No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN KOELEMIJ,
Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX TO APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Michael Ufferman Law Firm
2202-1 Raymond Diehl Road
Tallahassee, Florida 32308
Florida Bar # 114227
Phone (850) 386-2345
Email: ufferman@uffermanlaw.com

Counsel for the Petitioner

TABLE OF CONTENTS

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-13381

KEVIN J. KOELEMIJ,

Petitioner-Appellant,

versus

SECRETARY DEPARTMENT OF CORRECTIONS STATE OF FLORIDA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:21-cv-00373-AW-ZCB

ORDER:

Kevin Koelemij, a Florida prisoner, filed a counseled amended 28 U.S.C. § 2254 petition, asserting, as relevant, that the state trial court erred when it denied his motions for a new trial and to disqualify the trial judge, based on comments that the judge made when counsel asked Mr. Koelemij to stand up at trial during the testimony of one witness (Ground One). The district court denied Mr. Koelemij's § 2254 petition, and he appealed and now moves for a certificate of appealability ("COA") on Ground One.

In order to obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For claims denied on substantive grounds, the petitioner must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

Here, reasonable jurists would not debate the district court's denial of Ground One. *See id.* The district court properly concluded that Mr. Koelemij did not explain how the First District Court of Appeal's ("First DCA") findings were unreasonable or contrary to clearly established federal law. *See* 28 U.S.C. § 2254(d)(1), (2). As to his argument that his due process rights were violated by the state trial court's comments, the district court properly found that the First DCA reasonably found that the admonishment was brief, and even if the judge seemed stern or impatient, that did not establish a valid ground for recusal, even under

state law. *See Birotte v. State*, 795 So. 2d 112, 113 (Fla. Dist. Ct. App. 2001) ("[A] judge's expression of dissatisfaction with counsel's . . . behavior does not give rise to a reasonable fear of bias or prejudice").

Further, the First DCA reasonably explained that, because Mr. Koelemij's counsel stated on record at trial that the trial court's comments did not prejudice Mr. Koelemij, and the court gave a curative instruction that it did not prefer one verdict over another, Mr. Koelemij did not suffer any bias or prejudice, such to establish fundamental unfairness at trial to entitle him to federal habeas relief. Thus, the First DCA properly rejected Mr. Koelemij's argument that the state trial court erred when it denied his motions for a new trial and to disqualify the judge.

Accordingly, Mr. Koelemij's motion for a COA is DENIED.

UNITED STATES CIRCUIT JUDGE