United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 6, 2025
Lyle W. Cayce
Clerk

No. 24-10854

MICHAEL JAMES CARSON,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*,

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Northern District of Texas
USDC No. 4:24-CV-186

ORDER:

Michael James Carson, Texas prisoner # 02250040, seeks a certificate of appealability ("COA") to appeal the district court's denial of his 28 U.S.C. § 2254 application challenging his conviction for felony possession of a controlled substance. Carson argues that (i) the trial court erred by admitting testimony concerning his incriminating statements made to a law enforcement officer while in custody without warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966), in violation of his Fifth Amendment right against self-incrimination; (ii) his Fourth Amendment rights were violated in

connection with the search of the vehicle he was driving; (iii) his rights under *Brady v. Maryland*, 373 U.S. 83 (1983), were violated when the prosecution withheld evidence; and (iv) he received ineffective assistance when his trial counsel failed to (a) investigate and file a motion to suppress a syringe that was possessed by a passenger in the vehicle Carson was driving; (b) object to the law enforcement officer's testimony regarding Carson's incriminating statements; (c) review a dash cam video and certain exhibits that would have supported Carson's allegation that his incriminating statements were made while in custody; and (d) seek the suppression of the controlled substances discovered upon a search of a backpack found in the vehicle.

As a preliminary matter, Carson raises for the first time in his COA motion claims that the dash cam video and certain exhibits demonstrate that his incriminating statements were made while in custody, and that his counsel was ineffective for failing to review those items and argue that they supported his Fifth Amendment objection to the admission of his incriminating statements. Because he did not raise these issues in his § 2254 application, this court lacks jurisdiction to consider them. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

A COA may issue 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, 336 (2003). When the district court denies relief on the merits, an applicant must show that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the district court denies relief on procedural grounds, a COA should issue if an applicant establishes, at least, that jurists of reason would find it debatable whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Id.*

Carson fails to meet the requisite standard. *See id.* His motion for a COA is DENIED. His motions to supplement the record, for an evidentiary hearing, and for a copy of the record on appeal are likewise DENIED. His motion to file an amended brief is GRANTED.

Dana M. Douglas

DANA M. DOUGLAS
United States Circuit Judge

Appendix A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MICHAEL JAMES CARSON,	§	
No. 2250040,	§	
	§	
Petitioner,	§	
	§	
V.	§	**NO. 4:24-CV-186-O**
	§	
DIRECTOR, TDCJ-CID,	§	
	§	
Respondent.	§	

FINAL JUDGMENT

Consistent with the memorandum opinion and order signed this date, all relief sought in the petition of Michael James Carson in this action is **DENIED**.

SO ORDERED this **19th day** of **August, 2024**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

Appendix B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MICHAEL JAMES CARSON, No. 2250040,	§	
Petitioner,	§	
V.	§	**NO. 4:24-CV-186-O**
DIRECTOR, TDCJ-CID,	§	
Respondent.	§	

MEMORANDUM OPINION AND ORDER

Came on for consideration the petition of Michael James Carson under 28 U.S.C. § 2254 for writ of habeas corpus. The Court, having considered the petition, the response, the record, and applicable authorities, concludes that the petition must be **DENIED**.

I. BACKGROUND

Petitioner is serving a fifty-year term of imprisonment imposed following his conviction under Case No. CR20449 in the 271st District Court, Wise County, Texas, for possession of a controlled substance, namely gamma hydroxybutyric acid ("GHB"), in an amount of two hundred grams or more, enhanced to habitual status based on his prior felony convictions. ECF No. 26-29 at 29–31. His conviction was affirmed on appeal. *Carson v. State*, No. 02-19-00091-CR, 2020 WL 2202331 (Tex. App.—Fort Worth May 7, 2020, pet. ref'd). Through his first state habeas petition, he was granted leave to file an out-of-time petition for discretionary review, ECF No. 26-18, but the petition was denied. *Carson*, 2022 WL 2202331. Petitioner's second state habeas petition was dismissed as noncompliant. ECF No. 26-30. His third petition, ECF No. 26-42 at 107–22,[1] was

[1] The page references to the state habeas application are to "Page __ of 201" reflected at the top right portion of the document on the Court's electronic filing system.

denied without written order. ECF No. 26-36.

II. GROUNDS OF THE PETITION

Petitioner asserts five grounds in support of his petition. ECF No. 1. They are:

(1) The trial court violated his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), by allowing the jury to consider incriminating statements without proper instruction.

(2) The state failed to establish probable cause for searching the trunk of the vehicle where Petitioner's backpack containing the drugs was found.

(3) Officer Brown prolonged the traffic stop in violation of Due Process without articulating probable cause.

(4) Officer Brown exceeded the scope of his authority to search the vehicle.

(5) Petitioner received ineffective assistance because his trial counsel failed to conduct discovery and file motions to suppress evidence.

III. APPLICABLE LEGAL STANDARDS

A. Section 2254

A writ of habeas corpus on behalf of a person in custody under a state court judgment shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the petitioner shows that the prior 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 proceedings.

28 U.S.C. § 2254(d). A decision is contrary to clearly established federal law if the state court arrives at a conclusion opposite to that reached by the United States Supreme Court on a question

of law or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000); *see also Hill v. Johnson*, 210 F.3d 481, 485 (5th Cir. 2000). A state court decision will be an unreasonable application of clearly established precedent if it correctly identifies the applicable rule but applies it objectively unreasonably to the facts of the case. *Williams*, 529 U.S. at 407–09; *see also Neal v. Puckett*, 286 F.3d 230, 236, 244–46 (5th Cir. 2002) (en banc) (focus should be on the ultimate legal conclusion reached by the state court and not on whether that court considered and discussed every angle of the evidence). A determination of a factual issue made by a state court is presumed to be correct. 28 U.S.C. § 2254(e)(1). The presumption of correctness applies to both express and implied factual findings. *Young v. Dretke*, 356 F.3d 616, 629 (5th Cir. 2004); *Valdez v. Cockrell*, 274 F.3d 941, 948 n.11 (5th Cir. 2001). Absent express findings, a federal court may infer fact findings consistent with the state court's disposition. *Marshall v. Lonberger*, 459 U.S. 422, 433 (1983). Thus, when the Texas Court of Criminal Appeals denies relief without written order, such ruling is an adjudication on the merits that is entitled to this presumption. *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997) (en banc). The petitioner has the burden of rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Hill*, 210 F.3d at 486.

In making its review, the Court is limited to the record that was before the state court. 28 U.S.C. § 2254(d)(2); *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

B. Ineffective Assistance of Counsel

To prevail on a claim of ineffective assistance of counsel, the petitioner must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Strickland*, 466 U.S. at 697; *see also United States v. Stewart*, 207 F.3d 750, 751 (5th Cir. 2000) (per curiam). "The likelihood of a different result must be substantial, not just conceivable," *Harrington v. Richter*, 562 U.S. 86, 112 (2011), and a petitioner must prove that counsel's errors "so *undermined* the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Cullen*, 563 U.S. at 189 (quoting *Strickland*, 466 U.S. at 686). Judicial scrutiny of this type of claim must be highly deferential and the petitioner must overcome a strong presumption that his counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689.

Where the state court adjudicated the ineffective assistance claims on the merits, this Court must review a petitioner's claims under the "doubly deferential" standards of both *Strickland* and § 2254(d). *Cullen*, 563 U.S. at 190. In such cases, the "pivotal question" for the Court is not "whether defense counsel's performance fell below *Strickland's* standard"; it is "whether the state court's application of the *Strickland* standard was unreasonable." *Harrington*, 562 U.S. at 101, 105. In other words, the Court must afford "both the state court and the defense attorney the benefit of the doubt." *Burt v. Titlow*, 571 U.S. 12, 15 (2013) (quoting *Cullen*, 563 U.S. at 190); *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009).

Simply making conclusory allegations of deficient performance and prejudice is not sufficient to meet the *Strickland* test. *Miller v. Johnson*, 200 F.3d 274, 282 (5th Cir. 2000).

IV. ANALYSIS

Briefly, the facts giving rise to Petitioner's conviction are that on January 16, 2017, he was driving a car with a broken stop lamp at about 2:15 a.m. Officer Brody Brown stopped the car, which contained Petitioner and two passengers. One of the passengers, Shawn Ingram, informed Officer Brown that he had an outstanding warrant for a parole violation and that he had a syringe in his pocket. Officer Brown saw a crystalline residue around the tip of the syringe, which he knew to be consistent with intravenous methamphetamine use.[2] Officer Brown believed that he had probable cause to search the vehicle. Before doing so, he asked the passengers to identify which items belonged to each of them. Petitioner identified a black backpack in the trunk as belonging to him. Officer Brown opened the backpack and found two bottles containing a viscous liquid that he believed to be, and was, GHB. He arrested Petitioner. *Carson*, 2020 WL 2202331, at *1.

In his first ground, Petitioner alleges that his right against self-incrimination was violated when "un-mirandized incriminating statements" were heard by the jury. ECF No. 1 at 5.[3] Nowhere in the petition or his supporting memorandum does Petitioner identify the particular statements. ECF Nos. 1, 17. Presumably, he is referring to his statement that the backpack in which the drugs were found belonged to him. This issue was raised on appeal and determined to be without merit. *Carson*, 2020 WL 2202331, at *2–4. The appellate court concluded that based on all the objective circumstances, a reasonable person in Petitioner's position would not have perceived that he was being restrained at the time he stated that the backpack belonged to him. *Id.* at *4. "He was not in custody, and his first set of incriminating statements is not subject to exclusion for want of *Miranda* warnings." *Id.* The other custodial statements were never brought before the jury so there was nothing about which to complain. *Id.* Petitioner has failed to show that this was an unreasonable application of, or contrary to, clearly established law as determined by the Supreme Court.

Petitioner's second, third, and fourth grounds pertain to the alleged lack of probable cause to search the trunk of the car where the drugs were found in Petitioner's backpack. ECF No. 1 at 7, 8, 10; ECF No. 17 at 7–19. He seems to be of the belief that the State had to prove "beyond a reasonable doubt that the syringe contained any controlled substance" before a search of the

[2] Ingram admitted drug use to Officer Brown. ECF No. 26-2 at 145, 201, 204–05.

[3] The page references to the petition are to "Page __ of 19" reflected at the top right portion of the document on the Court's electronic filing system.

vehicle could be justified. ECF No. 17 at 15.[4] These grounds, however, are barred by *Stone v. Powell*, 428 U.S. 465 (1976). Federal courts do not have authority to review a state court's application of Fourth Amendment principles in habeas proceedings if the petitioner had a full and fair opportunity to litigate those claims in state court. *Stone*, 428 U.S. at 494. Petitioner raised these grounds in his state habeas application. ECF No. 26-42 at 114–17. The petition was denied. ECF No. 26-36. He is not entitled to pursue these grounds here.[5]

In his final ground, Petitioner argues that he received ineffective assistance because his counsel failed to conduct any discovery or investigation and failed to file motions before trial. ECF No. 1 at 16; ECF No. 7 at 19–25. He made these allegations on appeal and the appellate court denied relief. *Carson*, 2020 WL 2202331, at *4–*7. His petition for discretionary review was denied. *Carson*, 2022 WL 2202331. In addition, he raised this ground in his state habeas application, ECF No. 26-42 at 118–19, which was denied. ECF No. 26-36. Applying the doubly-deferential standards of both *Strickland* and § 2254(d), *Cullen*, 563 U.S. at 190, the Court cannot find that Petitioner has met his burden to show that he is entitled to relief.[6]

V. CONCLUSION

For the reasons discussed herein, the Court **DENIES** the relief sought in the petition.

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[4] The page number references to the brief are to "Page __ of 32" reflected at the top right portion of the document on the Court's electronic filing system.

[5] The Court notes that whether the syringe actually contained methamphetamine is irrelevant to the validity of the search. *See, e.g.*, *United States v. Ortiz*, 781 F.3d 221, 229 (5th Cir. 2015) (police may search a vehicle without warrant if they have probable cause to believe that the vehicle contains contraband); *United States v. Edwards*, 577 F.2d 883, 895 (5th Cir. 1978) (en banc) ("probable cause to search an automobile exists when trustworthy facts and circumstances within the officer's personal knowledge would cause a reasonably prudent man to believe that the vehicle contains contraband"). *See also Wyoming v. Houghton*, 526 U.S. 295, 301 (1999) (if probable cause justifies the search of a vehicle, it justifies the search of every part of the vehicle).

[6] The State has adequately addressed this ground and the Court need not repeat its arguments. ECF No. 25 at 15–21.

Further, pursuant to 28 U.S.C. § 2253(c), for the reasons discussed herein, a certificate of appealability is **DENIED**.

SO ORDERED this **19th day** of **August, 2024**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
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NEW ORLEANS, LA 70130

February 19, 2025

#02250040
Mr. Michael James Carson
CID Polunsky Prison
3872 FM 350, S.
Livingston, TX 77351-0000

No. 24-10854 Carson v. Lumpkin
USDC No. 4:24-CV-186

Dear Mr. Carson,

We received your motion to amend COA. The Court denied a motion for a certificate of appealability on January 5, 2025. In light of case being closed, we are taking no action on this motion.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

cc: Ms. Lori Denise Brodbeck

Appendix C

TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 38.22 § 6

In all cases where a question is raised as to the voluntariness of a statement of an accused, the court must make an independent finding in the absence of the jury as to whether the statement was made under voluntary conditions. If the statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court must enter an order stating its conclusion as to whether or not the statement was voluntarily made, along with the specific findings of facts upon which the conclusion was based, which order shall be filed among the papeers of the cause. Such order shall not be exhibited to the jury nor the finding thereof made known to the jury in any manner. Upon the finding by the judge as a matter of law and fact that the statement was voluntarily made, evidence pertaining to such matter may be submitted to the jury and it shall be instructed that unless the jury believes beyond a reasonable doubt that the statement was voluntarily made, the jury shall not consider such statement for any purpose nor any evidence obtained as a result thereof. The state and the defendant shall be entitled to present any new evidence on the issue of the voluntariness of the statement prior to the courts final ruling and order stating its findings.

TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 38.22 § 2

No written statement made by an accused as a result of custodial interrogation is admissible as evidence against him in any criminal proceeding unless it is shown on the face of the statement that:

(a) the accused, prior to making the statement, either received from a magistrate the warning provided in Article 15.17 of this code or received from the person to whom the statement is made a warning that:

(1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at trial;

(2) any statement he makes may be used as evidence against him in court;

(3) he has the right to have a lawyer present to advise him prior to and during any questioning;

(4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning;

(5) he has the right to terminate the interview at any time; and

(b) the accused, prior to and during the making of the statement, knowingly, intelligently, and voluntarily waived the rights set out in the warning prescribed by Subsection (a) of this section.