No. 24-3810

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MATTHEW JONES,

Petitioner-Appellant,

v.

DAVE YOST, Ohio Attorney General,

Respondent-Appellee.

ORDER

Before: KETHLEDGE, Circuit Judge.

Pro se federal prisoner Matthew Jones appeals the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition. Jones moves the court for a certificate of appealability (COA), for leave to appeal in forma pauperis, and for a copy of the district court record at government expense. The court denies Jones's COA application for the following reasons.

In 2003, Jones photographed himself raping two different three-year-old girls and stored the images on his personal computer. One of the assaults occurred in Montgomery County, Ohio, and the other one occurred in Greene County, Ohio. Both counties are in the Southern District of Ohio. Jones made other images of child pornography available on a peer-to-peer file sharing network.

In 2018, a federal grand jury indicted Jones for various federal sex offenses, including two counts of producing child pornography. In 2019, a Montgomery County grand jury indicted Jones for several state sex offenses, including rape of a child under 10 years of age. Also in 2019, a Greene County grand jury indicted Jones on the same charge.

Jones resolved all three prosecutions in a global plea agreement. In the federal case, Jones agreed to plead guilty to two counts of producing child pornography in exchange for a recommendation that the district court run his sentence concurrent with the sentences in the state

cases. In the Montgomery County case, Jones agreed to plead guilty to rape, as well as the other charges, and the prosecutor agreed to recommend that the trial court impose a sentence of 20 years to life in prison, to be served concurrently with his sentences in the other two cases. And in the Greene County case, Jones agreed to plead guilty to rape in exchange for a recommendation that the trial court sentence him to a concurrent sentence of 15 years to life in prison.

The district court accepted Jones's plea agreement and sentenced him to concurrent terms of 270 months of imprisonment. Jones is currently in federal custody on that sentence. The Montgomery County trial court accepted the plea agreement as well and sentenced Jones to a concurrent term of 20 years to life in prison. But the Greene County trial court rejected the parties' sentencing recommendation and sentenced Jones to life without the possibility of parole. Jones's habeas petition arises out of the Greene County case.

On direct appeal, Jones argued that his guilty plea was involuntary and that his sentence was excessive under state law. The Ohio Court of Appeals rejected both arguments and affirmed Jones's conviction and sentence. *See State v. Jones*, No. 2020-CA-12, 2020 WL 5870182 (Ohio Ct. App. Oct. 2, 2020). The Ohio Supreme Court granted Jones leave to file a delayed appeal, *State v. Jones*, 175 N.E.3d 1261 (Ohio 2021) (table), but then dismissed the case for failure to prosecute after Jones failed to file a memorandum in support of jurisdiction, *State v. Jones*, 177 N.E.3d 293 (Ohio 2021) (table).

In December 2022, Jones filed a § 2254 petition in the district court, claiming (1) his guilty plea was involuntary under the Fifth, Sixth, and Fourteenth Amendments, (2) the trial court placed unconstitutional conditions on his decision to plead guilty, in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments, and (3) his life-without-parole sentence is cruel and unusual under the Eighth and Fourteenth Amendments. A magistrate judge issued a report that concluded that claims 1 and 2 were meritless and that claim 3 was both procedurally defaulted and meritless. Accordingly, the magistrate judge recommended denying Jones's petition. Over Jones's objections, the district court adopted the magistrate judge's conclusion that Jones's claims were meritless and/or procedurally defaulted, denied the petition, and declined to issue a COA.

Jones appealed and now moves this court for a COA on each of his claims.

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant must demonstrate "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 a district court denies a habeas petition on procedural grounds, this court may issue a COA only if the applicant shows "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] court should not grant a certificate without some substantial reason to think that the denial of relief might be incorrect." *Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020). Consequently, "a claim does not merit a certificate unless every independent reason to deny the claim is reasonably debatable." *Id.* (emphasis omitted).

Jones's first claim is that his plea was involuntary because (1) he was not represented by state defense counsel when he entered into the federal global plea agreement, (2) he was unaware that he could be sentenced to life without parole, and (3) the prosecution failed to disclose to the trial court that the global plea agreement required him to plead guilty.

In the Ohio Court of Appeals, Jones argued that his plea was involuntary under all of the circumstances of the case. Jones asserted that he subjectively believed that the trial court would accept the parties' recommendation to sentence him to 15 years to life in prison because he had cooperated with law enforcement to resolve all of the cases and sought mental health treatment to understand his behavior. *See Jones*, 2020 WL 5870182, at *1-3. The court of appeals denied this claim because during the change-of-plea hearing Jones acknowledged that he understood that the parties' sentencing recommendation did not bind the trial court. Further, the court rejected Jones's argument that the global plea agreement unduly coerced his guilty plea. The court found that Jones

"reasonably might have believed that pleading guilty was his best chance of preserving the possibility of his being released on parole, yet he would not necessarily have been sentenced to life without the possibility of parole had he chosen to take his case to trial and been found guilty." *Id.* at *2. The court thus concluded that Jones's belief that the trial court would accept the parties' sentencing recommendation was not objectively reasonable and denied the claim. *See id.*

As stated above, the Ohio Supreme Court dismissed Jones's appeal for failure to prosecute because he did not file a timely jurisdictional memorandum. The district court found unpersuasive the respondent's argument that Jones procedurally defaulted claim 1 because Jones had shown that his federal prison had unduly delayed mailing his jurisdictional memorandum to the Ohio Supreme Court. Consequently, the court reviewed claim 1 de novo and concluded that it was meritless, reasoning that (1) Jones's Sixth Amendment right to counsel in state court had not attached at the time he signed the global plea agreement, and (2) the change-of-plea colloquy contradicted his claim that the global plea agreement affected his decision to plead guilty.

"Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is 'voluntary' and that the defendant must make related waivers 'knowingly,' intelligently,' and with sufficient awareness of the relevant circumstances and likely consequences.'" *United States v. Ruiz*, 536 U.S. 622, 628 (2002) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970) (cleaned up)). Prevailing on an involuntary-plea claim is difficult:

> [T]he representations of the defendant, his lawyer, and the prosecutor at . . . a [plea] hearing, as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.

Blackledge v. Allison, 431 U.S. 63, 73-74 (1977).

Here, during Jones's plea hearing, the trial court read Jones's plea agreement to him and asked him if he understood that the agreement did not require it to accept the parties' sentencing recommendation. Jones said under oath that he did. The court then asked Jones if he understood that it could impose a sentence of up to life in prison without the possibility of parole. Jones again

said that he understood. Further, Jones stated that he was not coerced into pleading guilty and that no other promises induced him to plead guilty. And despite acknowledging the possibility that the court could reject the sentencing recommendation and sentence him to life in prison, Jones stated that he still wanted to plead guilty. Accordingly, reasonable jurists would not debate the district court's conclusion that Jones's guilty plea was not involuntary. *See McAdoo v. Elo*, 365 F.3d 487, 494-97 (6th Cir. 2004).

Nor would reasonable jurists debate the district court's conclusion that the global plea agreement did not coerce Jones's guilty plea. When questioned about possible coercion or other promises, Jones did not claim that the global plea agreement affected his decision to plead guilty in this case. Nor could it have reasonably done so because the global plea agreement did not contain any promises that the Greene County court would accept the parties' sentencing recommendation. Although Jones argues that the global plea agreement compelled him to plead guilty in the Greene County case, he does not contend that his decision to sign the global plea agreement was involuntary. Consequently, reasonable jurists would not debate whether the global plea agreement rendered Jones's guilty plea involuntary.

Reasonable jurists also would not debate the district court's conclusion that Jones's guilty plea was not invalid because of a Sixth Amendment violation. Jones's right to counsel in the Greene County case did not attach until he was formally charged in that jurisdiction. *See Turner v. United States*, 885 F.3d 949, 953-55 (6th Cir. 2018). And Jones was represented by counsel when he entered into a separate plea agreement in the Greene County case, so there was no Sixth Amendment violation. Moreover, Jones told the trial court that he was satisfied with his trial attorney's representation and advice to plead guilty.

In Claim 2, Jones argued that the state court placed unconstitutional conditions on his acceptance of the plea agreement. In Claim 3, Jones asserted that his life sentence is cruel and unusual under the Eighth Amendment. Reasonable jurists would agree that Jones procedurally defaulted these claims in state court by not presenting the factual and legal basis for the claims to the Ohio Court of Appeals on direct appeal. *See Williams v. Mitchell*, 792 F.3d 606, 613 (6th Cir.

2015). Jones did not present his unconstitutional-conditions claim to the Ohio Court of Appeals at all, and he challenged his life sentence as a state-law violation only. *See Jones*, 2020 WL 5870182, at *3-4. Because Jones could have raised these two claims on direct appeal, res judicata now bars Ohio courts from considering them. *See Hanna v. Ishee*, 694 F.3d 596, 613 (6th Cir. 2012). Accordingly, Jones procedurally defaulted claims 2 and 3. *See Williams*, 792 F.3d at 613.

This court will consider Jones's procedurally defaulted claims only if he can establish cause and prejudice to excuse the default. *See id.* Jones cannot rely on his appellate counsel's failure to raise his defaulted claims because he did not file an Ohio Rule of Appellate Procedure Rule 26(B) motion to reopen his appeal. *See Edwards v. Carpenter*, 529 U.S. 446, 453 (2000); *Carter v. Mitchell*, 693 F.3d 555, 565 (6th Cir. 2012). And Jones did not provide or point to any new evidence demonstrating that he is actually innocent of the offense. *See Hodges v. Colson*, 727 F.3d 517, 5320 (6th Cir. 2013).

For these reasons, the court **DENIES** Jones's COA application. The court **DENIES** all other pending motions as moot.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

No. 24-3810

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MATTHEW JONES,

Petitioner-Appellant,

v.

DAVE YOST, Ohio Attorney General,

Respondent-Appellee.

ORDER

Before: SUHRHEINRICH, WHITE, and RITZ, Circuit Judges.

Matthew Jones, a pro se federal prisoner, petitions the court to rehear en banc its order denying his application for a certificate of appealability. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(b)(1)(A).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

No. 24-3810

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 23, 2025
KELLY L. STEPHENS, Clerk

MATTHEW JONES,

Petitioner-Appellant,

v.

DAVE YOST, Ohio Attorney General,

Respondent-Appellee.

ORDER

Before: SUHRHEINRICH, WHITE, and RITZ, Circuit Judges.

Matthew Jones petitions for rehearing en banc of this court's order entered on February 6, 2025, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

APPENDIX C