UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
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: November 04, 2022

Mr. Michael Matthew Stahl
Office of the Attorney General of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207

Mr. Jerome M. Teats
Northwest Correctional Complex
960 State Route 212
Tiptonville, TN 38079

Re: Case No. 22-5365, Jerome Teats v. Kevin Genovese
Originating Case No. : 3:19-cv-00841

Mr. Teats and Counsel,

The Court issued the enclosed Order today in this case. Judgment to follow.

Sincerely yours,

s/Leon T. Korotko
Case Manager
Direct Dial No. 513-564-7069

cc: Ms. Lynda M. Hill

Enclosure

No mandate to issue

No. 22-5365

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JEROME M. TEATS,

Petitioner-Appellant,

v.

KEVIN GENOVESE, Warden,

Respondent-Appellee.

ORDER

Before: THAPAR, Circuit Judge.

Jerome M. Teats, a pro se Tennessee prisoner, appeals a district court's judgment denying his habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The court construes his notice of appeal as an application for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b).

In August 2009, Teats was charged with one count of aggravated robbery of a Shoney's restaurant manager. The trial court appointed Christopher Coats to represent Teats and ordered a forensic psychologist, Dr. Kimberly Brown, to evaluate Teats's competency. In October 2009, Teats was charged with four additional counts, including multiple counts of especially aggravated kidnapping of individual Shoney's staff employees. Coats withdrew as counsel upon Teats's retention of Jim Todd. Teats later hired Patrick McNally as co-counsel.

Todd filed a motion to suppress Teats's statements to police after his arrest. After conducting a hearing where Teats, police officers, and expert witnesses testified, the trial court denied the motion. *See State v. Teats*, No. M2012-01232-CCA-R3-CD, 2014 WL 98650, at *14 (Tenn. Crim. App. Jan. 10, 2014), *aff'd*, 468 S.W.3d 495 (Tenn. 2015).

At his trial in 2011, the court admitted Teats's statement to police. *See id.* at *4. In the statement, he admitted participating in the robbery and holding a man at gunpoint, while his codefendant took women to the back of the restaurant. *See id.* Dr. Brown testified that Teats was

in fact able to understand the wrongfulness of his conduct on the day of the offense and that his statement to police strengthened her opinion. *See id.* at *9. Other witnesses against Teats included three Shoney's employees, a customer, and police officers. *See id.* at *1-5. The officers testified that Teats's SUV and a loaded handgun were found near the restaurant and that the SUV contained a large garbage bag full of cash. *See id.* at *3-4. A jury convicted Teats as charged, and the trial court imposed a total effective prison term of 50 years.

In 2012, Teats moved for a new trial on the kidnapping charges in light of *State v. White*, 362 S.W.3d 559, 578 (Tenn. 2012), which held that the trial court must instruct the jury to determine whether a kidnapping "is, in essence, incidental to the accompanying felony or, in the alternative, is significant enough, standing alone, to support a conviction." The trial court denied the motion.

The Tennessee appellate courts affirmed Teats's convictions, rejecting his arguments that, among other things, his suppression motion was erroneously denied and that his kidnapping convictions were based on improper jury instructions. *Teats*, 2014 WL 98650, at *14, *30; *Teats*, 468 S.W.3d at 505.

In 2016, Teats petitioned for post-conviction relief. The trial court appointed counsel, Elaine Heard, who filed an amended petition and raised claims of ineffective assistance of trial and appellate counsel. After a hearing where Todd, McNally, and Teats testified, the trial court denied the amended petition. The Tennessee Court of Criminal Appeals affirmed. *Teats v. State*, No. M2017-00855-CCA-R3-PC, 2019 WL 76643 (Tenn. Crim. App. Jan. 2, 2019), *app. denied* (Tenn. June 20, 2019).

In his pro se § 2254 petition, placed in the prison mailing system on September 18, 2019, Teats claimed that:

> (1) Coats rendered ineffective assistance by (a) instructing Teats to await the results of the competency evaluation before accepting a plea offer with a 12-year prison term and (b) failing to advise Teats that his statements to Dr. Brown could be used against him at trial;
>
> (2) the prosecutor's hand signals to a witness during the suppression hearing violated Teats's due-process rights;

(3) his statements to police should have been suppressed;

(4) the State withheld (a) immigration documents regarding the kidnapping victims and (b) a recorded conversation between Teats and Detective McCoy, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963);

(5) Todd and McNally rendered ineffective assistance by (a) advising Teats to reject a plea offer with a 15-year prison term, (b) advising him not to testify at trial in order to successfully appeal the denial of his suppression motion, and (c) failing to object to a jury instruction on aggravated kidnapping;

(6) Teats's due-process rights were violated by the post-trial change in law promulgated in *White*;

(7) McNally rendered ineffective assistance by failing to include in the appellate record (a) the trial court's order denying the suppression motion and (b) a court opinion, *State v. Davis*, No. M2011-02075-CCA-R3-CD, 2012 WL 5947439 (Tenn. Crim. App. Nov. 16, 2012), supporting dismissal of the kidnapping charges;

(8) trial and appellate counsel's cumulative errors prejudiced Teats; and

(9) the post-conviction proceedings violated his right of access to the courts and to equal protection when a court clerk mishandled pro se pleadings that Teats wished to file.

The State opposed the petition, arguing in part that the majority of the claims were procedurally defaulted. Teats filed a reply. In a motion to amend, Teats proposed new claims: (10) McNally rendered ineffective assistance by failing to argue on appeal that the change in law effected by *White* deprived him of due process; and (11) Todd and McNally rendered ineffective assistance by failing to obtain the aforementioned *Brady* evidence to use at trial.

The district court denied the § 2254 petition and the motion to amend. After finding that Teats had exhausted his claims regarding the denial of the suppression motion and ineffective assistance with respect to the 15-year plea offer, the court determined that those claims lacked merit. The court held non-cognizable the claims of cumulative error by counsel and mishandling of post-conviction pleadings. It held that Teats procedurally defaulted his remaining claims by failing to exhaust them, and that the *Brady* claim also lacked merit.

An individual seeking a COA is required to make a substantial showing of the denial of a federal constitutional right. *See* 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by

demonstrating 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).

When the appeal concerns a district court's procedural ruling, a COA should issue if the petitioner demonstrates "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). A prisoner must "demonstrate substantial underlying constitutional claims." *Id.* To determine if this standard is satisfied, a court must make "a modest assessment of the merits of the claim[s]." *Dufresne v. Palmer*, 876 F.3d 248, 254 (6th Cir. 2017) (per curiam).

Claims Rejected as Meritless or Non-Cognizable

Teats's third claim is that his statements to police after his capture, after being forced into a police car, and at the police station should have been suppressed for the following reasons. He had not been advised of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), before initial questioning about the location of the gun used in the robbery. A police officer then allegedly twisted Teats's arm, made threats, and promised leniency during his placement in the police car. And, at the station, police allegedly did not permit Teats to use the bathroom and did not provide him with water. Moreover, Teats suffered from diminished capacity throughout the encounter because of thyroid disease, allegedly interfering with the validity of any *Miranda* waiver.

Jurists of reason would not debate the district court's conclusion that the state court reasonably rejected this claim, *see* 28 U.S.C. § 2254(d), because the totality of the circumstances indicated that Teats had knowingly and voluntarily waived his *Miranda* rights. *See Frazier v. Jenkins*, 770 F.3d 485, 502 (6th Cir. 2014). First, there were no apparent health issues. Officer Patrick Ragan, who handcuffed Teats upon his capture, had no concerns about Teats's health and would have called an ambulance if necessary. Detective Stokes testified that there was no indication that Teats did not understand what he was saying and that Teats made no comments about feeling unwell or needing to go to the hospital.

As to the questions about the gun's location, jurists of reason would agree that it was reasonable for the state court to conclude that *Miranda*'s public-safety exception applied because the questions were necessary to protect the officers' and public's safety. *See New York v. Quarles*, 467 U.S. 649, 657-59 (1984); *United States v. Williams*, 483 F.3d 425, 428 (6th Cir. 2007).

The state courts discredited Teats's testimony that the arresting officer, Officer Ragan, had grabbed his arm forcefully and had threatened to break it; the courts instead credited Ragan's testimony that he had not done so and that Teats had been very cooperative. *Teats*, 2014 WL 98650, at *12-16. Likewise, the courts credited Ragan's statement that he had not threatened to put Teats away for life. *Id.* at *14. An instruction to Teats by another officer, Sergeant Teague, to tell Detective William Stokes everything that he wanted to know occurred after Teats had expressed his willingness to cooperate, and Stokes did not deem the comment to be a threat. *Id.* at *15. Furthermore, Teats had walked to the patrol car, where Detective Stokes gave the *Miranda* warnings. *Id.* Teats confirmed that he understood and stated that he wanted to speak. *Id.* When Stokes repeated the *Miranda* warnings at the police station, Teats again confirmed that he understood, signed a written waiver, and agreed to speak to Stokes. *Id.* at *12. Stokes also testified that Teats did not request a drink of water or to use the restroom at the station. *Id.* Teats has not demonstrated clear error regarding the state court's credibility findings, which this court must treat with great deference on habeas review. *See Felkner v. Jackson*, 562 U.S. 594, 598 (2011) (per curiam); *Howell v. Hodge*, 710 F.3d 381, 386 (6th Cir. 2013). Jurists of reason would further agree that Teague's instruction to Teats was a brief remark that did not violate the Fifth Amendment. *See Bachynski v. Stewart*, 813 F.3d. 241, 248 (6th Cir. 2015). Thus, reasonable jurists would not debate the district court's rejection of Teats's third claim as reasonably adjudicated by the state courts.

In part of his fifth claim, Teats asserts that Todd and McNally rendered ineffective assistance by advising him to reject a plea offer with a 15-year prison term on the grounds that Teats's statements to police would be suppressed on appeal and that the kidnapping charges would be reversed. Teats also alleged that he had wanted to "settle" the case.

Jurists of reason would agree that the district court properly rejected the claim that Todd and McNally performed deficiently. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). The Tennessee Court of Criminal Appeals found that

> the post-conviction court []credited the testimony of both trial counsel and co-counsel, who stated that they did not promise the Petitioner they would obtain a more favorable plea offer from the State nor did they guarantee success on appeal. Moreover, trial counsel and co-counsel agreed that the Petitioner did not want to plead guilty and instead wanted to go to trial.

Teats, 2019 WL 76643, at *7. Teats has not demonstrated clear error regarding the state court's credibility findings regarding counsel's testimony. *See Felkner*, 562 U.S. at 598; *Howell*, 710 F.3d at 386.

Jurists of reason could disagree as to whether Teats's eighth claim, alleging cumulative error by trial and appellate counsel, is cognizable on habeas review. *See Dimora v. United States*, 973 F.3d 496, 507 (6th Cir. 2020) (per curiam) (expressing uncertainty as to "whether this theory of prejudice is available to [28 U.S.C.] § 2255 petitioners"). But because the district court determined that Teats's individual claims of ineffective assistance of counsel lacked merit or were procedurally defaulted, and jurists of reason would not debate the district court's resolution of those claims, as more fully discussed elsewhere in this order, reasonable jurists would not debate the denial of Teats's cumulative-error claim either. *See United States v. Trujillo*, 376 F.3d 593, 614 (6th Cir. 2004) ("In order to obtain a new trial based upon cumulative error, a defendant must show that the combined effect of individually harmless errors was so prejudicial as to render his trial fundamentally unfair.").

Jurists of reason would agree with the district court's conclusion that Teats's ninth claim, challenging the mishandling of pleadings in his post-conviction proceedings, is not cognizable. A prisoner cannot challenge the adequacy of state post-conviction proceedings on federal habeas review. *See Leonard v. Warden, Ohio State Penitentiary*, 846 F.3d. 832, 854-55 (6th Cir. 2017); *Cress v. Palmer*, 484 F.3d 844, 853 (6th Cir. 2007); *Greer v. Mitchell*, 264 F.3d 663, 681 (6th Cir. 2001).

Claims Rejected as Procedurally Defaulted

Jurists of reason would agree that Teats procedurally defaulted his remaining claims. He did not present them to the Tennessee Court of Criminal Appeals and thereby invoke one full round of the state's established review procedures, *see O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999), and he has no remaining state court remedies to exhaust. *See Theriot v. Vashaw*, 982 F.3d 999, 1003 (6th Cir. 2020), *cert. denied*, 142 S. Ct. 482 (2021); *see* Tenn. Code Ann. § 40-30-102(c).

Teats's reply and proposed amended complaint are jointly construed as presenting arguments that his failure to exhaust his remaining claims should be excused because (1) the state courts did not consider his request for self-representation on post-conviction appeal, where he allegedly would have raised all of his defaulted claims, (2) "Tennessee has an ineffective corrective process" because he could not obtain consideration of his request for self-representation, (3) counsel performed ineffectively, and (4) his *Brady* claim is meritorious. None of these arguments establish cause for his default and actual prejudice. *See Theriot*, 982 F.3d at 1003.

To begin, a defendant has no constitutional right to self-representation after trial. *See Martinez v. Ct. of Appeal of Calif.*, 528 U.S. 152, 163 (2000). And this court has held that a petitioner may not rely on a state appellate court's refusal to permit him to file a pro se supplemental brief on direct appeal as cause to excuse a procedural default. *McMeans v. Brigano*, 228 F.3d 674, 684 (6th Cir. 2000). The same rationale would apply to a state appellate court's refusal to permit a pro se supplemental brief in a post-conviction appeal.

With his next asserted cause, the State's ineffective corrective process, Teats attempts to excuse his procedural default based on an exception to the exhaustion requirement. Exhaustion is not required if "there is an absence of available State corrective process." 28 U.S.C. § 2254(b)(1)(B)(i). This statutory exhaustion exception, however, does not excuse a procedural default. *See Smith v. Warden, Toledo Corr. Inst.*, 780 F. App'x 208, 225 n.2 (6th Cir. 2019); *Williams v. Anderson*, 460 F.3d 789, 806 (6th Cir. 2006).

Teats's allegation of ineffective assistance by post-conviction counsel fails to serve as cause to excuse his procedural default. In Claim 1(a), Teats asserted that pretrial counsel (Coats) rendered ineffective assistance with respect to a plea offer with a 12-year prison term. Although

the claim was raised and considered during post-conviction proceedings, the claim was not raised on appeal. Because there is no right to effective assistance of post-conviction appellate counsel, counsel's failure to raise the issue on appeal does not serve as cause to excuse Teats's default. *See West v. Carpenter*, 790 F.3d 693, 699 (6th Cir. 2015) ("[A]ttorney error at state post-conviction appellate proceedings cannot excuse procedural default."). For the same reason, Teats has not shown cause to excuse his default of Claim 5(b)—trial and co-counsel's advice not to testify—and Claim 5(c)—their failure to object to a jury instruction.

In Claim 1(b), Teats asserts that pretrial counsel rendered ineffective assistance by failing to advise him that his statements to Dr. Brown could be used against him at trial. The claim is procedurally defaulted because it was not raised by post-conviction counsel. However, counsel's failure to raise the claim does not excuse the default because Teats has not shown that his claim is "a substantial one," i.e., a claim with some merit. *See Martinez v. Ryan*, 566 U.S. 1, 14 (2012). Teats did not identify statements made to Dr. Brown and explain how they prejudiced him at trial, and the evidence against Teats at trial was substantial. Therefore, he has not shown that a reasonable probability exists that the outcome of trial would have been different without Dr. Brown's testimony. *See Strickland*, 466 U.S. at 694.

Martinez also does not excuse the default, due to any deficient performance by post-conviction counsel, of Claim 2—the prosecutor's alleged hand signals to a witness during the suppression hearing, Claim 4—the State's alleged *Brady* violations, Claim 6—the alleged due-process violation related to *White*, and Claim 7—McNally's alleged ineffective assistance due to his failure to include in the appellate record the order denying the suppression motion and a copy of *Davis*, 2012 WL 5947439. *Martinez* applies only to claims of ineffective assistance of trial counsel and not to other claims, such as those pertaining to prosecutorial misconduct and *Brady* violations. *See Gerth v. Warden, Allen Oakwood Corr. Inst.*, 938 F.3d 821, 832 (6th Cir. 2019); *Abdur'Rahman v. Carpenter*, 805 F.3d 710, 714 (6th Cir. 2015).

Additionally, jurists of reason would agree that Teats's *Brady* claim lacks merit with respect to the purported suppression of immigration documents. *See Bell v. Bell*, 512 F.3d 223, 231 n.3 (6th Cir. 2008) (en banc) (permitting review of a defaulted *Brady* claim in light of *Banks*

v. Dretke, 540 U.S. 668, 691 (2004)). Even if the State suppressed the immigration documents, Teats's allegations regarding the substance of them are conclusory. *See Wogenstahl v. Mitchell*, 668 F.3d 307, 335 (6th Cir. 2012). Therefore, he did not establish that the documents were impeaching and that suppression of them prejudiced him. *See Brooks v. Tennessee*, 626 F.3d 878, 890 (6th Cir. 2010). Moreover, the trial court could have concluded that the victims' immigration status was not relevant to whether Teats was involved in a crime or whether the victims could identify him. *See State v. Taylor*, M2016-02578-CCA-R3-CD, 2018 WL 265512, at *12 (Tenn. Crim. App. Jan. 3, 2018).

With respect to the part of Teats's *Brady* claim regarding a purported taped conversation with Detective McCoy, Teats alleged that Detective Stokes stated that he would pursue only one charge if Teats told him about other robberies and that McCoy then questioned him. Jurists of reason would agree with the district court that this part of Teats's *Brady* claim lacks merit. Teats did not establish that a recording existed that was suppressed by the State, he did not explain how he could have used the recording to impeach Stokes or McCoy, and he did not show that the suppression of the alleged recording prejudiced him. *See Brooks*, 626 F.3d at 890. Additionally, Stokes was true to his word and charged Teats with only one count of aggravated robbery before the State later indicted Teats on the four counts of kidnapping.

Jurists of reason would also agree with the district court's decision to deny the motion to amend. First, Teats failed to raise on post-conviction appeal his proposed claims of ineffective assistance pertaining to McNally's failure to argue on appeal that the change in law effected by *White* deprived him of due process, so he has procedurally defaulted the claims. *See O'Sullivan*, 526 U.S. at 842; *Theriot*, 982 F.3d at 1003. And he cannot show cause to excuse the default under *Martinez* because it applies only to claims of ineffective assistance of trial counsel. *See Gerth*, 938 F.3d at 832. Second, because Teats cannot show a *Brady* violation, Todd and McNally could not have been ineffective for failing to obtain the alleged *Brady* material. *See Smith v. Warden, Toledo Corr. Inst.*, Nos. 20-3472, 20-3496, 2022 WL 601860, at *3 (6th Cir. Mar. 1, 2022).

For these reasons, the court **DENIES** Teats's COA application.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Exhibit 1

No. 22-5365

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JEROME M. TEATS,

Petitioner-Appellant,

v.

KEVIN GENOVESE, Warden,

Respondent-Appellee.

ORDER

Before: CLAY, WHITE, and LARSEN, Circuit Judges.

Jerome M. Teats, a pro se Tennessee prisoner, petitions this court to rehear its order of November 4, 2022, denying his application for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b).

After careful consideration, we conclude that the court did not overlook or misapprehend any point of law or fact when it denied Teats's COA application. *See* Fed. R. App. P. 40(a)(2).

For these reasons, we **DENY** Teats's petition for rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Exhibit 1

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 07/31/2023.

Case Name: Jerome Teats v. Kevin Genovese
Case Number: 22-5365

Docket Text:
ORDER filed: We DENY Teat's petition for rehearing [6963862-2]. Eric L. Clay, Circuit Judge; Helene N. White, Circuit Judge and Joan L. Larsen, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Jerome M. Teats
Northwest Correctional Complex
960 State Route 212
Tiptonville, TN 38079

A copy of this notice will be issued to:

Ms. Lynda M. Hill
Mr. Michael Matthew Stahl

Exhibit 3

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Deborah S. Hunt
Clerk

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

Filed: August 18, 2023

Jerome M. Teats
Northwest Correctional Complex
960 State Route 212
Tiptonville, TN 38079

Re: Case No. 22-5365, *Jerome Teats v. Kevin Genovese*
Originating Case No. : 3:19-cv-00841

Dear Sir or Madam,

The enclosed motion for extension of time to file a petition for rehearing en banc is being returned to you unfiled.

Neither the Federal Rules of Appellate Procedure nor the Rules of the Sixth Circuit make any provision for filing successive petitions for rehearing. Your petition for panel rehearing was denied by order of July 31, 2023. Therefore, the motion for extension of time to file a petition for rehearing en banc is not accepted for filing.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. Michael Matthew Stahl

Additional material from this filing is available in the Clerk's Office.