APPENDIX A

No. 24-1143

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

COREY DEQUAN BROOME,

Petitioner-Appellant,

v.

JAMES R. SCHIEBNER, Warden,

Respondent-Appellee.

ORDER

Before: BOGGS, Circuit Judge.

Corey Dequan Broome, a pro se Michigan prisoner, appeals a district-court judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Broome moves this court for a certificate of appealability (COA) and for leave to proceed in forma pauperis. The court denies both motions.

In 2015, a jury found Broome guilty of assault with intent to do great bodily harm, being a felon in possession of a firearm, carrying a concealed weapon, and two counts of possessing a firearm during the commission of a felony. The convictions stem from an encounter between Broome and Herbert Pippen; after their vehicles collided, a verbal exchange ensued, and Broome shot Pippen, who was also armed. Broome maintains that he shot Pippen in self-defense. The trial court sentenced Broome as a fourth-offense habitual offender to 25 to 50 years in prison for the assault conviction, five to 25 years in prison for the felon-in-possession and carrying-a-concealed-weapon convictions, and consecutive two-year prison terms for the felony-firearm convictions. The Michigan Court of Appeals affirmed, *People v. Broome*, No. 328310, 2017 WL 461260 (Mich. Ct. App. Feb. 2, 2017) (per curiam), and the Michigan Supreme Court denied leave to appeal, *People v. Broome*, 901 N.W.2d 103 (Mich. 2017) (mem.).

Broome then moved for relief from judgment. The trial court denied the motion. The Michigan Court of Appeals and Michigan Supreme Court each denied leave to appeal. *People v. Broome*, 951 N.W.2d 892 (Mich. 2020) (mem.).

Broome brings seven claims in his § 2254 petition; he raised the first two on direct appeal and the remaining five in his motion for relief from judgment. The district court denied the petition and declined to issue a COA, reasoning that Broome's claims were reasonably adjudicated on the merits by the state courts.

A COA may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). To be entitled to a COA, the applicant must demonstrate that reasonable jurists could debate whether "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) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). And pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), when a state court adjudicates a claim on the merits, the district court may not grant habeas relief unless the state court's 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 "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); *see Harrington v. Richter*, 562 U.S. 86, 100 (2011). When the state appellate court applies plain-error review, which is what the Michigan Court of Appeals did here with respect to Broome's first claim, *see Broome*, 2017 WL 461260, at *1, those rulings are also entitled to AEDPA deference, *see Stewart v. Trierweiler*, 867 F.3d 633, 638 (6th Cir. 2017). And when AEDPA deference applies, a reviewing court, in the COA context, must evaluate the district court's application of § 2254(d) and determine "whether that resolution was debatable amongst jurists of reason." *Miller-El*, 537 U.S. at 336.

Claim One – Eighth Amendment

Broome first claims that his 25-year mandatory-minimum sentence for being a fourth-offense habitual offender, as required by Michigan Compiled Laws § 769.12(1)(a), amounts to cruel and unusual punishment because the statute prevented the trial court from considering individualized factors (e.g., his youth at the time of the offenses) and mitigating circumstances.

On plain-error review, the Michigan Court of Appeals found no merit to this claim. *Broome*, 2017 WL 461260, at *2-3. It first rejected Broome's argument that § 769.12(1)(a) unconstitutionally limits a sentencing judge's discretion and ability to consider a defendant's circumstances or probability of rehabilitation, reasoning that the Michigan legislature is vested with "the ultimate authority to provide penalties for criminal offenses" and appropriately exercised that authority when enacting the habitual-offender statute. *Id.* at *2 (quoting *People v. Hegwood*, 636 N.W.2d 127, 130 (Mich. 2001)). The court then rejected Broome's argument that § 769.12(1)(a) mandated a sentence that amounts to cruel and unusual punishment in his case. *Id.* at *2-3. Broome's sentence was appropriate, the court reasoned, because he was convicted of "serious and violent" crimes after "severe" evidence was presented against him, has a lengthy criminal record despite his youth, committed the current crimes against a stranger who was walking away from him, and will be eligible for release when he is approximately 50 years old. *Id.* at *3.

The district court agreed that Broome's sentence was lawful, particularly because it fell within the penalty range authorized by statute. A sentence that does not exceed the maximum penalty authorized by statute "generally does not constitute 'cruel and unusual punishment.'" *Austin v. Jackson*, 213 F.3d 298, 302 (6th Cir. 2000) (quoting *United States v. Organek*, 65 F.3d 60, 62 (6th Cir. 1995)). Michigan's sentencing enhancement law for offenders who, like Broome, have been convicted of at least three prior felonies authorizes a maximum sentence of life for a subsequent conviction which is otherwise punishable by a maximum term of five years or more. Mich. Comp. Laws § 769.12. The statute for assault with intent to do great bodily harm authorizes a 10-year maximum sentence. Mich. Comp. Laws § 750.84. Thus, as Broome's sentence of 25 to

50 years in prison is less than life, it is authorized by Michigan law. No reasonable jurist therefore could debate the district court's conclusion that the Michigan Court of Appeals reasonably rejected Broome's Eighth Amendment claim.

Claim Two – Sixth Amendment and Sentencing

Broome claims that the trial court engaged in impermissible fact-finding when imposing his 25-year mandatory minimum sentence for being a fourth-offense habitual offender.

The Michigan Court of Appeals determined that this claim was foreclosed by *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny. *Broome*, 2017 WL 461260, at *4. In *Apprendi*, the Supreme Court held that, "*[o]ther than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490 (emphasis added). Here, the "fact" that the trial court found was Broome's prior convictions, and it was permitted to do so under *Apprendi*. *See Broome*, 2017 WL 461260, at *4. Contrary to Broome's insistence, *Apprendi* is still good law, so there was no sentencing error. *See id.* In light of *Apprendi*, no reasonable jurist could debate the district court's conclusion that the state appellate court's rejection of this claim was not contrary to or an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts.

Claim Three – Ineffective Assistance of Trial Counsel – Self-Defense Jury Instructions

Broome claims that trial counsel was ineffective for failing to secure a proper self-defense jury instruction. According to Broome, although the trial court appropriately instructed the jury that self-defense applied to the charge of assault with intent to commit murder, trial counsel should have ensured that the trial court also instructed the jury that self-defense applied to the lesser-included offense of assault with intent to commit great bodily harm.

To establish ineffective assistance of counsel, a defendant must show deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "The standards created by *Strickland* and § 2254(d) are both 'highly deferential,' and when the two apply in tandem, review is 'doubly' so." *Richter*, 562 U.S. at 105 (first quoting *Strickland*, 466

U.S. at 689; and then quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)). Thus, on habeas review, "[w]hen § 2254(d) applies, the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.*

In rejecting this claim, the trial court explained that the self-defense instruction was not erroneous—a ruling to which this federal habeas court must defer, *see McMullan v. Booker*, 761 F.3d 662, 668 (6th Cir. 2014)—and reasoned that the jury could logically infer that self-defense applied both to the greater charged offense and lesser-included offense. And trial counsel did not perform deficiently, the trial court continued, as he "vigorously argued that [Broome] was not guilty of either the principal or the lesser included offense based on his right to act in lawful self-defense." The district court agreed, adding that there was no suggestion that self-defense applied only to the greater offense, given that the prosecutor broadly argued that Broome did not act in self-defense and the trial court properly instructed the jury on self-defense without differentiating between the greater and lesser offenses. "Thus, if anything," the district court concluded, "the jury was more likely to assume that the defense of self-defense applied to both the greater and lesser offenses, not merely one of them." On this record and in light of the double deference due under *Strickland* and § 2254(d), no reasonable jurist could debate the district court's conclusion that the state court's rejection of this ineffective-assistance claim was not contrary to or an unreasonable application of *Strickland* or based on an unreasonable determination of the facts.

Claim Four – Constructive Denial of Counsel

Broome claims that he was constructively denied counsel because trial counsel admittedly failed to conduct pretrial investigative interviews of any prosecution witnesses. By framing trial counsel's failure to interview these witnesses as the constructive denial of counsel through lack of meaningful adversarial testing, Broome seeks to take advantage of the presumption-of-prejudice analysis provided by *United States v. Cronic*, 466 U.S. 648, 658 (1984). A *Cronic* violation occurs if trial counsel fails to subject the prosecution's case to meaningful adversarial testing. 466 U.S.

at 658-59. In such a case, there is a structural error in the proceedings, and the petitioner is not required to demonstrate prejudice in order to receive a new trial. *Id.* at 659.

The trial court rejected this claim, reasoning that Broome neither provided any factual predicate for it nor showed that trial counsel's failure to interview the witnesses deprived him of a substantial defense. The district court agreed, adding that that the failure to interview witnesses—without more—is insufficient to establish a *Cronic* violation. *See Bell v. Cone*, 535 U.S. 685, 697 (2002) (providing that counsel must "entirely fail[]," which means that "the attorney's failure must be [a] complete" and not a mere partial failure to subject the prosecution's case to meaningful adversarial testing). And trial counsel *did* subject the prosecution's case to meaningful adversarial testing, the district court continued, by cross-examining the witnesses at trial and by otherwise adequately presenting Broome's theory of defense throughout the trial. Under these circumstances, reasonable jurists could not debate the district court's conclusion that Broome failed to demonstrate a *Cronic* violation and that the state trial court reasonably rejected this claim. *See Moss v. Hofbauer*, 286 F.3d 851, 860-62 (6th Cir. 2002).

Claim Five – Impartial Judge

Broome claims that his right to an impartial judge was violated when the trial court judge referred to Pippen as the "victim." The trial court judge used the term "victim" when relaying a question from the jury; specifically, the trial court judge asked a witness, a police officer, to clarify his testimony about photo identification procedures with the following: "Did you say [that Broome] was [identified] by one of the victim's family members, and used to make the photo lineup?"

In rejecting this claim, the trial court (a different judge) explained that the isolated remark in response to a jury question did not show that the trial court judge was biased against Broome. The district court agreed, adding that the trial court judge's one-time use of the term "victim" did not prevent the jury from determining whether Broome's conduct was unlawful and did not show that the judge was prejudiced. Inasmuch as Broome offers no other factual basis for or persuasive

argument in support of his impartiality claim, reasonable jurists could not debate the district court's conclusion that the trial court reasonably rejected it.

Claim Six – Ineffective Assistance of Trial Counsel – Limiting Instruction

Broome claims that trial counsel failed to ensure that the jury received a limiting instruction concerning evidence of his prior bad acts (namely, his felony convictions).

In rejecting this claim, the trial court explained that admission of Broome's prior felony convictions was necessary to prove an element of being a felon in possession of a firearm, so trial counsel had no basis on which to object to the jury instructions regarding Broome's criminal record. Although Broome faults trial counsel for failing to request a limiting instruction stating that the jury can consider his prior felonies only as it relates to his status as a convicted felon and not as substantive evidence of his guilt, he cannot overcome the trial court's ruling that the jury instructions with respect to his prior felony convictions were proper under state law. *See McMullan*, 761 F.3d at 668. Reasonable jurists would thus agree that trial counsel could not have been ineffective for failing to lodge a meritless objection, *see Tackett v. Trierweiler*, 956 F.3d 358, 375 (6th Cir. 2020), and that the trial court reasonably rejected this claim.

Claim Seven – Ineffective Assistance of Appellate Counsel

Broome claims that appellate counsel was ineffective for failing to raise Claims Three through Six on direct appeal. But appellate counsel is not required "to raise every non-frivolous issue on appeal." *Caver v. Straub*, 349 F.3d 340, 348 (6th Cir. 2003). And when, as here, appellate counsel "presents one argument on appeal rather than another . . . the petitioner must demonstrate that the issue not presented 'was clearly stronger than issues that counsel did present'" to establish ineffective assistance of counsel. *Id.* (quoting *Smith v. Robbins*, 528 U.S. 259, 289 (2000)). Because, as set forth above, reasonable jurists would agree that these four claims were reasonably adjudicated as meritless by the state trial court on post-conviction review, appellate counsel cannot be faulted for declining to raise them on direct appeal. *See Shaneberger v. Jones*, 615 F.3d 448, 452 (6th Cir. 2010). Reasonable jurists therefore could not debate the district court's rejection of Broome's ineffective-assistance-of-appellate-counsel claim.

The court therefore **DENIES** the motion for a COA and **DENIES** as moot the motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1143

COREY DEQUAN BROOME,

Petitioner-Appellant,

v.

JAMES R. SCHIEBNER, Warden,

Respondent-Appellee.

Before: BOGGS, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Corey Dequan Broome for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COREY DEQUAN BROOME,

Petitioner,

Case No. 2:20-cv-13282

HONORABLE STEPHEN J. MURPHY, III

v.

CONNIE HORTON,

Respondent.
_____/

OPINION AND ORDER DENYING
PETITION FOR WRIT OF HABEAS CORPUS [1]

Petitioner Corey Dequan Broome, a Michigan prisoner, petitioned for writ of habeas corpus under 28 U.S.C. § 2254. ECF 1. A jury convicted Petitioner in State court of assault with intent to do great bodily harm, felon in possession of a firearm, carrying a concealed weapon, and two counts of commission of a felony with a firearm. *Id.* at 1–2. The State court sentenced Petitioner to twenty-five to fifty years' imprisonment for the assault conviction and lesser terms for the other offenses. *Id.* at 2. Petitioner then filed the present petition and raised seven grounds for granting him a writ of habeas corpus. *See generally id.* For the following reasons, the Court will deny the petition.

BACKGROUND

The case arose from a collision between Petitioner's vehicle and a vehicle driven by a man named Herbert Pippen in January 2015. ECF 6-5, PGID 230. Both men exited their vehicles with handguns concealed in their clothing. *Id.* at 232. After

unusual punishment, (2) resentencing was warranted because fourth habitual felony offender status was not supported by facts that were proven beyond a reasonable doubt before the jury, and (3) the sentence on the felony-firearm charges was incorrectly ordered to run consecutively to both their predicate offenses and other predicate offenses. *See id.* at 472, 478, 482. The court affirmed Petitioner's sentence. *People v. Broome*, No. 328310, 2017 WL 461260 (Mich. Ct. App. Feb. 2, 2017). Petitioner applied for leave to appeal to the Michigan Supreme Court, raising the same three claims, but was denied. *People v. Broome*, 501 Mich. 862 (2017).

Petitioner then moved for relief from judgment in the State trial court. ECF 6-8. Petitioner raised five issues, all centered around the claim that he was denied effective assistance of counsel. *See generally id.* The State trial court denied the motion. ECF 6-9. Petitioner appealed to the Michigan Court of Appeals but was denied "because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment." ECF 6-12, PgID 527. And the Michigan Supreme Court again denied review because Petitioner "failed to meet the burden of establishing entitlement to relief under MCR 6.508(D)." *People v. Broome*, 506 Mich. 1025 (2020). Petitioner then filed the present petition.

LEGAL 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 raise claims previously adjudicated by State courts must "show that the relevant [S]tate-court 'decision' (1) 'was contrary

PgID 5. The Eighth Amendment prohibits sentences that are "grossly disproportionate" to the crime. *Ewing v. California*, 538 U.S. 11, 23 (2003) (quotation marks and quotation omitted). But "the gross disproportionality principle reserves a constitutional violation for only the extraordinary case." *Lockyer v. Andrade*, 538 U.S. 63, 77 (2003). And a sentence that falls within the maximum penalty range authorized by a statute "generally does not constitute cruel and unusual punishment." *Austin v. Jackson*, 213 F.3d 298, 302 (6th Cir. 2000) (quotation marks and quotations omitted).

Here, the twenty-five-year mandatory minimum for Petitioner's sentence is not unconstitutionally disproportionate to the crimes he was convicted of in violation of the Eighth Amendment. Petitioner fired multiple shots at Pippen while Pippen's back was turned, then fled the scene. The bullet that struck Pippen likely would have killed him had he been unable to seek immediate medical attention. And Petitioner knew he was not allowed to carry a weapon at the time of the incident. Based on the facts, the application of a twenty-five-year minimum sentence—which is within the penalty range authorized by statute—was not grossly disproportionate. Petitioner's claim lacks merit.

II. Sixth Amendment

Petitioner argued that the State trial court violated his Sixth Amendment right to a jury trial when it determined that Petitioner was subject to enhanced sentencing as a fourth habitual felony offender. ECF 1, PgID 5, According to Petitioner, the prosecution did not prove to the jury beyond a reasonable doubt that Petitioner had

standard is "difficult to meet." *White v. Woodall*, 572 U.S. 415, 419 (2014) (quotation marks and quotation omitted). Indeed, obtaining relief under *Strickland* is even more difficult under AEDPA because "the 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).

Petitioner's argument fails. Petitioner cannot satisfy the highly deferential *Strickland* test because he failed to show that his trial counsel's performance was deficient. *Strickland*, 466 U.S. at 687. Defense counsel argued at trial that Petitioner was not guilty of either the greater or lesser offenses because he was acting in self-defense. ECF 6-5, PgID 291. And the prosecution did not argue that self-defense only applied to the lesser offense; instead, they argued simply that Petitioner did not act in self-defense. *Id.* at 288–91. Taken together, neither counsel's argument suggested that the defense of self-defense only applied to the greater offense. And the trial court properly instructed the jury on self-defense without differentiating between the greater and lesser offenses. *Id.* at 144 ("A person has the right to use force or even take a life to defend himself under certain circumstances."). Thus, if anything, the jury was more likely to assume that the defense of self-defense applied to both the greater and lesser offenses, not merely one of them. And Petitioner provided no facts that would otherwise support his entirely inferential argument. *See* ECF 1. In sum, Petitioner failed to show that his trial counsel's performance was deficient. Specifically, Petitioner was not prejudiced by his trial counsel's failure to seek a more

to apply *Cronic* presumption to claim that defense counsel failed to interview the only two prosecution witnesses who identified him as the shooter).

What is more, Petitioner's argument is not supported by the evidence. Despite his admitted failure to interview witnesses before trial, defense counsel thoroughly examined the witnesses at trial and adequately presented Petitioner's case. Nor is this a case in which there was an obvious need to interview multiple trial witnesses. The only two people present during the incident were Petitioner and Pippen. And the only other witnesses to testify at trial were Petitioner's mother and the police officers who were at the scene of the incident. Thus, because defense counsel did not "entirely fail[] to subject the prosecution's case to meaningful adversarial testing," *Cronic*, 466 U.S. at 659, Petitioner's argument fails.

V. Impartial Judge

Petitioner next contended that the State trial court invaded the province of the jury and violated his right to an impartial judge when it referred to Pippen as the "victim." ECF 1, PgID 4. Trial judges must be unbiased and impartial. *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases."); *Bracy v. Gramley*, 520 U.S. 899, 904–05 (1997) ("[T]he Due Process Clause clearly requires a fair trial in a fair tribunal before a judge with no actual bias against the defendant or interest in the outcome of his particular case.") (quotation marks and quotation omitted).

VII. Ineffective Assistance of Appellate Counsel

Last, Petitioner argued that his appellate counsel was ineffective for failing to raise the issues raised in his motion for relief for judgment on direct appeal. ECF 1, PgID 4. Claims of ineffective assistance of appellate counsel are governed by the same standard as claims of ineffective assistance of trial counsel. *Shaneberger v. Jones*, 615 F.3d 448, 452 (6th Cir. 2010); *see Strickland*, 466 U.S. at 687. Demonstrating the necessary deficiency to succeed on a claim of ineffective assistance of appellate counsel requires a petition to show that (1) appellate counsel acted unreasonably in failing to discover and raise nonfrivolous issues on appeal and (2) there is a reasonable probability he would have prevailed on appeal if his attorney had raised the issues. *Smith v. Robbins*, 528 U.S. 259, 285–86 (2000) (citation omitted).

As explained above, the claims raised in Petitioner's motion for relief from judgment lack merit. And "by definition, appellate counsel cannot be ineffective for a failure to raise an issue that lacks merit." *Greer v. Mitchell*, 264 F.3d 663, 676 (6th Cir. 2001). Thus, because there is not a reasonable probability that Petitioner would have prevailed on appeal if his appellate attorney had raised the claims in his motion for relief from judgment, Petitioner cannot show that he was prejudiced by appellate counsel's performance.

VIII. Certificate of Appealability

Before Petitioner may appeal this decision, the Court must determine whether to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability may issue "only if the applicant has made a substantial showing of the