengths onto Black River Trail and reactivated his emergency overhead lights in the hope of stopping the truck, which at that point was 300 to 400 yards down Black River Trail. He observed defendant throw something out of the driver's window onto the grass and noticed the truck beginning to accelerate as it got closer to him. LaChapelle estimated that the pickup was traveling at least 60 miles per hour when he realized that the truck was not slowing down or attempting to maneuver around him. LaChapelle immediately put his car into reverse in an attempt to back out of the driveway, but his tires spun on the gravel roadway. The truck struck the patrol car head-on, pushing the patrol car onto Black River Road, where it was struck in the rear by a southbound car driven by Angela Ortiz and occupied by her husband, her daughter, and her daughter's friend. The Ortiz car landed in the ditch before being struck by the pickup truck. A number of eyewitnesses testified that defendant's pickup truck accelerated as it went down Black River Trail, and that it crashed head-on into the patrol car. Sergeant Charles Beckwith, an accident reconstructionist, conducted an investigation of the scene and drew the following conclusions:

> The pickup truck was eastbound on Black River Trail. The cruiser was initially westbound on Black River Trail. And at a point when the officer, I believe, believed that he was going to be impacted, he went from a forward gear to a reverse gear, and that during that reverse gear, he accelerated extremely hard which created the acceleration marks, the short acceleration marks of that patrol car trying to go backwards, and during the course of that event the patrol car was impacted.

Defendant initially refused LaChapelle's orders to get out of the truck, but eventually rolled out of the truck. As he

> was walking toward the back of the truck, defendant was screaming, "Just shoot me." LaChapelle tased defendant and Sergeant Mark Tamlyn handcuffed him. Tamlyn testified that defendant smelled of alcohol but that he did not appear to be intoxicated. Evidence recovered from the scene included numerous knives that had been removed from defendant's truck.
>
> Defendant testified that he took his prescription medications, Paxil and Ativan, and consumed a bottle of rum on June 23 before getting into an argument with his father and leaving the house determined to go to Gaylord and get his guns so that he could go to Florida and make money by killing feral hogs. He indicated that he remembered pushing on the gas, "almost on purpose to sling dirt," and that he smashed into some posts and hit a culvert as he was going down Black River Trail. According to defendant, when he saw the patrol car he was afraid of "getting pulled over for a DUI" so he began to throw empty liquor bottles out the window. He testified that he knew "that the accelerator was being mashed on at points, being stomped on." He explained that as he was reaching down and grabbing the empty bottles he "probably pushed on the accelerator," and that it "didn't even come across my mind to brake." Defendant testified that "for some reason" he thought he "might just be able to pass this officer and he wouldn't pull me over." He indicated that he did not intend to kill LaChapelle; rather, his intent was to "get out of Michigan." Defendant also testified that he still had a number of items in his truck from his move to Michigan a month earlier, including his knife collection. Defendant testified that he neither owned nor possessed any firearms on June 23, 2013.

People v. Woodburn, No. 320718, 2016 WL 3946855, at *1–2 (Mich. Ct. App. July 21, 2016).

Woodburn was tried by jury in Cheboygan County Circuit Court and sentenced as a habitual offender, third offense, to 17 to 35 years for the assault with intent to murder conviction and 3 to 10 years for the felon in possession conviction. *Id.* at *1. He filed an appeal in the Michigan Court of Appeals raising multiple claims: (i) counsel was ineffective for failing to consult an expert in accident reconstruction; (ii) counsel was ineffective for introducing the nature of Woodburn's prior conviction; (iii) counsel was ineffective for failing to sever the felon-in-possession charge; (iv) counsel was ineffective for withdrawing an objection to the introduction of Woodburn's knife collection; (v) the cumulative effect of counsel's errors denied Woodburn a fair trial; (vi) the trial court improperly scored ten points under both OV [offense variable] 6 and OV 17; and (vii) the trial court improperly relied on facts not decided by a jury when sentencing Woodburn. Woodburn sought remand to develop the record for his ineffective-assistance-of-counsel claims and resentencing.

The Michigan Court of Appeals remanded the case for an evidentiary hearing on Woodburn's claims of ineffective assistance of counsel and to allow Woodburn to file a motion for resentencing. *People v. Woodburn*, No. 320718 (Mich. Ct. App. Apr. 24, 2015). The trial court denied Woodburn a new trial and resentenced him to the original sentence. *See* Op. & Ord., *People v. Woodburn*, No. 13-4757 (Cheboygan County Circuit Ct. Nov. 25, 2015) (ECF No. 6-11, PageID.1126-32);

(ECF No. 6-9, PageID.764). Following remand, the Michigan Court of Appeals affirmed. *Woodburn*, 2016 WL 3946855, at *5. The Michigan Supreme Court denied Woodburn's application for leave to appeal. *People v. Woodburn*, 891 N.W.2d 493 (Mich. 2017).

Woodburn then filed a motion for relief from judgment raising the same claims at issue in this petition. The trial court denied the motion. *People v. Woodburn*, No. 13-4757 (Cheboygan County Cir. Ct. Aug. 17, 2018) (ECF No. 6-12, PageID.1475-1479). The Michigan Court of Appeals denied Woodburn's application for leave to appeal, *People v. Woodburn*, No. 346139 (Mich. Ct. App. Apr. 3, 2019) (ECF No. 6-12, PageID.1303), as did the Michigan Supreme Court, *People v. Woodburn*, 933 N.W.2d 276 (Mich. 2019).

Woodburn then filed the instant petition for writ of habeas corpus through counsel. He raises these claims:

> I. It was contrary to U.S. Supreme Court law and an unreasonable determination of the facts to deny relief where Andrew Woodburn's trial attorney was ineffective for: (1) failing to consult with a psychopharmacological expert and (2) failing to present a temporary insanity defense based upon involuntary intoxication caused by Woodburn's use of the antidepressant Paxil.
>
> II. It was contrary to U.S. Supreme Court law and an unreasonable determination of the facts to deny relief where Andrew Woodburn's appellate attorney was ineffective for failing to allege on appeal, and during the *Ginther* hearing on remand, ineffective assistance of trial counsel for: (1) Failing to consult with a pharmacological expert and (2) Failing to present a

> temporary insanity defense based upon involuntary intoxication at trial based upon Woodburn's use of the antidepressant Paxil, the only viable defense in this case.

II. Standard

A § 2254 habeas petition is governed by the heightened standard of review set forth in the Anti-Terrorism and Effective Death Penalty Act (AEDPA). 28 U.S.C. § 2254. To obtain relief, habeas petitioners who challenge a matter "that was adjudicated on the merits in State court proceedings" must show that the adjudication

> **(1)** resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> **(2)** resulted in a decision that was 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). The focus of this standard "is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable -- a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). "AEDPA thus imposes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (cleaned up).

"A state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (cleaned up). In addition, a state-court's factual determinations are presumed correct on federal

habeas review, 28 U.S.C. § 2254(e)(1), and review "is limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

III. Evidentiary Hearing

Woodburn seeks an evidentiary hearing to develop the factual record for his ineffective assistance of counsel claims. He maintains that he can satisfy AEDPA's deferential standard of review based on the state court record alone but seeks a hearing to further develop the factual record.

The AEDPA "restricts the ability of a federal habeas court to develop and consider new evidence." *Shoop v. Twyford*, 142 S. Ct. 2037, 2043 (2022). If a claim was "adjudicated on the merits" in state court, review "is limited to the record that was before the state court that adjudicated the claim on the merits." *Pinholster*, 563 U.S. at 181 (limiting review under § 2254(d)(1) to state court record); *Shoop*, 142 S. Ct. at 2043 ("Review of factual determinations under § 2254(d)(2) is expressly limited to the evidence presented in the State court proceeding.") (cleaned up).

The Michigan state courts adjudicated Woodburn's ineffective assistance of counsel claims on the merits. This Court's review of these claims is therefore limited to the record that was before the state court.

IV. Discussion

A. Ineffective Assistance of Trial Counsel

In his first claim, Woodburn seeks relief on the ground that he received ineffective assistance of trial counsel. He contends that counsel failed to consult with a psychopharmacological expert and failed to present a temporary insanity defense based on involuntary intoxication.

To establish ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient and the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel's performance is deficient if "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. To show prejudice, a petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

The standard for obtaining habeas corpus relief is "difficult to meet." *White v. Woodall*, 572 U.S. 415, 419 (2014) (cleaned up). In the context of an ineffective assistance of counsel claim under *Strickland*, the standard is "all the more difficult" because "[t]he standards created by *Strickland* and § 2254(d) are both highly deferential and when the two apply in tandem, review is doubly so." *Harrington*, 562 U.S. at 105 (cleaned up). "[T]he question is not whether counsel's actions were reasonable" but "whether there is any reasonable argument that counsel satisfied *Strickland*'*s* deferential standard." *Id.*

Woodburn claims defense counsel failed to investigate the possibility of an involuntary intoxication defense and, consequently, failed to present his only viable defense. He maintains that "Paxil caused an involuntary craving and ingestion of alcohol" and that the combination of Paxil and alcohol rendered him unable to conform his behavior to his own intentions or to societal norms. (ECF No. 8, PageID.2847). Woodburn raised this claim for the first time in his motion for relief from judgment filed in the trial court. Along with the motion, Woodburn submitted a report prepared by David Healy, M.D., identified by Woodburn as a "psychiatric and psychopharmacological expert." (ECF No. 3, PageID.30). To prepare his report, Healy reviewed the trial transcript, evaluations of Woodburn by several mental health professionals, and additional medical records, but he did not interview Woodburn. (ECF No. 6-12, PageID.1349). Healy formed the opinion that Woodburn's "behavior was significantly affected by his Paxil intake, which led to an interaction with alcohol and a resulting mental state that left him essentially delirious with diminished responsibility for his actions." (*Id.* at PageID.1362). Healy further believed Woodburn "could not conform his behavior either to his own intentions or to social norms." (*Id.*).

The trial court denied Woodburn's ineffective assistance of counsel claim for three primary reasons. This Court first focuses on the trial court's second holding that Woodburn failed to establish that counsel's performance fell below an objective

standard of reasonableness under prevailing professional norms. (ECF No. 6-12, PageID.1477-78). The state court held that counsel's unfamiliarity with Healy's opinion was reasonable because the impact of Paxil on alcohol cravings and the effects of alcohol use were not widely known:

> Current defense counsel has located an expert in the United Kingdom in order to support his theory. This expert Dr. Healy has indicated in his report that it is not surprising that the doctors in the emergency room were not aware of the role of Paxil with alcohol ingestion as the role is not well known. If local medical professionals are unaware of this theory it cannot be concluded that previous trial counsel and appella[te] counsel were unreasonable under the prevailing professional norms for not locating Dr. Healy in the United Kingdom.

(*Id.* at PageID.1478).

The state court's decision is not contrary to, or an unreasonable application of, clearly established Federal law; nor is it based on an unreasonable determination of the facts in light of the evidence. In his report, Healy noted emergency room staff who treated Woodburn in the days preceding the accident likely did not consider Paxil's impact on Woodburn's behavior and cravings because Paxil's role was "not well-known." (ECF No. 6-12, PageID.1358). Healy also opined that "95+% of doctors would not be aware that SSRIs can cause alcohol problems."[2] (*Id.* at PageID.1356). Strategic decisions made after less than a complete investigation are

[2] "SSRI" refers to a class of medications known as selective serotonin reuptake inhibitors. Paxil is an SSRI antidepressant. (*Id.* at PageID.1350.)

reasonable "to the extent that reasonable professional judgments support the limitations on investigation." *Strickland,* 466 U.S. at 690-91. Given that physicians were not expected to be aware of Paxil's impact, the trial court reasonably applied *Strickland* in deciding that counsel was not ineffective for being unaware of Paxil's impact.

In addition, trial counsel could have reasonably concluded that an involuntary intoxication defense was not a strong one. "[T]he defense of involuntary intoxication is part of the defense of insanity when the chemical effects of drugs or alcohol render the defendant temporarily insane." *People v. Caulley*, 197 Mich. App. 177, 187 (1992). "Involuntary intoxication is intoxication that is not self-induced and by definition occurs when the defendant does not knowingly ingest an intoxicating substance, or ingests a substance not known to be an intoxicant." *Id.* (cleaned up). Michigan recognizes that involuntary intoxication can be caused by the use of prescription medications. *Id.* at 188. To establish that intoxication is involuntary:

> [T]he defendant must not know or have reason to know that the prescribed drug is likely to have the intoxicating effect. Second, the prescribed drug, not another intoxicant, must have caused the defendant's intoxicated condition. Third, the defendant must establish that as a result of the intoxicated condition, he was rendered temporarily insane.

Id. (cleaned up).

The trial court held that Woodburn "had reason to know that rum was intoxicating . . . [and] had reason to know that Paxil could make him more prone to consume alcohol." (ECF No. 6-12, PageID.1478). Significant evidence in the record supports a conclusion that Woodburn knew or had reason to know about Paxil's impact on him, including that Paxil caused an increased desire to drink and increased alcohol consumption. Healy stated that Woodburn first took Paxil for a depressive disorder in 2004 and became "disinhibited" and "began to consume alcohol compulsively." (*Id.* at PageID.1357). At that time, Woodburn believe that Paxil caused his alcohol consumption and "his conviction in this link remained firm" through 2013. (*Id.*). Further, a report from psychologist Lyle D. Danuloff, Ph.D., submitted in connection with Woodburn's state court resentencing also shows Woodburn was aware of Paxil's effect on his alcohol consumption. (*See* ECF No. 6-11, PageID.1257-1265). Woodburn was aware, in 2004, that Paxil "dramatically increased his desire to drink." (*Id.* at PageID.1261). This evidence undermines an involuntary intoxication defense and, although a different attorney may have taken a different approach, it would have been reasonable for counsel to conclude such a defense was not viable. *See Strickland*, 466 U.S. at 689 ("There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way."). This evidence

also supports the state court's decision that Woodburn was not prejudiced by counsel's performance.

Woodburn argues that the trial court incorrectly determined that an involuntary intoxication defense was inconsistent with Woodburn's testimony that he did not intend to kill the officer. This determination, Woodburn maintains, led the trial court to incorrectly conclude that it was reasonable trial strategy for counsel to decline to present an inconsistent defense. This Court need not decide the reasonableness of the trial court's decision in this regard because, as discussed above, the state court's analysis about investigation and retention of an expert was "reasonable – not necessarily correct, but reasonable." *Wetzel v. Lambert*, 565 U.S. 520, 524 (2012). Therefore, the reasonableness of the court's other reasons for denying this claim is "beside the point." *Shinn v. Kayer*, 141 S. Ct. 517, 524 (2020) (cleaned up); *see also Parker v. Matthews,* 567 U.S. 37, 42 (2012) ("it is irrelevant [whether] the court also invoked a ground of questionable validity").

In sum, the state court's denial of Woodburn's ineffective assistance of counsel claim was not so obviously wrong as to be "beyond any possibility for fairminded disagreement" and, under § 2254(d), that is "the only question that matters." *Harrington*, 562 U.S. at 102-03 (cleaned up). Relief is denied on this claim.

B. Ineffective Assistance of Appellate Counsel

Woodburn maintains that he received ineffective assistance of appellate counsel because his attorney neglected to raise on direct review the ineffective assistance of trial counsel claim raised in this petition. A petitioner does not have a constitutional right to have appellate counsel raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 754 (1983). Strategic and "tactical choices regarding issues raised on appeal are properly left to the sound professional judgment of counsel." *Workman v. Bell*, 178 F.3d 759, 771 (6th Cir. 1998). Because Woodburn's ineffective assistance of counsel claim is meritless, and since appellate counsel need not raise non-meritorious claims on appeal, habeas relief on this claim is denied. *Shaneberger v. Jones*, 615 F.3d 448, 452 (6th Cir. 2010).

V. Certificate of Appealability

An appeal may not proceed unless a certificate of appealability (COA) is issued. Fed. R. App. P. 22(b); 28 U.S.C. § 2253(c). A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (cleaned up).

This Court concludes that reasonable jurists could debate Woodburn's ineffective assistance of trial counsel claim. The Court therefore grants a COA with respect to that claim. Reasonable jurists would not debate the Court's conclusion that Woodburn failed to establish entitlement to relief on his ineffective assistance of appellate counsel claim and the Court denies a COA for that claim.

IV. Conclusion

Accordingly,

IT IS ORDERED that the petition for writ of habeas corpus is denied.

IT IS FURTHER ORDERED that a certificate of appealability is granted as to Woodburn's ineffective assistance of trial counsel claim but denied as to his ineffective assistance of appellate counsel claim.

IT IS FURTHER ORDERED that the case caption be amended to substitute Bryan Morrison as the respondent.

s/Bernard A. Friedman
Hon. Bernard A. Friedman
Senior United States District Judge

Dated: November 17, 2022
Detroit, Michigan

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDREW FRANKLIN WOODBURN,

Petitioner,

Civil Action No. 19-cv-12901
HON. BERNARD A. FRIEDMAN

vs.

BRYAN MORRISON,

Respondent,

_____/

JUDGMENT

IT IS ORDERED AND ADJUGED that pursuant to this Court's Order dated November 17, 2022, this cause of action is DISMISSED.

Dated at Detroit, Michigan this 17th day of November, 2022.

KININIA D. ESSIX
CLERK OF COURT

By: Johnetta M. Curry-Williams
Deputy Clerk

Approved: s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR U.S. DISTRICT JUDGE

Dated: November 17, 2022

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Kelly L. Stephens
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: January 04, 2024

Mr. Mitchell T. Foster
Law Office
P.O. Box 798
Milford, MI 48381

Mr. John S. Pallas
Ms. Marissa Wiesen
Office of the Attorney General
of Michigan
P.O. Box 30736
Lansing, MI 48909

Re: Case No. 22-2084, *Andrew Woodburn v. Bryan Morrison*
Originating Case No. : 2:19-cv-12901

Dear Counsel,

The Court issued the enclosed opinion today in this case.

Enclosed are the court's unpublished opinion and judgment, entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Sincerely yours,

s/Cathryn Lovely
Opinions Deputy

cc: Ms. Kinikia D. Essix

Enclosures

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION
File Name: 24a0002n.06

Case No. 22-2084

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 04, 2024
KELLY L. STEPHENS, Clerk

ANDREW WOODBURN,

Petitioner-Appellant,

v.

BRYAN MORRISON, Warden,

Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

O P I N I O N

Before: MOORE, McKEAGUE, and KETHLEDGE, Circuit Judges.

McKEAGUE, Circuit Judge. A Michigan jury convicted Andrew Woodburn of assault with intent to commit murder after he crashed his pickup truck into an occupied police car. Woodburn now seeks habeas relief under 28 U.S.C. § 2254 for ineffective assistance of trial and appellate counsel. Woodburn argues that his trial lawyer was ineffective for failing to investigate and raise an involuntary intoxication defense based on unusual interactions between Woodburn's prescribed antidepressant and alcohol. He similarly argues that his appellate lawyer was ineffective for failing to raise that issue on direct appeal. But a Michigan state court already considered Woodburn's claims and rejected them on the merits. Because that state-court decision was not unreasonable, the district court properly denied habeas relief. The district court also properly denied Woodburn's request for an evidentiary hearing because the state court adjudicated both claims on the merits after considering the necessary facts. We **AFFIRM**.

I.

In June 2013, police officers arrested Andrew Woodburn after he drank a bottle of rum and drove his pickup truck into a state trooper's patrol car. Michigan authorities charged Woodburn with, among other things, assault with intent to commit murder. State prosecutors alleged that Woodburn possessed the specific intent to kill the state trooper. *See* Mich. Comp. Laws § 750.83.

A. Trial in State Court

Woodburn faced trial in a Michigan state court. Shortly before trial began, Woodburn's lawyer informed the court that he intended to rely on Woodburn's prescription medications and alcohol consumption to argue that Woodburn could not form the requisite intent to kill. But, applying Michigan law, the state court ruled that voluntary intoxication was not a valid defense to specific-intent crimes. The court therefore barred any evidence of Woodburn's medications or alcohol intoxication if submitted for the purpose of negating intent. Rather, such evidence was admissible only to help demonstrate that the automobile collision was an accident.

The evidence at trial painted the following picture:

Woodburn lived in northern Michigan with his parents. About three weeks before the June 2013 automobile collision, he began taking a prescribed antidepressant called Paxil. At the time, he was also taking a few other prescribed medications.

On June 23—the day of the collision—Woodburn took his Paxil around noon. He felt sore and "had this inclination to get alcohol" because he thought it would make him feel better. Trial Tr., R.6-6 at PageID 580–81. Woodburn bought a bottle of spiced rum from a nearby grocery store and drank the entire bottle within a couple hours. When the alcohol's effects kicked in, an intoxicated Woodburn started arguing with his parents about his abrupt plan to move to Florida.

The argument escalated. Woodburn, agitated and increasingly becoming upset, asked his parents about guns. He wanted some guns because he intended to make money in Florida by shooting feral hogs. But Woodburn's mother, Sharon, had removed all guns from the home two

days earlier and given them to a neighbor for safekeeping. Sharon lied to Woodburn and told him that the guns were in a storage locker in Gaylord, Michigan. She retreated to her bedroom, and Woodburn pounded on the door.

Alarmed by her son's demeanor, Sharon called 911. She told the dispatcher that Woodburn was violent and not in his right mind. On the recorded 911 call, Woodburn could be heard in the background threatening to kill his mother if she called the police. The recording also captured Woodburn saying that the first officer to respond was "dead" (or perhaps "done"). Sharon explained to the dispatcher that her son was "going through like a psychotic episode" and would "kill anybody that's in his way." Trial Tr., R.6-4 at PageID 259–60. Woodburn probably had a machete and some knives, she added. She also warned that her son would likely try to provoke responding officers into shooting him. By then, Woodburn had left the house and gotten into his Ford pickup truck. Sharon described the vehicle to the dispatcher.

A state trooper responded to the 911 call in a marked patrol car. The Woodburns lived on a one-lane private trail that feeds into a public road. The trooper initially positioned his vehicle on the public road's shoulder, close to the intersection with the private trail. He saw Woodburn's truck driving on the trail toward the public road. Hoping to stop Woodburn, the trooper activated his overhead lights and pulled his vehicle one or two car-lengths onto the graveled trail, partially blocking Woodburn's access to the larger road. The trooper saw Woodburn throw something out the driver's side window and begin to accelerate. At that point, Woodburn's truck was about 300 to 400 yards away and closing in at approximately 60 miles per hour. Without slowing down or attempting to maneuver around the patrol car, Woodburn drove his truck head-on into the trooper's vehicle. The collision forced the police car into the public road, where it was struck by another passing car. Woodburn's truck ended up in a nearby ditch.

The trooper exited his mangled vehicle, approached the pickup truck, and ordered Woodburn to get out. Woodburn did not initially comply, but he eventually rolled out of the truck

and yelled "just shoot me" two or three times. Trial Tr., R.6-6 at PageID 592–93. The trooper tased Woodburn. Another police officer arrived at the scene, handcuffed Woodburn, and took him into custody.

Woodburn testified that he did not intend to kill the trooper. He explained that he simply wanted to drive down to Gaylord to pick up some guns, and then continue driving to Florida. He recalled smashing into some posts and hitting a culvert as he drove down the private gravel trail. According to Woodburn, he spotted the trooper's patrol car and thought he might get pulled over for driving under the influence. Woodburn started tossing empty liquor bottles out the driver's side window. He testified that he knew "the accelerator was being mashed on at points" and that he was probably "pushing on it" while reaching down and grabbing empty bottles. *Id.* at PageID 589. He added that the thought of hitting the brakes never crossed his mind. But Woodburn attested that he "didn't mean to" hit the police car. *Id.* at PageID 594. Rather, he thought that he "might just be able to pass this officer" and turn onto the public road. *Id.* at PageID 598, 611, 615.

The jury was unpersuaded. It convicted Woodburn of assaulting the trooper with the intent to murder him. It also convicted Woodburn of being a felon in possession of a firearm. The state trial court sentenced him for both crimes.

B. Direct Appeal in State Court

Represented by new counsel, Woodburn appealed his conviction and sentence in Michigan's court of appeals. Woodburn argued that he received ineffective assistance of trial counsel because his trial lawyer (1) failed to consult an accident-reconstruction expert, (2) introduced the nature of Woodburn's prior conviction, (3) failed to sever Woodburn's felon-in-possession charge from his assault-with-intent-to-murder charge, and (4) allowed prosecutors to introduce as evidence a knife collection that police recovered from Woodburn's pickup truck. Woodburn also argued that the trial court improperly calculated his sentence.

The court of appeals remanded the case back to the trial court for an evidentiary hearing on Woodburn's ineffective-assistance-of-counsel claims. After conducting that evidentiary hearing, the state trial court denied Woodburn's request for a new trial and re-imposed his original sentence. The court of appeals affirmed, and Michigan's supreme court declined to hear the case.

C. State Post-Conviction Proceedings

Woodburn, represented by his current lawyer, filed a motion for relief from judgment in the state trial court. The motion raised—for the first time—his prior lawyers' failure to pursue a temporary insanity defense based on the involuntarily intoxicating effect of his prescribed Paxil. Woodburn argued that his trial lawyer was ineffective for failing to consult a psychopharmacology expert and present the involuntary intoxication defense. Relatedly, he argued that his appellate lawyer was ineffective for neglecting to raise those trial-counsel deficiencies on direct appeal and during Woodburn's subsequent evidentiary hearing.

Woodburn's motion relied on a report by Dr. David Healy, a psychopharmacology expert based in the United Kingdom. Dr. Healy has long studied the effects of Paxil and related antidepressants. According to his research, those medications have an obscure but well-documented tendency to induce alcohol cravings. His report concluded that Woodburn's "behavior was significantly affected by his Paxil intake, which led to an interaction with alcohol and a resulting mental state that left him essentially delirious with diminished responsibility for his actions on the day of the offense." State Docs., R.6-12 at PageID 1362 (expert report). Among other things, Dr. Healy opined that Paxil had "most unusually" caused Woodburn to become involuntarily intoxicated by inducing him to compulsively consume alcohol. *Id.* at PageID 1359.

Woodburn also referenced a pair of alcohol-related incidents in the days preceding the automobile collision. Three days before the collision, Woodburn nearly drowned in a river after reportedly drinking a fifth of rum. The following day, Woodburn jumped out of a moving car and was found hours later lying in a field; an emergency-room physician diagnosed Woodburn with

acute alcohol intoxication. Dr. Healy's report cited those episodes and reasoned that they supported his theory that Woodburn was involuntarily intoxicated by Paxil. After all, Woodburn's sudden binge drinking started mere weeks after starting his Paxil treatment. He had previously been sober for several years following his struggle with substance abuse.

After reviewing the motion and Dr. Healy's report, the state trial court denied Woodburn's request for post-judgment relief. It rejected his ineffective-assistance claims on three separate grounds: First, Woodburn failed to overcome the presumption that his trial lawyer was implementing sound trial strategy by avoiding a defense theory that was arguably inconsistent with Woodburn's own testimony that the crash was an accident. Second, Woodburn never established that his lawyers' failure to investigate and consult an expert regarding Paxil's side effects was unreasonable under prevailing professional norms. Finally, Woodburn likely lacked a viable involuntary intoxication defense under Michigan law. The state's court of appeals and supreme court both declined to review the trial court's decision.

D. Federal Habeas Proceedings

Woodburn petitioned for a writ of habeas corpus in federal district court. He raised the same two claims that he had brought in his state-court motion for relief from judgment: his trial lawyer was ineffective for failing to investigate and present an involuntary intoxication defense, and his appellate lawyer was ineffective for failing to raise trial counsel's failure on appeal. Woodburn also sought an evidentiary hearing to flesh out his claims.

The district court denied the petition, reasoning that the state court did not unreasonably reject Woodburn's claims. It also denied Woodburn's request for an evidentiary hearing, concluding that its review was limited to the record before the state court that rejected Woodburn's claims on the merits. However, the district judge certified the ineffective-assistance-of-trial-counsel claim for appeal. This Court, in a single-judge order, expanded our scope of review to include the appellate-counsel claim. Woodburn now appeals.

II.

Woodburn argues that the district court erred in rejecting his habeas claims for ineffective assistance of trial and appellate counsel. He also contends that the district court erroneously denied his request for an evidentiary hearing.

A. Habeas Claims for Ineffective Assistance of Counsel

We turn first to Woodburn's two ineffective-assistance habeas claims. This Court reviews a district court's denial of habeas relief de novo. *Daniel v. Burton*, 919 F.3d 976, 978 (6th Cir. 2019). The district court's factual findings are reviewed for clear error, and its legal conclusions on mixed questions of law and fact are reviewed de novo. *Id.*

The state court's underlying decision, however, deserves more deference. A Michigan court already rejected Woodburn's ineffective-assistance claims on the merits. To prevail in this federal habeas action, Woodburn must therefore overcome the heightened standard of review imposed by the Antiterrorism and Effective Death Penalty Act (AEDPA). Relevant here, he must demonstrate that the state court's decision to deny his claims involved an "unreasonable application" of clearly established federal law, as determined by U.S. Supreme Court precedent. 28 U.S.C. § 2254(d)(1); *see also Williams v. Taylor*, 529 U.S. 362, 412–13 (2000) (clarifying that AEDPA imposes a "new constraint" on federal habeas relief where state prisoners' claims have been adjudicated in state court).

Under AEDPA, we cannot disturb the state court's ruling unless its application of clearly established federal law was "objectively" unreasonable. *Williams*, 529 U.S. at 409. That requires more than a showing that the state court was "incorrect." Even an incorrect state-court application of federal law survives our habeas review unless it was also objectively unreasonable. *Id.* at 410–11. Federal habeas relief is improper whenever "fairminded jurists could disagree" about the correctness of the state-court decision. *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)).

And the substantive ineffective-assistance standard poses its own high bar: Woodburn must satisfy *Strickland v. Washington*'s two-pronged test to prevail. 466 U.S. 668 (1984). *First*, he must prove that counsel's performance was deficient. That entails a showing that counsel "made errors so serious" that the lawyer was not functioning as the "counsel" guaranteed by the Constitution. *Id.* at 687. Courts approach this highly deferential inquiry with a "strong presumption" that counsel was furthering a sound strategy. *Id.* at 689. We afford counsel every benefit of the doubt and affirmatively consider the range of possible reasons behind counsel's decisions. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011). *Second*, Woodburn must also show that counsel's deficient performance prejudiced him. Prejudice requires a "reasonable probability" that, but for counsel's deficient performance, Woodburn's case would have ended with a different result. *Strickland*, 466 U.S. at 694. That probability must be "sufficient to undermine confidence" in the proceeding's outcome, but it need not rise to the level of "more likely than not." *Id.* at 693–94.

Strickland's difficult-to-meet standard is magnified when viewed through the deferential AEDPA lens. *See* 28 U.S.C. § 2254(d)(1); *see also Harrington*, 562 U.S. at 105 (noting that our review is "doubly" deferential when both *Strickland* and § 2254(d) apply). To grant habeas relief, a federal court must conclude that the state court's application of *Strickland* was "unreasonable"—not just that it was wrong. *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009). And because *Strickland*'s general standard relies heavily on case-specific considerations, state courts enjoy particularly wide latitude to reasonably deny ineffective-assistance claims. *Id.*

1. Trial Counsel

Woodburn first targets his trial attorney's performance. He argues that his trial lawyer provided ineffective assistance by failing to consult a psychopharmacology expert and present an involuntary intoxication defense. Woodburn contends that such a defense—based on his Paxil ingestion and the resulting interaction with compulsorily consumed alcohol—was his only viable trial strategy.

That argument failed in state court. Among other things, the state judge determined—and the district court agreed—that Woodburn likely lacked a viable involuntary intoxication defense under Michigan law. Therefore, the courts reasoned, Woodburn failed to satisfy either of *Strickland*'s two prongs: counsel's performance was not deficient for failing to raise an inapplicable defense, and Woodburn was not prejudiced because the defense would likely have failed anyway.

As a federal habeas court, we cannot question a state court's application of state law. *E.g.*, *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991); *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990). Federal habeas relief is not available for state-law errors. *Lewis*, 497 U.S. at 780; *see also* 28 U.S.C. § 2254(a) (limiting habeas relief to violations of federal law). We therefore cannot grant habeas relief for ineffective assistance of counsel when doing so requires a determination that the state court erred in interpreting its own law. *Davis v. Straub*, 430 F.3d 281, 290–91 (6th Cir. 2005). That arguably ends our inquiry in this case altogether. After all, the state court grounded its ineffective-assistance decision in its interpretation and application of Michigan's involuntary intoxication defense. To the extent that we *can* question the state court's decision—perhaps as an "unreasonable determination of the facts in light of the evidence presented" under 28 U.S.C. § 2254(d)(2)—we nevertheless conclude that the state court acted reasonably in denying Woodburn's claim.[1]

The state court explained that Michigan recognizes a temporary insanity defense for defendants who commit crimes while involuntarily intoxicated by prescribed medications. But, it continued, Michigan law limits that defense to situations where the defendant lacked reason to know that the prescribed drug was likely to have its intoxicating effect. In addition, the prescribed drug—not another substance—must have caused the intoxicating condition. *See People v. Caulley*, 494 N.W.2d 853, 859 (Mich. Ct. App. 1992). Examining the record, the state court concluded that Woodburn fell short of satisfying both requirements.

[1] Because this conclusion forecloses Woodburn's claim, we need not consider the state court's alternative grounds for denying relief.

First, the court decided that Woodburn had reason to know about Paxil's intoxicating effect. This reasonable finding has plenty of support in the record. Dr. Healy's report explains that when Woodburn first tried Paxil in 2004, he became disinhibited and started compulsively consuming alcohol. Woodburn suspected at the time that there was a link between Paxil and his alcohol abuse, and he successfully requested a switch to new medications. Woodburn remained firmly convinced over the years about the connection between Paxil and alcohol abuse. Then, in 2013, Woodburn's new doctor recommended returning to Paxil—in an even higher dose than before. Woodburn started taking Paxil again despite his ongoing concerns about its effects. A psychological report submitted for Woodburn's state-court resentencing proceeding further confirms that Woodburn knew about Paxil's effect on his alcohol consumption and mental state.

Second, the state court decided that alcohol, not Paxil, caused Woodburn's intoxication. No party, after all, disputes that Woodburn drank a substantial amount of rum shortly before the incident. Nor does anyone dispute that Woodburn knew about rum's intoxicating properties. In its order, the court acknowledged that Dr. Healy's report suggested some primary intoxicating effect of Paxil itself. However, it found the thrust of the expert's position to be that Paxil's secondary intoxicating effect—i.e., inducing the involuntary consumption of alcohol—was the main culprit.[2] But, interpreting Michigan law, the state court rejected Woodburn's legal theory. "The fact that Paxil may have heightened Mr. Woodburn's craving for alcohol," it concluded, "does not amount to intoxication." State Docs., R.6-12 at PageID 1478 (order denying motion).

[2] To be sure, Woodburn argues that Paxil's primary intoxicating effect must be considered as well. He notes Dr. Healy's observation that Paxil can cause compulsive behaviors and disinhibition, compromise decisionmaking, and trigger aggressive suicidality. But although Dr. Healy opines that Paxil caused Woodburn to become "confused or disorganized" and crave alcohol, he concluded that Woodburn's case likely did not involve "Paxil induced aggression or suicidality." State Docs., R.6-12 at PageID 1358, 1362 (expert report). In light of that record, we do not think the state court was unreasonable when it focused on Paxil's tendency to cause alcohol cravings. Moreover, its factual finding that alcohol caused the traffic collision is entitled to a presumption of correctness—a presumption that Woodburn has not overcome. *See* 28 U.S.C. § 2254(e)(2).

This decision, too, is reasonable. Woodburn cites no Michigan (or other) authorities validating his involuntary intoxication theory. If anything, Michigan caselaw seems to go the other way. *See People v. Osborn*, No. 316228, 2014 WL 5364052, at *3 (Mich. Ct. App. Oct. 21, 2014) (rejecting involuntary intoxication defense where defendant consumed prescription drug and alcohol because defendant could not show that the drug—not alcohol—caused the intoxication). And although at least one Michigan case seemingly endorses an involuntary intoxication defense for the "unexpected effects of combining alcohol with a prescription medication," *see People v. Wilkins*, 459 N.W.2d 57, 58, 60 (Mich. Ct. App. 1990), that lends no clear support to a situation where one intoxicant is alleged to have caused the consumption of another. True, Woodburn also appears to argue that simultaneous interactions between Paxil and alcohol created a more pronounced intoxicated state than one would expect from alcohol alone. But that argument cannot escape the state court's reasonable finding that drinking a bottle of rum immediately before the incident caused Woodburn's intoxication.

Given the state court's conclusion that Woodburn likely lacked a viable involuntary intoxication defense under state law, it reasonably determined that Woodburn cannot satisfy *Strickland*. At best, Woodburn's involuntary intoxication defense constituted a novel and untested theory. His trial lawyer was well within his considerable discretion to proceed instead on a theory that the automobile crash was an accident. *See Alexander v. Smith*, 311 F. App'x 875, 887 (6th Cir. 2009) (holding that counsel's failure to "present a novel legal argument when the caselaw is ambiguous" is not ineffective assistance); *see also Harrington*, 562 U.S. at 110 (stressing that counsel cannot be faulted for making a "reasonable miscalculation" or failing to prepare for seemingly remote possibilities). And given the low likelihood of the defense's success, Woodburn fell short of establishing a reasonable probability of a different trial result.

2. Appellate Counsel

Woodburn next argues that his appellate lawyer was also ineffective—both on appeal and during the state-court evidentiary hearing on remand—for failing to raise the above-described deficiencies in trial counsel's performance. But because Woodburn's underlying trial-counsel claim itself lacks merit, we reject his appellate-counsel claim as well.

The Constitution guarantees criminal defendants the effective assistance of counsel in their first appeal by right. *Evitts v. Lucey*, 469 U.S. 387, 396–97 (1985). Michigan affords its criminal defendants the right to appeal an adverse judgment following trial, *see* Mich. Comp. Laws § 770.3(a), so Woodburn is entitled to relief if he can satisfy *Strickland*'s two-pronged standard. As with his ineffective-assistance-of-trial-counsel claim, Woodburn must show that his appellate lawyer's representation "fell below an objective standard of reasonableness" and that the lawyer's deficient performance prejudiced him. *Roe v. Flores-Ortega*, 528 U.S. 470, 476–77 (2000) (quoting *Strickland*, 466 U.S. at 688). Moreover, AEDPA's extra layer of deference still constrains our review. *See* 28 U.S.C. § 2254(d)(1). We cannot grant habeas relief unless the state court was "objectively unreasonable" when it rejected Woodburn's appellate-counsel claim on the merits. *Mahdi v. Bagley*, 522 F.3d 631, 636 (6th Cir. 2008) (citation omitted).

Under that framework, the state court reasonably applied *Strickland* to reject Woodburn's appellate-counsel claim. After all, Woodburn's appellate lawyer cannot be deemed ineffective for neglecting to raise a meritless issue. *See Wilson v. Mitchell*, 498 F.3d 491, 514–15 (6th Cir. 2007). As we concluded above, the state court reasonably rejected Woodburn's underlying trial-counsel claim—the sole basis for his derivative appellate-counsel claim. That alone forecloses both *Strickland* prongs: appellate counsel was not required to pursue the non-meritorious trial-counsel claim, *Jalowiec v. Bradshaw*, 657 F.3d 293, 321 (6th Cir. 2011), and Woodburn can hardly demonstrate a reasonable probability of reversal, *see id.* at 322.

B. Evidentiary Hearing

Finally, Woodburn seeks an evidentiary hearing to expand the record. At such a hearing, he intends to present testimony from Dr. Healy and other witnesses to bolster his Paxil-based ineffective-assistance-of-counsel claims.

We review the district court's denial of Woodburn's requested evidentiary hearing for an abuse of discretion. *Black v. Carpenter*, 866 F.3d 734, 742 (6th Cir. 2017). Though AEDPA often constrains district courts' authority to *grant* evidentiary hearings, *see, e.g.*, *Shinn v. Ramirez*, 596 U.S. 366, 381–82 (2022), district courts enjoy more leeway in *denying* such hearings. Whenever a federal court "is able to resolve a habeas claim on the record before it, it may do so without holding an evidentiary hearing." *Black*, 866 F.3d at 742. And where AEDPA precludes federal courts from considering new evidence at all, the district court must deny an evidentiary hearing. Such a hearing would "needlessly prolong" federal habeas proceedings. *Shoop v. Twyford*, 596 U.S. 811, 820 (2022) (quoting *Shinn*, 596 U.S. at 390).

With that in mind, the district court properly denied Woodburn's request for an evidentiary hearing. Critically, a state court already adjudicated his claims on the merits. *See* 28 U.S.C. § 2254(d). Federal habeas review of such claims falls under § 2254(d) and "is limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011); *see Shoop*, 596 U.S. at 819. Notably, the record before the state court included Dr. Healy's report and other evidence supporting Woodburn's two ineffective-assistance claims. Neither this Court nor the district court can consider additional evidence in reviewing the reasonableness of the state court's resulting decision. *See Shoop*, 596 U.S. at 819–20; *see also Hodges v. Colson*, 727 F.3d 517, 541 (6th Cir. 2013).

Woodburn disagrees. He directs us to § 2254(e)(2), a neighboring AEDPA provision. That subsection bars (with limited exceptions) evidentiary hearings for habeas petitioners who "failed to develop" the factual basis of their claims in state court. 28 U.S.C. § 2254(e)(2). Then, citing the

Supreme Court's *Williams v. Taylor* decision, Woodburn correctly notes that a habeas petitioner does not "fail" to develop his facts if external forces stymie his diligent efforts to do so. 529 U.S. 420, 436–37 (2000). Thus, Woodburn concludes, an evidentiary hearing is permissible because the state courts unreasonably denied his claims without allowing him to fully develop his facts.

That argument is unpersuasive. Woodburn rightly says that he never "failed to develop" the factual record under § 2254(e)(2). But unlike in *Williams*, Woodburn's efforts to develop his facts were not frustrated by outside forces—or by any forces at all. Rather, Woodburn *succeeded* in developing the record. The state court considered all the facts necessary for deciding Woodburn's Paxil-based claims, including Dr. Healy's expert report. It then adjudicated those claims on the merits. Indeed, Woodburn concedes that he "can satisfy § 2254(d)'s deferential standard of review based on the state record alone." Appellant's Br. 66. Because Woodburn properly developed the factual basis of his claims in state court, § 2254(e)(2) is inapplicable. And, under § 2254(d), we limit our review to the facts before the state court. The district court did not err in denying Woodburn an evidentiary hearing.

III.

For the foregoing reasons, we **AFFIRM** the district court's order.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-2084

ANDREW FRANKLIN WOODBURN,

Petitioner - Appellant,

v.

BRYAN MORRISON, Warden,

Respondent - Appellee.

FILED
Jan 04, 2024
KELLY L. STEPHENS, Clerk

Before: MOORE, McKEAGUE, and KETHLEDGE, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

APPENDIX E

Case No. 22-2084

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

ANDREW FRANKLIN WOODBURN

Petitioner - Appellant

v.

BRYAN MORRISON, Warden

Respondent - Appellee

BEFORE: MOORE, Circuit Judge; MCKEAGUE, Circuit Judge; KETHLEDGE, Circuit Judge

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens, Clerk

Issued: January 29, 2024