

In the United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

Markeisha Elliott,
Petitioner,

Application No. _____

V.

Warden, Dayton Corr. Inst.
Respondent

Prior Case:

USCA 24-3766

Motion for Extension of Time to file
Certiorari

I, Markeisha Elliott, pro Se Inmate, comes to request an extension of time to file certiorari for the sixth circuit denied on January 23, 2025 (Elliott, 2025 U.S. App. Lexis 1548) Rehearing denied on May 06, 2025 (Elliott, 2025 U.S. App. Lexis 10993). The due date to file certiorari is August 04, 2025. The library has been closed since May/2025 due to the retirement of the librarian and no permanent replacement has been provided. The library only open a couple hours per week and it is not sufficient to meet the needs of 1000 inmates.

Respectfully submitted,

X ~~Markeisha Elliott~~

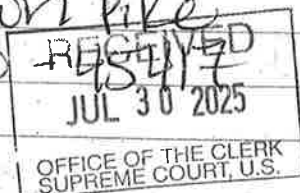
Date: July 19/2025

Markeisha Elliott (W 101046)

Dayton Correctional Institution

4104 Germantown Pike

Dayton, Ohio



No. 24-3766

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jan 23, 2025

KELLY L. STEPHENS, Clerk

MARKEISHA ELLIOTT,

Petitioner-Appellant,

v.

WARDEN, DAYTON CORRECTIONAL
INSTITUTION,

Respondent-Appellee.

ORDER

Before: GIBBONS, Circuit Judge.

Markeisha Elliott, a pro se Ohio prisoner, appeals a district court's judgment denying her 28 U.S.C. § 2254 petition for a writ of habeas corpus. She has applied for a certificate of appealability (COA) and moves to proceed in forma pauperis (IFP) on appeal. *See* Fed. R. App. P. 22(b), 24(a)(5). As discussed below, we deny her COA application and IFP motion.

Video footage of a pre-arranged street fight between Elliott's sister Tyshara Walker and Shawnice Johnson revealed that Elliott

advanced over to where her sister and Ms. Johnson wrestled on the ground. She approached the two with a small, pointed object in hand, which Ms. Elliott later acknowledged was a knife. Ms. Elliott then bent over and made a thrusting movement with the hand holding the knife in the direction of Ms. Johnson. In the wake of that blow, Ms. Johnson stumbled to her feet, clutching her neck. The crowd quickly dispersed as the severity of Ms. Johnson's wounds became apparent. Though rushed to the hospital, the knife had punctured Ms. Johnson's left carotid artery; she eventually lost consciousness and later died.

State v. Elliott, No. C-180294, 2019 WL 4231225, at *1 (Ohio Ct. App. Sept. 6, 2019), *perm. app. denied*, 137 N.E.3d 1209 (Ohio 2020). At trial, defense counsel attempted to establish that Elliott acted in defense of her sister, while Elliott also testified that the stabbing was an accident. *See id.*

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at *1-2. Dismissing both possibilities, the jury convicted Elliott of murder (special felony), in violation of Ohio Revised Code § 2903.02(B), and two counts of felonious assault, in violation of Ohio Revised Code § 2903.11(A)(1). The trial court merged the assault counts with the murder count for purposes of sentencing and imposed a prison term of 15 years to life. The Ohio Court of Appeals affirmed, rejecting Elliott's claim that trial counsel rendered ineffective assistance by pursuing a defense-of-another theory instead of an accident theory. *Id.* at *3.

In 2019, Elliott filed an application to reopen her appeal, asserting that appellate counsel rendered ineffective assistance by failing to raise additional claims of ineffective assistance of trial counsel and a claim that Elliott's felony murder conviction was against the manifest weight of the evidence. *See* Ohio. R. App. 26(B). The Ohio Court of Appeals denied the application on the merits in 2020. Elliott next filed a petition for post-conviction relief, which the trial court denied as untimely.

In 2021, Elliott filed her § 2254 petition asserting that:

(1) trial counsel rendered ineffective assistance by not (a) objecting to the lack of a jury instruction on accident and (b) informing the jury that the State had the burden of proving that Johnson's injury was not caused by an accident;

(2) her convictions were against the manifest weight of the evidence because the greater weight of the evidence showed that she was acting in defense of another;

(4) [sic] trial counsel rendered ineffective assistance by failing to (a) request a jury instruction on manslaughter or voluntary manslaughter, (b) object to the nearly all-white jury venire, and (c) challenge the certification of non-disclosure of witnesses and evidence; and

(5) appellate counsel rendered ineffective assistance by failing to (a) transmit all transcripts to the Ohio Court of Appeals and (b) inform her of decisions and ask if he could continue to exhaust her state remedies.

A magistrate judge recommended denying Elliott's first and fifth grounds on the merits,¹ her second as non-cognizable, and her fourth as procedurally defaulted. (Elliott's petition did not include a ground three.)

¹ Based on documents suggesting that Elliott and counsel were not served with the decision denying the Rule 26(B) application, the magistrate judge opted not to consider whether the

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Elliott filed objections. Upon review, the district court determined that Elliott had made a specific objection only with respect to the recommended denial of her claim that trial counsel rendered ineffective assistance by not objecting to the lack of a jury instruction on accident. Concluding that the magistrate judge's recommendation was correct, the court denied Elliott's § 2254 petition and declined to issue a COA.

In her COA application, Elliott asserts that (1) trial counsel rendered ineffective assistance by failing to request jury instructions on accident and voluntary manslaughter, (2) her conviction was not supported by sufficient evidence and was against the manifest weight of the evidence, and (3) the trial court deprived her of due process by failing to sua sponte instruct the jury on accident and voluntary manslaughter. By failing to address her other § 2254 claims in her COA application, Elliott has forfeited review of them. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam).

As a preliminary matter, we decline to consider any new claims that Elliott may be attempting to raise on appeal, such as that the trial court deprived her of due process by failing to sua sponte instruct the jury on accident and voluntary manslaughter. *See Seymour v. Walker*, 224 F.3d 542, 561 (6th Cir. 2000).

We also decline to consider any claims that were not the subject of a specific objection to the magistrate judge's report and recommendation. A litigant must file specific objections to a magistrate judge's report to preserve appellate review of the claims addressed therein. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985). "The filing of vague, general, or conclusory objections does not meet the requirement of specific objections and is tantamount to a complete failure to object." *Zimmerman v. Cason*, 354 F. App'x 228, 230 (6th Cir. 2009) (quoting *Cole v. Yukins*, 7 F. App'x 354, 356 (6th Cir. 2001)); *see also Alspaugh v. McConnell*, 643 F.3d 162, 166 (6th Cir. 2011). As noted above, the district court concluded that Elliott had filed a specific objection as to her claim that trial counsel rendered ineffective assistance by failing to request a jury instruction on accident.

ineffective-assistance-of-appellate-counsel claims were procedurally defaulted due to Elliott's failure to appeal the decision to the Ohio Supreme Court.

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We conclude that she also filed a specific objection as to her claim that the jury's verdict was against the manifest weight of the evidence. Therefore, we will consider these two claims and no others.

An individual seeking a COA is required to make a substantial showing of the denial of a 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). Under the Antiterrorism and Effective Death Penalty Act, a district court shall not grant a habeas petition with respect to any claim that was adjudicated on the merits in the state courts unless the adjudication resulted in a decision that: (1) was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court, or (2) was based on an unreasonable determination of the facts in light of the evidence presented to the state courts. *See* 28 U.S.C. § 2254(d).

As to the first claim, jurists of reason would agree that it was reasonable for the state court to conclude that trial counsel did not render ineffective assistance. To establish ineffective assistance generally, a defendant "must show that counsel's performance" was deficient and prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). Here, counsel engaged in sound trial strategy by arguing defense-of-another, which would justify the stabbing, instead of presenting a defense of accident. *See id.* at 689. Elliott herself admitted that she had entered the fray to help Walker and then had stabbed Johnson with a knife. And other evidence presented by the defense indicated that Walker was outnumbered at that time and was being attacked by a man. Therefore, counsel did not render deficient performance. We need not address whether Elliott suffered prejudice from counsel's strategy. "There is no reason for a court deciding an ineffective assistance claim . . . to address both" the performance and prejudice "components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697.

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Because we must construe pro se pleadings liberally, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), we construe Elliott's § 2254 petition and COA application as reasserting her state post-conviction claim that appellate counsel rendered ineffective assistance by failing to argue that her murder conviction was against the weight of the evidence. We conclude that jurists of reason would agree that appellate counsel did not render ineffective assistance because there is no reasonable probability that she would have prevailed had counsel raised the issue. *See McFarland v. Yukins*, 356 F.3d 688, 699 (6th Cir. 2004). When denying Elliott's claim, the Ohio Court of Appeals recounted the evidence presented at trial and Elliott's testimony that the stabbing was an accident. The appellate court rejected her testimony, quoting its prior finding that "a video of the incident showed Elliott 'approach the victim, bend over and make a *deliberate* thrusting motion.'" The court concluded that

[t]here was thus substantial credible evidence that Elliott had caused the victim's death as a proximate result of knowingly causing serious physical harm or causing or attempting to cause physical harm with a deadly weapon, and adequate record evidence existed to undermine her "defense of another" position. *See* R.C. 2903.02(B) and 2903.11(A)(1) and (A)(2) (defining felony murder with felonious assault as the predicate offense). Therefore, we do not believe that a manifest weight argument would have presented a reasonable probability for success because the jury could not be said to have lost its way in rejecting Elliott's defense-of-others claim and finding her guilty of felony murder.

Reasonable jurists would agree that Elliott has not shown that the state court's decision was "contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court" or that the decision "was based on an unreasonable determination of the facts in light of the evidence presented." 28 U.S.C. § 2254(d).

For these reasons, we **DENY** the COA application, and we **DENY** the IFP motion as moot.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

No. 24-3766

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

May 6, 2025

KELLY L. STEPHENS, Clerk

MARKEISHA ELLIOTT,

Petitioner-Appellant,

v.

WARDEN, DAYTON CORRECTIONAL
INSTITUTION,

Respondent-Appellee.

ORDER

Before: NALBANDIAN, MURPHY, and RITZ, Circuit Judges.

Markeisha Elliott petitions for rehearing en banc of this court's order entered on January 23, 2025, denying her 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, Clerk