

DOCKET No. _____

IN THE
Supreme Court of the United States

MARGARET A. ALLEN,

Petitioner,

v.

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

Respondents.

**APPLICATION FOR SIXTY (60) DAY
EXTENSION OF TIME TO FILE PETITION
FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

ATTACHMENT A

April 12, 2023 Order Denying Application for a Certificate of Appealability

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-10447-P

MARGARET A ALLEN,

Petitioner - Appellant,

versus

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

Respondents - Appellees.

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

ORDER:

Margaret Allen, a Florida inmate sentenced to death for murder, applies for a certificate of appealability to appeal the denial of her petition for a writ of habeas corpus. 28 U.S.C. §§ 2253, 2254. Because she failed to make a substantial showing of the denial of a constitutional right, Allen's application for a certificate of appealability is **DENIED**.

I. BACKGROUND

Allen was convicted for the kidnapping and first-degree murder of Wenda Wright. *See Allen v. State (Allen I)*, 137 So. 3d 946, 951–55 (Fla. 2013) (summarizing the crimes, trial, and sentencing). Allen believed that Wright had stolen her purse and persuaded Wright to come to her home. *Id.* at 951. Although Wright begged to be allowed to leave, Allen and an accomplice, Quintin Allen, refused to release her. *Id.* Allen struck Wright in the head, knocking her to the ground. *Id.* Quintin held Wright down on the floor while Allen poured chemicals onto Wright’s face. *Id.* Then Allen beat Wright with belts while Quintin tied Wright’s feet. *Id.* When Allen pulled a belt around Wright’s neck, Wright begged her to stop. *Id.* Wright started shaking and then fell still after about three minutes. *Id.* at 951–52.

The next day, Allen, Quintin, and James Martin, who had spent the previous night at Allen’s house but did not witness the murder, moved Wright’s body into a borrowed truck and drove to an area off the highway to dispose of it. *Id.* at 952–53. They buried Wright, covered the hole, and threw the carpet in which Wright’s body had been wrapped in a dumpster outside a truck stop. *Id.* at 952. Quintin turned himself in to the police and took the police to the burial location. *Id.*

Dr. Sajid Qaiser, the county’s chief medical examiner, testified at Allen’s trial based on his review of the autopsy report because the doctor who performed

the autopsy was unavailable. *Id.* at 953 & n.1. Dr. Qaiser testified that Wright's body showed extensive bruising and that a dead body cannot bruise. *Id.* at 953. He could not tell whether Wright lost consciousness during the beating. *Id.* The marks on her body indicated that her hands had been tied and that something had been tied tightly around her neck or she had been hanged. *Id.* He concluded that Wright's death was a homicide and that strangulation was an important cause of death, although other factors also contributed. *Id.*

The trial court denied the defense's motion for acquittal. *Id.* The defense rested without calling any witnesses. *Id.* The jury found Allen guilty of kidnapping and first-degree murder. *Id.*

During the penalty phase, Dr. Qaiser again testified on behalf of the State. He explained that someone would feel a sense of panic during strangulation. *Id.* He did not know whether Wright was conscious during the majority of the attack. *Id.* Someone would lose consciousness after about ten to twenty seconds of strangulation. *Id.* He testified that unconscious people may perceive pain, although he could not say whether Wright experienced pain while unconscious. *Allen v. State (Allen II)*, 261 So. 3d 1255, 1276 (Fla. 2019).

The defense called two expert witnesses during the penalty phase. First, a neurological physician testified that Allen had suffered from numerous head injuries, was at the lower end of intellectual capacity, and had organic brain

damage that would destroy her impulse control and make it difficult for her to conform her conduct to the requirements of the law and might affect her ability to appreciate the criminality of her conduct. *Allen I*, 137 So. 3d at 953–54. Although he could not determine whether Allen was substantially mentally impaired because she was not cooperative, he thought that Allen would not be able to create a complex plan. *Id.* at 954. But when he learned the facts of the case on cross-examination, he stated that learning that Allen had created and followed through on the plan to discard Wright’s body would change the severity of his diagnosis of Allen. *Id.* Second, a specialist in neuropsychiatry and brain imaging testified that he had reviewed Allen’s brain scan and identified at least ten traumatic brain injuries. *Id.* He thought that these injuries would make it hard for Allen to conform her conduct to the requirements of the law but would not impair her planning abilities. *Id.*

The defense also called Allen’s aunt, Myrtle Hudson. *Id.* Hudson testified that Allen grew up in a violent and drug-infested neighborhood. *Id.* Hudson knew that Allen was beaten to the point of unconsciousness in at least two abusive relationships. *Id.* She thought Allen was sexually abused as a child. *Id.*

Finally, the trial court held a hearing outside the presence of the jury to allow both sides to present additional evidence. *Id.*; *see Spencer v. State*, 615 So. 2d 688, 690–91 (Fla. 1993). Several witnesses testified for the defense regarding

Allen's character and background. *Allen I*, 137 So. 3d at 954. Allen testified that she had been abused and that she sold drugs. *Id.* She denied killing Wright but admitted that her daughter had told the police that Allen had committed the crimes. *Id.*

The jury unanimously recommended a sentence of death. *Id.* at 955. The trial court found and afforded great weight to two statutory aggravators: the murder was committed in connection with a kidnapping and the murder was especially heinous, atrocious, or cruel. *Id.* The trial court found no statutory mitigation. *Id.* The trial court afforded some weight to three nonstatutory mitigating factors: Allen was a victim of physical and possibly sexual abuse; she had brain damage that resulted in episodes of lack of impulse control; and she grew up around violence and illegal drugs. *Id.* It afforded little weight to the finding that Allen helped other people by providing food, money, or shelter. *Id.* Because the trial court concluded that the aggravating factors outweighed the mitigating factors, it imposed the death sentence for the murder. *Id.* It imposed a sentence of life imprisonment for the kidnapping. *Id.* at 969.

The Supreme Court of Florida affirmed Allen's convictions and sentences on direct appeal. *Id.* Allen moved for postconviction relief under Florida Rule of Criminal Procedure 3.851. The trial court held an evidentiary hearing on every

claim but for one subclaim and denied the motion. *See Allen II*, 261 So. 3d at 1267. The Supreme Court of Florida affirmed. *Id.* at 1289.

Allen filed a timely federal petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254. She alleged fourteen grounds for relief based on both her direct appeal and her motion for postconviction relief. The district court denied the petition and denied a certificate of appealability.

II. STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

This Court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). That standard requires the applicant to “demonstrat[e] that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Whether the applicant has satisfied that burden is a “threshold inquiry that does not require full consideration of the factual or legal bases adduced in support of the claims.” *Id.* at 336.

When the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, governs an applicant’s claims, we examine the district court’s application of the Act to the petition for a writ of habeas corpus and ask whether its resolution was debatable among reasonable jurists. *Miller-El*, 537

U.S. at 336. Under the Act, when a state court has adjudicated a claim on the merits, federal habeas relief is unavailable on that claim unless its adjudication “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 “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)(1)–(2). State-court determinations of fact are presumed to be correct, and a petitioner can rebut that presumption only “by clear and convincing evidence.” *Id.* § 2254(e)(1). When a state court has ruled that a petitioner failed to comply with a state procedure in the process of exhausting her claim, if that state procedure was an independent and adequate ground to deny relief, then the petitioner has procedurally defaulted that claim in federal court and ordinarily cannot receive relief on that claim. *Mason v. Allen*, 605 F.3d 1114, 1119–20 (11th Cir. 2010).

III. DISCUSSION

Allen seeks a certificate of appealability on fourteen grounds, which fall into five groups of claims. First, she argues that her death sentence is unconstitutional because the jury did not explicitly find the facts necessary to impose the death penalty and was informed that its recommendation of the death sentence was advisory. Second, she argues that her trial counsel was constitutionally ineffective.

Third, she argues that the prosecution knowingly introduced and failed to correct false evidence. Fourth, she argues that the trial court's exclusion of evidence that Quintin confessed to the crime violated her right to due process. Fifth, she argues that her death sentence is unconstitutional because the sentencing judge erred in finding and weighing the evidence in aggravation and mitigation.

Allen also argues the district court failed to address her allegation that the state court unreasonably determined the facts. *See* 28 U.S.C. § 2254(d)(2). We disagree. The district court's decision clearly encompassed factual review. Moreover, that a state court's decision was based on an unreasonable determination of the facts would not, by itself, merit habeas relief; Allen would still have to prove that her custody violated federal law, *id.* § 2254(a). *See Wilson v. Corcoran*, 562 U.S. 1, 5–6 (2010).

A. Allen's Claims Regarding the Jury's Advisory Sentence Do Not Merit a Certificate of Appealability.

Allen contends that her death sentence violates the rules established in *Hurst v. Florida*, 577 U.S. 92 (2016), and *Caldwell v. Mississippi*, 472 U.S. 320 (1985), but she has abandoned her *Hurst* claim and failed to satisfy her burden regarding her *Caldwell* claim. In *Hurst*, the Supreme Court explained that the Sixth Amendment requires a jury to find each fact that is necessary to the imposition of the death penalty. 577 U.S. at 97–98. It held Florida's capital-sentencing scheme unconstitutional because the sentencing judge under that system found the factual

predicates for death-penalty eligibility. *Id.* at 99–100, 103. In *Caldwell*, the Court held that it is a violation of the Eighth Amendment “to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant’s death rests elsewhere.” 472 U.S. at 328–29.

Allen’s application for a certificate of appealability purports to “incorporate[] all previously advanced claims and arguments,” but “[w]e have rejected the practice of incorporating by reference arguments made to the district courts,” *Anderson v. Sec’y for Dep’t of Corr.*, 462 F.3d 1319, 1331 (11th Cir. 2006). Allen’s application asserts that “her death sentence is unconstitutional in light of *Hurst*” without further explanation. Because Allen failed to challenge the Supreme Court of Florida’s determination that the *Hurst* error was harmless beyond a reasonable doubt, *Allen II*, 261 So. 3d at 1287–89, she has not satisfied her burden on this issue.

As for Allen’s argument that the jury was misled about its responsibility, she acknowledges that “to establish a *Caldwell* violation, a defendant necessarily must show that the remarks to the jury improperly described the role assigned to the jury by local law.” *Romano v. Oklahoma*, 512 U.S. 1, 9 (1994) (alteration adopted) (citation omitted). The Supreme Court of Florida held that the jury instructions at Allen’s trial correctly described the jury’s role under Florida law at the time. *Allen*

II, 261 So. 3d at 1289. Although Allen argues that the trial court made an “incorrect statement of the law” in remarks to the jury, federal habeas relief “does not lie for errors of state law,” *Corcoran*, 562 U.S. at 5. Because Allen does not explain why reasonable jurists may debate any issue of federal law regarding her *Caldwell* claim, she has not satisfied her burden.

B. Allen’s Claims of Ineffective Assistance of Counsel Do Not Merit a Certificate of Appealability.

Allen also fails to satisfy her burden regarding her claims of ineffective assistance of counsel. To prevail on such a claim, a defendant must prove both that her counsel’s performance was objectively deficient and that the defective performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The Supreme Court of Florida held that each of Allen’s claims failed one or both of those elements. *See Allen II*, 261 So. 3d at 1269–86. The district court determined that Allen was not entitled to habeas relief under the deference afforded to state-court merits decisions. No reasonable jurist would debate that resolution.

1. Penalty-Phase Mitigating Evidence

Allen devotes most of her application to her claim that her counsel was ineffective for failing to adequately investigate and present mitigating evidence during the penalty phase. The Supreme Court of Florida held that Allen failed to

prove prejudice under *Strickland. Allen II*, 261 So. 3d at 1272–75. The district court determined that Allen was not entitled to relief on this claim.

In her application, Allen urges that a member of the Supreme Court of Florida would have granted her relief on this claim. *See id.* at 1289–90 (Pariente, J., dissenting). But the standard to obtain a certificate of appealability is whether reasonable jurists applying the deference owed to state-court merits decisions would disagree with the *district court's* resolution of Allen's claims, not whether the underlying state-court decision was debatable. *Miller-El*, 537 U.S. at 336.

Allen also contends that under *Strickland*, the court must “speculate” as to the effect of additional mitigation evidence developed in postconviction proceedings. *Cf. Sears v. Upton*, 561 U.S. 945, 956 (2010). The Supreme Court of Florida did so: it determined that the postconviction evidence was cumulative or otherwise entitled to little weight, and it explained its conclusion that because the aggravating evidence was so great, there was no reasonable probability that this additional mitigating evidence would have altered the outcome of Allen's trial. *Allen II*, 261 So. 3d at 1272–75. The district court did the same.

Allen also asserts that the Supreme Court of Florida's denial of relief on this subclaim violated her equal-protection rights and that the district court “appears to have ignored” this argument. *See* U.S. CONST. amend. XIV, § 1. She compares herself to another capital defendant whose case originated in the same county and

who was granted relief by the Supreme Court of the United States on his claim that counsel prejudiced him by unreasonably failing to present mitigating evidence.

Allen argues that “the only difference between her and similarly situated individuals [who] were granted relief . . . [is] that [she] is a female.”

The decision Allen cites, *Porter v. McCollum*, 558 U.S. 30 (2009), is inapposite. In *Porter*, the Supreme Court of the United States granted relief because the jury heard “almost nothing” about the defendant’s troubled background, the Supreme Court of Florida had rejected one of the aggravating circumstances the sentencing judge had found, and the Florida courts failed to give any consideration to postconviction evidence of Porter’s cognitive defects. 558 U.S. at 41–43. In Allen’s case, by contrast, the jury heard evidence of Allen’s traumatic upbringing; the Supreme Court of Florida upheld the statutory-aggravator findings; and the state courts treated Allen’s brain damage as a nonstatutory mitigating factor. *Allen II*, 261 So. 3d at 1273–75; *Allen I*, 137 So. 3d at 962–64, 967. No reasonable jurist would think that Allen’s sex was “the only difference between her and” Porter.

2. Prosecutor’s Guilt-Phase Closing Argument

Allen argues that her counsel was ineffective for failing to object to portions of the prosecutor’s guilt-phase closing argument. Her application mentions only one portion of that argument: the prosecutor’s misstatements of some of Dr.

Qaiser’s testimony. The Supreme Court of Florida held that Allen failed to prove prejudice, in part because in the light of the evidence “that Wright was tortured, bound, and strangled by Allen,” there was no reasonable probability that the prosecutor’s partial misstatements about details of that torture and strangulation—how many minutes it takes to die of strangulation and whether blood vessels in Wright’s eyes had burst because of the tight strangulation—affected the outcome. *Allen II*, 261 So. 3d at 1270–71. The district court agreed that Allen could not prove prejudice and found that she was not entitled to habeas relief on this claim.

Allen now criticizes the district court because although part of its reasoning was that the trial court instructed the jury that attorneys’ statements were not evidence, the jury did not receive that instruction during the penalty phase. But the prosecutor’s misstatements were during the guilt phase, where Allen does not dispute that the instruction was given, so the jury instruction was close in time to the allegedly prejudicial comments. Jurors are presumed to follow the court’s instructions. *See Brown v. Jones*, 255 F.3d 1273, 1280 (11th Cir. 2001). Moreover, the district court’s determination also relied on the “extensive evidence” of Allen’s attack on Wright. In the light of that evidence, coupled with the accurate jury instruction in the same trial phase as the prosecutor’s misstatements, no reasonable jurist would debate whether Allen met the high bar for habeas relief.

3. Penalty-Phase Prosecutorial Misconduct

Next, Allen faults her trial counsel for not objecting to or moving for a mistrial based on prosecutorial misconduct during the penalty phase. First, the prosecutor stated that Allen had multiple drug-offense convictions when, in fact, she had only one drug conviction and that conviction should not have been disclosed to the jury. Second, the prosecutor improperly questioned one of Allen's mental-health experts about Allen's future dangerousness. Third, the prosecutor described Allen's actions as "waterboarding torture" during closing arguments. The Supreme Court of Florida held that Allen failed to prove that she was prejudiced by any of these comments. *Allen II*, 261 So. 3d at 1277–78, 1280. The district court agreed.

Regarding the comments on drug convictions, Allen's sole argument about the district court's prejudice analysis is that the prosecutor's comments were repeated, "not isolated like the [Supreme Court of Florida] claimed." But the state court *did* consider that the topic of Allen's involvement with drugs arose multiple times. *See Allen II*, 261 So. 3d at 1277.

Although future dangerousness is not a legitimate sentencing consideration under Florida law, the Supreme Court of Florida reasonably rejected Allen's challenge based on that line of questioning. On direct appeal, it found that the improper questions did not amount to reversible error for several reasons,

including that the jury was properly instructed on what aggravating circumstances it could consider. *Allen I*, 137 So. 3d at 962. In postconviction proceedings, it determined that because Allen did not prove on direct review that the prosecutor's comments amounted to reversible error, she had failed to prove prejudice under *Strickland*. *Allen II*, 261 So. 3d at 1278. Allen's sole argument in her application is that the jury was encouraged to consider an illegitimate sentencing factor, but we must assume that the jury obeyed its instructions. *See Brown*, 255 F.3d at 1280.

Regarding the prosecutor's use of the term "waterboarding torture," Allen points out that the district court misstated the *Strickland* prejudice standard when it denied relief on this subclaim. But the district court recited the correct standard elsewhere in its decision, and the Supreme Court of Florida stated and applied the correct standard, *Allen II*, 261 So. 3d at 1280. In the light of the evidence that Allen tortured Wright by pouring chemicals on her face, reasonable jurists would not debate whether Allen was entitled to habeas relief on this claim.

4. Expert Testimony Regarding Wright's Cause of Death

Allen argues that counsel was ineffective for failing to call an expert witness to testify based on the autopsy report. The Supreme Court of Florida held that Allen's claim failed under both elements of *Strickland*: counsel's cross-examination of Dr. Qaiser successfully elicited the weaknesses in his testimony and drew the jury's attention to the differences between his opinions and the

autopsy report, so additional expert testimony to the same effect—such as the testimony of the forensic expert at Allen’s postconviction hearing—would not have undermined the prosecution’s case. *Id.* at 1283–84. The district court agreed. Allen does not identify any particular evidence to which the postconviction expert testified that was not brought out on cross-examination at her trial. And although the district court misstated the *Strickland* prejudice standard in its analysis of this claim, the state court did not, and in any event, jurists of reason would not debate that the state court reasonably concluded that Allen’s claims failed under *both* elements of *Strickland*.

5. Quintin’s Testimony

Next, Allen argues that her counsel was ineffective for eliciting testimony from Quintin on cross-examination about Allen pouring chemicals on Wright that went further than Quintin’s testimony on direct examination. She also argues that counsel was ineffective for failing to impeach Quintin with an allegedly inconsistent statement he made to the police. Allen contends that Quintin’s testimony contributed to both statutory aggravators and that a different trial strategy would have led the jury to “discredit[] all of Quintin’s testimony.” The Supreme Court of Florida ruled that these claims failed both elements of *Strickland*. *Allen II*, 261 So. 3d at 1275–76, 1284–85. The district court agreed.

No reasonable jurist would debate this resolution. As the Supreme Court of Florida found, counsel cross-examined Quintin extensively, and Quintin admitted that he had lied on direct examination regarding the manner in which Wright was restrained while the substances were poured on her. *Id.* at 1285. Because the jury was already aware that Quintin’s testimony was inconsistent and that he had lied on the stand, jurists would not debate the reasonableness of the decision of the Supreme Court of Florida that cumulative evidence—the additional cross-examination and impeachment for which Allen now advocates—would not have made a difference.

6. Dr. Qaiser’s Testimony

Allen argues that her counsel was ineffective for failing to object to Dr. Qaiser’s testimony, relevant to the “especially heinous, atrocious, or cruel” aggravator, that unconscious people can feel pain. The Supreme Court of Florida held that counsel was not deficient because on cross-examination, Dr. Qaiser admitted that he could not say whether *Wright* experienced pain while unconscious. *Id.* at 1276. The court also held that in the light of the evidence about Allen’s torture of Wright, including while Wright was conscious and begged to be released, there was no reasonable probability that an objection to Dr. Qaiser’s testimony could have affected the outcome. *Id.* at 1276–77. The district court agreed that Allen’s claim failed both elements of *Strickland*.

Allen now argues that Dr. Qaiser’s statement was “completely at odds with mainstream medicine.” But that contention, even if true, does not establish either element of *Strickland*, much less that reasonable jurists would debate the resolution of Allen’s claim in the light of the deference owed to the state court. Even if it were impossible for Wright to experience pain while unconscious, the Supreme Court of Florida correctly found that Wright was also tortured while conscious and that there was “a large amount of evidence” supporting the aggravating factor that was “unrelated to Dr. Qaiser’s testimony.” *Id.*

Allen also contends that the testimony violated her rights under the Confrontation Clause because Dr. Qaiser’s testimony about studies on this subject “made him a conduit for other individuals who were unable to be cross-examined.” *See* U.S. CONST. amend. VI. She complains that the district court “failed to consider” this argument. But Allen never made a freestanding Confrontation-Clause claim; instead, she argued that her counsel was ineffective for failing to object on Confrontation-Clause grounds. So, the ruling that Allen was not prejudiced by the lack of an objection resolved this argument too.

7. Hudson’s Testimony

Allen argues that counsel was ineffective for questioning her aunt, Myrtle Hudson, during the penalty phase about Allen’s childhood exposure to a culture of drugs and violence. The Supreme Court of Florida determined that counsel’s

questioning was strategic and that in the light of the evidence, there was no reasonable probability that this line of questioning affected the outcome. *Allen II*, 261 So. 3d at 1283. The district court agreed that Allen’s claim failed both elements of *Strickland*, in part because the trial court treated the evidence of Allen’s childhood as a nonstatutory *mitigating* factor.

Allen argues that although the trial court treated this evidence as mitigating, the jury may have considered it “inflammatory.” But as previously discussed, the jury was properly instructed on what it could consider an aggravating factor, and we presume that the jury obeyed that instruction. *See Brown*, 255 F.3d at 1280. Moreover, Allen’s unsupported speculation about how the jury might have viewed the evidence does not come close to “affirmatively prov[ing] prejudice” under *Strickland*, 466 U.S. at 693, much less prove that reasonable jurists would debate the resolution of this claim under the deference owed to the state court’s holding.

8. Juror Carll

Allen’s final *Strickland* claim is that her counsel should have used a peremptory strike against one juror, Carll, or should have stricken her for cause. Allen alleges that Carll, who stated during voir dire regarding her views on the death penalty that she was “pro death,” was biased against Allen. Allen agrees that to prevail on her *Strickland* claim, she must prove that Carll was actually biased. The Supreme Court of Florida affirmed the trial court’s determination that Carll

was not biased against Allen and held that Allen failed to prove prejudice. *Allen II*, 261 So. 3d at 1286. It found that Carll’s statements “show[ed] that she would abide by the law and consider the evidence presented.” *Id.* The district court agreed that Allen failed to prove that Carll was biased and thereby failed to prove prejudice.

Because actual juror bias is a question of fact, a federal habeas court must presume that a state court’s determination of that issue is correct. *Patton v. Yount*, 467 U.S. 1025, 1036 (1984); 28 U.S.C. § 2254(e)(1). In her application, Allen does not even attempt to rebut this presumption by clear and convincing evidence. *See* 28 U.S.C. § 2254(e)(1). Allen does not even state what type of bias she alleges. Allen’s arguments regarding deficient performance are irrelevant because the state court denied her claim for failure to prove prejudice. *Allen II*, 261 So. 3d at 1286.

C. Allen’s Giglio Claim Does Not Merit a Certificate of Appealability.

Allen argues that the prosecution violated the rule of *Giglio v. United States*, 405 U.S. 150 (1972), by eliciting and failing to correct what it knew to be false testimony that Allen had multiple drug-offense convictions when in fact she had only one. The Supreme Court of Florida held that the *Giglio* claim was procedurally barred because it should have been raised on direct appeal. *Allen II*, 261 So. 3d at 1286. It also explained that even if the claim were not procedurally barred, it would fail on the merits because the *Giglio* violation was harmless. *Id.* at 1286–87. The district court addressed only the merits decision and determined that

Allen was not entitled to habeas relief. In her application for a certificate of appealability, Allen likewise discusses the merits rulings without acknowledging the state court's finding of a procedural bar.

The procedural bar was an adequate and independent state ground on which to deny relief. *See Dugger v. Adams*, 489 U.S. 401, 410 n.6 (1989) (explaining that the Supreme Court of Florida has “faithfully applied” the governing procedural rule in “the vast majority of cases”). Because the state court denied Allen’s claim on an adequate and independent state ground and reached the merits only as an alternative holding, the federal courts are without power to review the underlying claim. *Sochor v. Florida*, 504 U.S. 527, 533 (1992).

D. Allen’s Chambers Claim Does Not Merit a Certificate of Appealability.

Allen argues that the trial court erred and violated her due-process rights by excluding Martin’s testimony that Quintin had admitted to choking Wright to death. She cites *Chambers v. Mississippi*, 410 U.S. 284 (1973), for this claim. In *Chambers*, the Supreme Court held that a defendant’s due-process rights were violated when the trial court both refused to allow the defendant to cross-examine an individual who had confessed to the crime and also refused to allow three witnesses who had heard the confessions to testify about them. *Id.* at 291–93, 302. When Allen raised this claim on direct appeal, the Supreme Court of Florida denied it because *Chambers* was inapposite and was expressly limited to its facts.

Allen I, 137 So. 3d at 957; *see Chambers*, 410 U.S. at 302–03. It also rejected Allen’s arguments that the testimony was admissible under various state-law hearsay exceptions and held, in the alternative, that any error was harmless. *Allen I*, 137 So. 3d at 955–58. The district court agreed that *Chambers* was inapplicable.

Allen now argues that the hearsay evidence was reliable and important to her defense but fails to address the Supreme Court of Florida’s reasoning for distinguishing *Chambers*: Allen was not prevented from calling or cross-examining Quintin. *Id.* at 957. So, Allen has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

E. Allen’s Claims Regarding the Trial Judge’s Sentence Do Not Merit a Certificate of Appealability.

Finally, Allen claims that the trial court’s imposition of the death sentence was unconstitutional. She contends that the evidence did not support the aggravating factors, supported statutory mitigating factors, and supported giving greater weight to nonstatutory mitigating factors. The Supreme Court of Florida rejected all these state-law claims on direct appeal. *Allen I*, 137 So. 3d at 962–68. The district court agreed that the evidence supported each of the trial court’s findings. Because federal habeas relief “does not lie for errors of state law,” Allen is entitled to relief only if she proves that the Supreme Court of Florida failed to comply with *federal* law. *Corcoran*, 562 U.S. at 5 (citation omitted); 28 U.S.C. § 2254(a).

Allen disputes an issue of state law regarding one of the aggravating factors but does not even attempt to argue that the Supreme Court of Florida's holding violated her federal constitutional rights. Although she maintains that the Supreme Court of Florida made an unreasonable determination of the facts, her sole contention in support of this argument is that the *trial court* allegedly applied the wrong standard when it weighed the aggravating and mitigating circumstances. That too is an issue of state law.

IV. CONCLUSION

Allen's application for a certificate of appealability is **DENIED**.

/s/ William H. Pryor Jr.

CHIEF JUDGE

DOCKET No. _____

IN THE
Supreme Court of the United States

MARGARET A. ALLEN,

Petitioner,

v.

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

Respondents.

**APPLICATION FOR SIXTY (60) DAY
EXTENSION OF TIME TO FILE PETITION
FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

ATTACHMENT B

**May 19, 2023 Order Denying Motion for Reconsideration of Order Denying
Application for a Certificate of Appealability**

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10447

MARGARET A ALLEN,

Petitioner-Appellant,

versus

SECRETARY, 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. 6:19-cv-00296-PGB-DCI

2

Order of the Court

23-10447

Before WILLIAM PRYOR, Chief Judge, and BRANCH and BRASHER,
Circuit Judges.

BY THE COURT:

Allen's motion for reconsideration of the April 12, 2023, order denying her application for a certificate of appealability is **DENIED**.