

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Sep 12, 2017

DEBORAH S. HUNT, Clerk

CHRISTOPHER MCDANIEL,

Petitioner-Appellant,

v.

BONITA J. HOFFNER,

Respondent-Appellee.

ORDER

Christopher McDaniel, a pro se Michigan prisoner, appeals the district court's judgment denying his petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court construes McDaniel's notice of appeal as an application for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b)(2). McDaniel also moves the court to proceed in forma pauperis on appeal.

In 2010, McDaniel was convicted of armed robbery, felon in possession of a firearm, and possessing a firearm during the commission of a felony (felony firearm). The trial court sentenced McDaniel to an aggregate term of 12 to 25 years of imprisonment on the armed-robbery and felon-in-possession convictions, and to a consecutive two-year term of imprisonment on the felony-firearm conviction. The Michigan Court of Appeals affirmed McDaniel's convictions, *People v. McDaniel*, No. 297738, 2011 WL 2739460 (Mich. Ct. App. July 14, 2011), and the Michigan Supreme Court denied leave to appeal, *People v. McDaniel*, 805 N.W.2d 212 (Mich. 2011) (mem.). In 2011, McDaniel filed a motion for relief from judgment in the trial court. The trial court denied post-conviction relief, the Michigan Court of Appeals denied McDaniel's delayed application for leave to appeal, and the Michigan Supreme Court denied leave to appeal, *People v. McDaniel*, 843 N.W.2d 524 (Mich. 2014) (mem.).

McDaniel then filed a petition for a writ of habeas corpus under § 2254 in the district court, raising three claims: (1) the prosecution failed to disclose relevant and material evidence; (2) the trial court violated his right to confrontation; and (3) his trial counsel was ineffective for failing to object to hearsay and for failing to make a motion to suppress. The district court denied McDaniel's petition on the merits and declined to issue a COA.

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). 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. 28 U.S.C. § 2254(d).

McDaniel's convictions arose out of the armed robbery of a DTE Energy service representative. A mailman had been robbed at gun point earlier in the day in the same neighborhood. A postal inspector suspected that the same person committed both robberies and testified that the Postal Service received a tip that identified McDaniel as the perpetrator. The trial court denied McDaniel's pretrial motion to compel the prosecution to disclose the identity of the confidential informant.

Each of McDaniel's habeas claims relates to the confidential informant. Specifically, McDaniel claims that the prosecution withheld the identity of the confidential informant in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), that the trial court violated his right to confrontation by admitting the informant's hearsay statements, and that his trial counsel was ineffective for not objecting to the hearsay and for not filing a motion to suppress the hearsay

statements. The Michigan Court of Appeals concluded that the trial court did not abuse its discretion in denying McDaniel's motion to disclose the identity of the informant, that there was no *Brady* violation because the informant's tip was not exculpatory, and that there was no confrontation violation because the informant did not accuse McDaniel of a crime or provide evidence against him at trial. See *McDaniel*, 2011 WL 2739460, at *3-4. The district court concluded that the state court's resolution of McDaniel's claims was not contrary to or an unreasonable application of Supreme Court precedent.

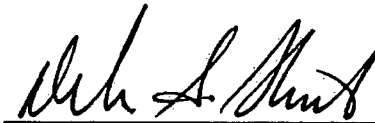
Given that McDaniel filed a pretrial motion to compel the prosecution to disclose the identity of the confidential informant, which the trial court denied, the prosecution obviously did not wrongfully suppress evidence. Moreover, the informant's statement identifying McDaniel was inculpatory, and therefore did not fall within *Brady*'s requirement for the prosecution to disclose evidence favorable to the defendant. See *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999) ("There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued."). Reasonable jurists therefore would not debate the district court's conclusion that the state court's decision denying this claim was not contrary to or an unreasonable application of *Brady*. To the extent that McDaniel is claiming a constitutional violation based on the trial court's order denying his motion to compel disclosure of the confidential informant's identity, he has not stated a claim for federal habeas relief. See *McCray v. Illinois*, 386 U.S. 300, 312-14 (1967) (declining to find that the federal constitution mandates the disclosure of confidential informants); *Phillips v. Cardwell*, 482 F.2d 1348, 1349 (6th Cir. 1973) (stating that it is doubtful that a claim for failure to produce the identity of an informant is cognizable in habeas corpus).

The postal inspector's testimony about the tip from the confidential informant was background information that explained how the investigation led to McDaniel and therefore was not hearsay that violated McDaniel's right to confrontation. Cf. *United States v. Pugh*, 273 F.

App'x 449, 456 (6th Cir. 2008). Because there was no underlying constitutional violation related to the trial court's admission of the confidential informant's statement, McDaniel's trial counsel was not ineffective for failing to object to or move to suppress the statement. *See Kelly v. McKee*, No. 16-1572, 2017 WL 2831019, at *6 (6th Cir. Jan. 24, 2017) ("Trial counsel is not required to raise meritless objections."). Reasonable jurists therefore would not debate the district court's conclusion that the state court's resolution of McDaniel's confrontation and ineffective-assistance-of-trial counsel claims was not contrary to or an unreasonable application of Supreme Court precedent.

Accordingly, the court **DENIES** McDaniel's COA application and **DENIES** as moot his motion to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk