

No. 17-1229

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 28, 2017
DEBORAH S. HUNT, Clerk

JAMES RAINS,

Petitioner-Appellant,

v.

WILLIE O. SMITH, Warden,

Respondent-Appellee.

O R D E R

James Rains, a pro se Michigan prisoner, appeals the district court's denial of his 28 U.S.C. § 2254 petition. This court construes Rains's notice of appeal as an application for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b)(2).

In 2012, Rains pled guilty to second-degree murder in Michigan state court. He was sentenced to twenty-five to fifty years in prison. Rains subsequently moved to withdraw his guilty plea, arguing that his trial counsel failed to advise him of the elements of second-degree murder; his plea was not voluntary, knowing, and intelligent; and the plea's factual basis was insufficient to support his conviction. *See People v. Rains*, No. 317723, 2014 WL 3613077, at *1 (Mich. Ct. App. July 22, 2014).

The trial court held a hearing where Rains's trial counsel testified that he met with Rains on "several occasions" and had "very fluid and very intelligent" conversations with him. *Id.* He confirmed that he knew Rains's medical history, including that he had a brain injury. *Id.* He also testified that he advised Rains about the elements of second-degree murder and possible defenses to the charge. *Id.* The trial court granted Rains's motion to withdraw his plea because the court was concerned that it was "defense counsel, rather than the court itself, who had questioned [Rains] at his plea hearing to establish a factual basis for second-degree murder,

including [his] intent. The court was also concerned that [Rains's] intent to kill was not expressed on the record.” *Id.*

The prosecution appealed, and the Michigan Court of Appeals denied leave to appeal. Next, the prosecution filed an application for leave to appeal the Court of Appeals’ order. Instead of granting leave to appeal, the Michigan Supreme Court remanded the case to the Court of Appeals “for consideration as on leave granted.” *People v. Rains*, 843 N.W.2d 749, 750 (Mich. 2014) (Mem.). On remand, the Court of Appeals concluded that the trial court abused its discretion by permitting Rains to withdraw his guilty plea and remanded the matter for reinstatement of Rains’s conviction and sentence. *Rains*, 2014 WL 3613077, at *5. Rains filed an application for leave to appeal, which the Michigan Supreme Court denied. *People v. Rains*, 859 N.W.2d 516 (Mich. 2015) (Mem.).

In 2015, Rains filed this habeas petition, arguing that (1) his plea was involuntary and (2) there was an insufficient factual basis elicited in the plea to support his conviction for second-degree murder. Subsequently, Rains moved to stay the proceedings so that he could exhaust additional claims in state court. The district court denied the petition, concluding that Rains’s first ground lacked merit and that his second ground was not cognizable on habeas review. Additionally, the court denied Rains’s motion to stay the proceedings and declined to issue a COA.

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); accord *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When the denial of relief is based on the merits, “[t]he petitioner must demonstrate 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 a habeas petition on a procedural ground without reaching the underlying constitutional claims, a COA should issue when the petitioner demonstrates “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.” *Id.* “[A] COA does not require a showing that the appeal will succeed,” *Miller-El*, 537

U.S. at 337; it is sufficient for a petitioner to demonstrate that “the issues presented are adequate to deserve encouragement to proceed further,” *Savoca v. United States*, 567 F.3d 802, 803 (6th Cir. 2009). Under § 2253(c), this court does not fully consider “the factual or legal bases adduced in support of the claims”; rather, this court conducts an overview of the claims and “a general assessment of their merits.” *Miller-El*, 537 U.S. at 336.

Before turning to Rains’s habeas claims, this court will address Rains’s motion to stay his habeas proceedings so that he could raise unexhausted ineffective-assistance-of-counsel claims in state court. He also sought to “re-present” his habeas claims “as federal constitutional violations,” presumably because these claims were presented to the state courts primarily in terms of state law. The district court denied the motion.

This court reviews a district’s denial of a stay for an abuse of discretion. *Ryan v. Gonzales*, 133 S. Ct. 696, 708 (2013). A stay “is only appropriate when the district court determines that there was good cause for the petitioner’s failure to exhaust his claims first in state court.” *Rhines v. Weber*, 544 U.S. 269, 277 (2005). Rains failed to show good cause for not raising his ineffective-assistance claims in state court or presenting his habeas claims in terms of federal law rather than state law. Accordingly, the district court’s decision to deny the motion to stay was not an abuse of discretion. In any event, the district court proceeded to rule on Rains’s claims without relying on his failure to “federalize” them in the state courts.

As for Rains’s grounds for relief, he first argued that his plea was involuntary because he was never informed of the elements of his second-degree murder charge before pleading guilty.

For a guilty plea to be deemed voluntary, knowing, and intelligent, a defendant must have been informed of the elements of the crime to which he is pleading guilty. *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005). In determining whether a defendant was so informed, a court may look to the record, which may contain an explanation of the charge by the trial judge, “or at least a representation by defense counsel that the nature of the offense has been explained to the accused.” *Henderson v. Morgan*, 426 U.S. 637, 647 (1976). “Moreover, even without such an express representation, it may be appropriate to presume that in most cases defense counsel routinely explain the nature of the offense in sufficient detail to give the accused notice of what

No. 17-1229

- 4 -

he is being asked to admit.” *Id.*; see also *Williams v. Wolfenbarger*, 513 F. App’x 466, 470 (6th Cir. 2013) (“[E]ven absent a clear showing on the record, we presume that counsel did in fact explain the nature of the offense to the defendant.”).

In adjudicating this claim, the Michigan Court of Appeals relied on the representation of Rains’s trial counsel to conclude that Rains was adequately informed of the elements of second-degree murder. See *Rains*, 2014 WL 3613077, at *3. The district court determined that this decision was not an unreasonable application of Supreme Court precedent. Reasonable jurists would not disagree, as counsel indicated that he explained the elements of second-degree murder to Rains.

Rains next argued that there was an insufficient factual basis elicited during his plea hearing to support his second-degree-murder conviction. Reasonable jurists would not debate the district court’s conclusion that this claim is not cognizable on federal habeas review, or its alternative conclusion that even if the claim were cognizable, the Michigan Court of Appeals reasonably concluded that there was sufficient basis for Rains’s plea. “The requirement that a sentencing court must satisfy itself that a sufficient factual basis supports the guilty plea is not a requirement of the Constitution, but rather a requirement created by rules and statutes.” *United States v. Tunning*, 69 F.3d 107, 111 (6th Cir. 1995); *Bonior v. Conerly*, 416 F. App’x 475, 478 (6th Cir. 2010) (“[T]o the extent [petitioner] claims an insufficient factual basis for the plea, that claim is not cognizable in federal habeas.”). Thus, this claim does not deserve encouragement to proceed further.

Accordingly, this court **DENIES** Rains’s COA application and his motion to hold the appeal in abeyance is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES RAHEEM RAINS,

Petitioner,

v.

Case No. 2:15-cv-14072
Honorable Marianne O. Battani

WILLIE SMITH,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION [14]
AND DENYING AS MOOT PETITIONER'S APPLICATIONS
FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL [17, 20]

Petitioner James Raheem Rains has appealed the Court's opinion and order denying his motion for a stay and dismissing his pro se application for the writ of habeas corpus under 28 U.S.C. § 2254. Currently pending before this Court are Rains' applications for leave to proceed in forma pauperis on appeal and his motion for reconsideration of the Court's opinion and order denying his motion for a stay and his habeas petition. The applications for leave to proceed in forma pauperis on appeal are denied as moot, because the Court granted leave to appeal in forma pauperis in its dispositive opinion. The motion for reconsideration is denied for the reasons given below.

I. Background

Rains initially was charged in Wayne County, Michigan with two counts of first-degree murder. Although there was only one victim, the prosecutor's theory was that Rains was guilty of both premeditated murder and felony murder (murder committed

during the commission of a home invasion). On August 13, 2012, Rains pleaded guilty in Wayne County Circuit Court to the lesser charge of second-degree murder. See Mich. Comp. Laws § 750.317. In return, the prosecutor agreed to dismiss the first-degree murder charges, and the parties agreed to a sentence of twenty-five to fifty years in prison.

On August 28, 2012, the trial court sentenced Rains, as agreed, to imprisonment for twenty-five to fifty years. Rains moved to withdraw his guilty plea on grounds that his plea was not voluntary, intelligent, and knowing and that there was an inadequate factual basis for the plea because the element of intent was missing. The trial court's successor held an evidentiary hearing on Rains' motion and then allowed Rains to withdraw his plea.

The Michigan Court of Appeals denied the prosecutor's application for leave to appeal, see People v. Rains, No. 317723 (Mich. Ct. App. Nov. 4, 2013), but the Michigan Supreme Court ordered the Court of Appeals to consider Rains case "as on leave granted." People v. Rains, 843 N.W.2d 749 (Mich. 2014). On remand, the Michigan Court of Appeals held that the circuit court abused its discretion when it granted Rains' motion to withdraw his guilty plea. The Court of Appeals reversed the circuit court's decision and remanded the case to the circuit court for reinstatement of Rains' plea-based conviction and sentence. See People v. Rains, No. 317723, 2014 WL 3613077 (Mich. Ct. App. July 22, 2014). Rains appealed to the Michigan Supreme Court, which denied leave to appeal because it was not persuaded to review the questions presented to it. See People v. Rains, 859 N.W.2d 516 (Mich. 2015).

Rains subsequently filed his habeas corpus petition, arguing that the state circuit court did not abuse its discretion by granting his motion to withdraw his plea. After the State filed an answer to the habeas petition, Rains moved for a stay so that he could return to stay court and pursue additional remedies there. The Court denied the motion for a stay and denied the habeas petition on the merits. Rains then filed his motion for reconsideration. A few days later, he appealed the Court's dispositive decision denying his motion for a stay and his habeas petition.

II. Analysis

A. Federal Rule of Civil Procedure 59

Rains brings his motion for reconsideration under Federal Rule of Civil Procedure 59(b), which states that “[a] motion for a new trial must be filed no later than 28 days after the entry of judgment.” Because Rains is seeking reconsideration of the Court's opinion and judgment denying his habeas petition, the Court construes his motion as having been filed under Federal Rule of Civil Procedure 59(e), which governs motions to alter or amend a judgment.

“The purpose of Rule 59(e) is ‘to allow the district court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings.’ ” Howard v. United States, 533 F.3d 472, 475 (6th Cir. 2008) (quoting York v. Tate, 858 F.2d 322, 326 (6th Cir. 1988) (quoting Charles v. Daley, 799 F.2d 343, 348 (7th Cir. 1986)). “A district court may grant a Rule 59(e) motion to alter or amend judgment only if there is: ‘(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.’ ”

Henderson v. Walled Lake Consol. Sch., 469 F.3d 479, 496 (6th Cir. 2006) (quoting Intera Corp. v. Henderson, 428 F.3d 605, 620 (6th Cir. 2005)). This standard is consistent with the Court's "palpable defect" standard in its Local Rules. Id. Under Local Rule 7.1, the Court generally

will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the Court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the Court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case.

LR 7.1(h)(3) (E.D. Mich. July 1, 2013). "A 'palpable defect' is 'a defect that is obvious, clear, unmistakable, manifest or plain.'" Buchanan v. Metz, 6 F. Supp. 3d 730, 752 (E.D. Mich. 2014) (quoting United States v. Lockett, 328 F. Supp. 2d 682, 684 (E.D. Mich. 2004)).

B. Application

Rains' motion raises issues regarding the voluntariness of his guilty plea and the factual basis for his plea. The Court declines to reconsider these claims because the Court previously adjudicated and rejected the claims on the merits. LR 7.1(h)(3).

The other basis for Rains' motion is his desire to pursue state remedies for two new claims about his trial and appellate attorneys. He has asked the Court to stay his case, allow him to exhaust state remedies for his new claims, and then give him additional time to re-file his habeas petition. This case is closed, however, and there is no pending habeas petition that can be stayed or held in abeyance.

Furthermore, the Court does not believe that it abused its discretion by denying Rains' initial motion for a stay, ECF No. 10. While it is true that federal district courts

may stay a case and hold a habeas petition in abeyance, a stay is appropriate only when the petitioner demonstrates good cause for the failure to present his claims first in state court, the unexhausted claims are potentially meritorious, and the petitioner is not engaged in dilatory litigation tactics. Rhines v. Weber, 544 U.S. 269, 278 (2005).

Rains does not appear to be engaged in dilatory litigation tactics, but he has not shown good cause for failing to raise his new claims in state court before he filed his habeas petition. He could have raised his new claims and expanded on his existing claims by filing a post-conviction motion in state court before he filed his habeas petition. In fact, appellate counsel apparently informed Rains that he could do one of two things after the Michigan Supreme Court denied his application for leave to appeal: file a post-conviction motion in state court or file a habeas corpus petition in federal court. See Mot. for Reconsideration, App. B, ECF No. 14, Pg ID 961-62.

Petitioner also has not convinced the Court that his unexhausted claims about trial and appellate counsel are potentially meritorious. He asserts that trial counsel failed to investigate his claim of self defense, his head injury, and his mental disorders (Attention Deficit Hyperactivity Disorder and Anxiety). However, a defense theory that Rains acted in self defense likely would have been unsuccessful, because there was evidence that he hit the victim in the back of the head with a hammer. Defense counsel, moreover, testified at a post-conviction hearing that he did not think Rains had a valid claim of self defense. See Ginther Hr'g, at 17 and 27 (Wayne Cty. Cir. Ct., May 3, 2013), ECF No. 9-12, Pg ID 364 and 374.

As for Rains' head injury, the trial court opined that referring to Rains' small subdural hematoma as a brain injury "would be a stretch." See id., at 41, Pg ID 388. And Rains' mental disorders would not have been a defense to the murder charge. See People v. Carpenter, 627 N.W.2d 276, 283 (Mich. 2001) (concluding that "evidence of mental incapacity short of insanity cannot be used to avoid or reduce criminal responsibility by negating specific intent").

To his credit, defense counsel negotiated a favorable plea agreement for Rains in a case where the evidence against him was substantial. The plea agreement reduced the first-degree murder charge, which carries a mandatory penalty of life imprisonment without the possibility of parole, see Mich. Comp. Laws § 750.316(1), to second-degree murder, which has a penalty of life imprisonment "or any term of years, in the discretion of the court." Mich. Comp. Laws § 750.317. The agreement also called for a sentence of twenty-five to fifty years. This means Rains could be released on parole when he reaches his mid-forties.¹

Petitioner has failed to persuade the Court that his claim about trial counsel is potentially meritorious. And because trial counsel's performance does not appear to have been deficient, appellate counsel was not ineffective for failing to raise a claim about trial counsel on direct appeal. See Greer v. Mitchell, 264 F.3d 663, 676 (6th Cir. 2001) (stating that, if trial counsel performed adequately, the Court's "inquiry [was] at an end" because, "by definition, appellate counsel cannot be ineffective for a failure to raise an issue that lacks merit").

¹ Rains states that he was 19 years old at the time of his plea.

To summarize, Rains' unexhausted claims are not potentially meritorious, and he has not shown good cause for his failure to raise the claims first in state court. The Court therefore does not believe it abused its discretion by denying Rains' motion for a stay.

III. Conclusion

Rains is not entitled to reconsideration of his case under Federal Rule of Civil Procedure 59(e) or Local Rule 7.1(h) because he has not shown that the Court committed a clear error of law in its previous decision and he does not claim to have newly discovered evidence. He also has not pointed to an intervening change in controlling law, and he has not demonstrated that the Court made a palpable defect when it denied his motion for a stay and his application for the writ of habeas corpus. Finally, relief from judgment is not necessary to prevent manifest injustice. The Court therefore denies Rains' motion for reconsideration (ECF No. 14). The Court denies as moot the applications to proceed in forma pauperis on appeal (ECF Nos. 17 and 20).

Date: April 20, 2017

s/Marianne O. Battani
MARIANNE O. BATTANI
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on April 20, 2017.

s/ Kay Doaks
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES RAHEEM RAINS,

Petitioner,

v.

Case No. 15-cv-14072
Honorable Marianne O. Battani

WILLIE SMITH,

Respondent.

**OPINION AND ORDER DENYING THE MOTION FOR A STAY (ECF No. 10),
AND DENYING THE PETITION FOR A WRIT OF HABEAS CORPUS (ECF No. 1)**

This matter has come before the Court on petitioner James Raheem Rains' pro se application for the writ of habeas corpus under 28 U.S.C. § 2254 and Rains' motion for a stay of these proceedings. The habeas petition challenges Rains' plea-based conviction for second-degree murder. Rains claims that he should be permitted to withdraw his guilty plea because his plea was involuntary and because there was an insufficient factual basis for his plea. In his motion for a stay, Rains indicates that he wishes to raise his current claims as constitutional issues in state court and to present the state court with two new claims regarding his trial and appellate attorneys. For the reasons given below, the Court has concluded that a stay is not appropriate and that Rains' habeas claims do not warrant granting the writ of habeas corpus. The Court therefore will deny Rains' motion for a stay and his application for the writ of habeas corpus.

I. Background

Petitioner initially was charged in Wayne County, Michigan with two counts of first-degree murder. Although there was only one victim, the prosecutor's theory was that Rains was guilty of both premeditated murder and felony murder (murder committed during the commission of a home invasion). On August 13, 2012, Rains pleaded guilty in Wayne County Circuit Court to the lesser charge of second-degree murder, Mich. Comp. Laws § 750.317. In return, the prosecutor agreed to dismiss the first-degree murder charges, and the parties agreed to a sentence of twenty-five to fifty years in prison. In addition, Rains agreed to pay restitution.

On August 28, 2012, the trial court sentenced Rains, as agreed, to imprisonment for twenty-five to fifty years. The court also imposed fees and costs, as well as, restitution in the amount of \$3,417.35. Rains subsequently moved to withdraw his guilty plea on grounds that his plea was not voluntary, intelligent, and knowing and that there was an inadequate factual basis for the plea because the element of intent was missing. The trial court's successor determined that an evidentiary hearing was necessary before the court could issue a decision on Rains' motion.

At the evidentiary hearing in 2013, Rains' plea attorney testified that the majority of his legal work was criminal defense and that he had been practicing law since 1996. He stated that he thought he informed Rains of the charges and the elements of the crime when he first met with Rains and that he probably went over the elements of second-degree murder with him as well. Counsel also testified that, before the day set for trial, he discussed the prosecution's plea offer with Rains and that he would have

explained the nature of second-degree murder with Rains at that time. Rains did not appear to have any difficulty understanding him.

Rains testified at the hearing that he did not remember his plea attorney discussing the elements of first- or second-degree murder with him. Medical records submitted during the hearing indicated that Rains incurred a small subdural hematoma in 2011. Rains testified that the injury occurred when he was hit by a car in April of 2011, and that the symptoms of his injury were headaches, sensitivity to light, and memory loss. The circuit court opined that referring to the hematoma as a brain injury was a "stretch."

Rains also claimed that he had been diagnosed with ADHD and anxiety. He explained that he had wanted to go to trial, but that he did not think his attorney was prepared for trial and that he changed his mind about going to trial because he was scared.

Rains' mother, Mena Riser, testified that Rains suffered some bruising of the brain during a car accident and that, as a result, he was a bit forgetful and his balance was not quite right. Ms. Riser claimed that, on the day set for trial, Rains' plea attorney told her that, if her son went to trial, he would get life imprisonment without the possibility of parole. She subsequently begged Rains to plead guilty because she was afraid that she would not see him again if he refused the plea offer.

At the conclusion of the evidentiary hearing, the circuit court ruled that Rains could withdraw his plea. The court's reasons for its ruling were that (1) defense counsel

had questioned Rains about the factual basis for his plea and (2) Rains had not expressed his intent on the record.

The prosecutor appealed the circuit court's order. The Michigan Court of Appeals denied leave to appeal, see People v. Rains, No. 317723 (Mich. Ct. App. Nov. 4, 2013), but the Michigan Supreme Court, in lieu of granting leave to appeal, remanded the case to the Michigan Court of Appeals "for consideration as on leave granted." People v. Rains, 843 N.W.2d 749 (Mich. 2014).

On remand, the Court of Appeals adjudicated Rains' claims on the merits and held that the circuit court abused its discretion when it granted Rains' motion to withdraw his guilty plea. The Court of Appeals reversed the circuit court's decision and remanded the case for reinstatement of Rains' plea-based conviction and sentence. See People v. Rains, No. 317723, 2014 WL 3613077 (Mich. Ct. App. July 22, 2014). Rains appealed the Court-of-Appeals decision to the Michigan Supreme Court, arguing that the circuit court did not abuse its discretion in granting his motion to withdraw his guilty plea. On March 3, 2015, the Michigan Supreme Court denied leave to appeal because it was not persuaded to review the questions presented to it. See People v. Rains, 859 N.W.2d 516 (Mich. 2015).

On May 11, 2015, Rains challenged his conviction for second-degree murder in a federal habeas corpus petition, which he filed in this District. See Rains v. Smith, No. 15-11686 (E.D. Mich. May 11, 2015). On May 14, 2015, the Magistrate Judge ordered Rains to pay the filing fee or to apply for leave to proceed in forma pauperis within twenty-one days of the date of the order, that is, by June 4, 2015. On August 14, 2015,

Rains applied for leave to proceed without prepayment of the fees or costs for this action, but on August 18, 2015, the Court dismissed the petition without prejudice for failure to comply with the Magistrate Judge's deficiency order.

On November 19, 2015, Rains filed the habeas corpus petition currently before the Court. He alleges here, as he did in state court, that the state circuit court did not abuse its discretion in granting his motion to withdraw his plea after concluding that (1) his plea was not voluntary, knowing, and intelligent and (2) the factual basis for his plea was insufficient.

On May 25, 2016, the State filed an answer to the habeas petition through counsel. The State argues that Rains' claims are not cognizable on federal habeas review because they deal with issues of state law and that the Michigan Court of Appeals reasonably adjudicated the claims. Rains subsequently moved for a stay so that he could return to state court and pursue additional remedies there.

II. The Motion for a Stay

Rains seeks a stay of these proceedings pursuant to Rhines v. Weber, 544 U.S. 269, 278-79 (2005), so that he can file a motion for relief from judgment in state circuit court. He wants to "federalize" his current claims and to raise two new claims regarding his trial and appellate attorneys.

The Supreme Court has stated that, "[b]efore a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court. In other words, the state prisoner must give the state courts an opportunity to act on his claims

before he presents those claims to a federal court in a habeas petition." O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999).

Federal district courts have authority to issue stays; and in appropriate cases, a federal district court may hold a habeas corpus petition in abeyance while an inmate returns to state court to exhaust state remedies for previously unexhausted claims. Rhines, 544 U.S. at 276. Rains' habeas petition, however, contains only his two exhausted claims regarding the voluntariness of his guilty plea and the factual basis for the plea, whereas "Rhines concerned the availability of a stay for so-called 'mixed' petitions in which some claims had been exhausted in state courts and some had not . . ." Carter v. Mitchell, ___ F.3d ___, ___, No. 13-3996, 2016 WL 3770282, at *7 (6th Cir. July 13, 2016). Because Rains' petition is not a mixed petition of exhausted and unexhausted claims, Rhines is not applicable, and a stay is not appropriate. Accordingly, Gains' motion for a stay (ECF No. 10) is denied. The Court will proceed to address Rains' exhausted habeas claims, using the following standard of review.

III. Standard of Review

"The statutory authority of federal courts to issue habeas corpus relief for persons in state custody is provided by 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)." Harrington v. Richter, 562 U.S. 86, 97 (2011). Pursuant to § 2254, the court may not grant a state prisoner's application for the writ of habeas corpus unless the state court's adjudication of the prisoner's claims on the merits

- (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 proceeding.

28 U.S.C. § 2254(d).

Under the “contrary to” clause [of § 2254(d)(1)], a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the 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. Under the “unreasonable application” clause [of § 2254(d)(1)], a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from [the Supreme] Court’s decisions but unreasonably applies that principle to the facts of the prisoner’s case.

Williams v. Taylor, 529 U.S. 362, 412-13 (2000) (O’Connor, J., opinion of the Court for Part II).

“[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.” Id. at 411. “AEDPA thus imposes a ‘highly deferential standard for evaluating state-court rulings,’ Lindh v. Murphy, 521 U.S. 320, 333 n.7 (1997), and ‘demands that state-court decisions be given the benefit of the doubt,’ Woodford v. Viscioti, 537 U.S. 19, 24 (2002) (*per curiam*).” Renico v. Lett, 559 U.S. 766, 773 (2010).

“A state court’s determination that a claim lacks merit precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on the correctness of the state court’s decision.” Richter, 562 U.S. at 101 (quoting Yarborough v. Alvarado, 541 U.S. 652, 664 (2004)). To obtain a writ of habeas corpus from a federal court, a state

prisoner must show that the state court's ruling on his claims "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." Id. at 103.

IV. Analysis

A. Claim One: Involuntary Guilty Plea

Rains alleges that his guilty plea was not voluntary, knowing, and intelligent because (1) no one mentioned the elements of second-degree murder on the record at the plea proceeding, (2) the trial court did not confirm that Rains' attorney discussed the elements of the crime with him, and (3) it was not established at the evidentiary hearing that defense counsel had discussed the elements of second-degree murder with him. Thus, according to Rains, the state circuit court did not abuse its discretion when it permitted him to withdraw his guilty plea on the ground that the plea was involuntary. The Michigan Court of Appeals disagreed with Rains and ruled that the trial court abused its discretion by granting Rains' motion to withdraw his guilty plea.

This Court begins its analysis by noting that Rains had no absolute right to withdraw his guilty plea. United States v. Martin, 668 F.3d 787, 794 (6th Cir. 2012); Shanks v. Wolfenbarger, 387 F. Supp.2d 740, 748 (E.D. Mich. 2005). Unless the plea violated a clearly-established constitutional right, the decision whether to allow a defendant to withdraw a plea is discretionary with the state trial court. Shanks, 387 F. Supp.2d at 748. For the following reasons, moreover, the record indicates that Rains' guilty plea was voluntary, knowing, and intelligent.

1. Clearly Established Federal Law

"A guilty or no-contest plea involves a waiver of many substantial constitutional rights," Fautenberry v. Mitchell, 515 F.3d 614, 636 (6th Cir. 2008), and an involuntary plea is "an impairment of a defendant's substantial rights," Martin, 668 F.3d at 792. Consequently, a guilty plea must be a voluntary, knowing, and intelligent act "done with sufficient awareness of the relevant circumstances and likely consequences." Brady v. United States, 397 U.S. 742, 748 (1970).

For a guilty plea to be valid, the defendant must appreciate the consequences of his waiver of constitutional rights, waive his rights without being coerced to do so, and understand the rights that he is surrendering by pleading guilty. Ruelas v. Wolfenbarger, 580 F.3d 403, 408 (6th Cir. 2009). Additionally, the defendant must understand the essential elements of the offense to which he pleads guilty and be aware of the maximum sentence to which he is exposed. Id. at 408-09. "Where a defendant pleads guilty to a crime without having been informed of the crime's elements, [the Brady] standard is not met and the plea is invalid." Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005). Courts consider all the relevant circumstances when determining whether a plea was voluntary. Brady, 397 U.S. at 749.

2. Application

Rains stated at his plea proceeding that he had read and signed the plea agreement and that he understood it. He also stated that he had talked with his attorney about the decision to enter the plea. (Plea Tr. at 4-5, Aug. 13, 2012). He indicated that he understood the rights he was waiving by pleading guilty and that he

had no questions about his rights. (Id. at 5-6.) He then stated that it was his choice to plead guilty and that no one had threatened him to make him plead guilty or promised him anything, other than what was stated in the plea agreement. (Id. at 7-8.) He assured the trial court that he was pleading guilty freely and voluntarily. (Id. at 8.) His “[s]olemn declarations in open court carry a strong presumption of verity.” Blackledge v. Allison, 431 U.S. 63, 74 (1977).

Rains nevertheless asserts that his plea was involuntary, unknowing, and unintelligent because no one explained the nature of the offense and the elements of second-degree murder to him. Rains relies on Henderson v. Morgan, 426 U.S. 637 (1976), in which the Supreme Court stated that a plea cannot “be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received ‘real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.’ ” Id. at 645 (quoting Smith v. O’Grady, 312 U.S. 329, 334 (1941)). The Supreme Court also stated that, “intent is such a critical element of the offense of second-degree murder that notice of that element is required.” Id. at 647 n.18.

The Supreme Court, however, went on to say that “it may be appropriate to presume that in most cases defense counsel routinely explain the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit.” Id. at 647. In other words, “[w]here a defendant is represented by competent counsel, the court usually may rely on that counsel’s assurance that the defendant has been properly informed of the nature and elements of the charge to which he is pleading guilty.”

Stumpf, 545 U.S. at 183. "[E]ven absent a clear showing on the record, [the Sixth Circuit Court of Appeals] presume[s] that counsel did in fact explain the nature of the offense to the defendant." Williams v. Wolfenbarger, 513 F. App'x 466, 470 (6th Cir. 2013).

Rains' attorney stated at a pretrial conference six days before Rains pleaded guilty that he had explained the ramifications of the prosecution's plea offer to Rains. (Pretrial Tr. at 3, Aug 7, 2012.) And, as noted above, Rains' attorney testified at the evidentiary hearing in state court that he informed Rains of the charges (first-degree murder) at their first meeting and that he would have discussed second-degree murder with Rains as well. (Ginther Hr'g Vol. I at 11, 14, 16, May 3, 2013). Although Rains testified that his plea attorney did not tell him what the prosecution would have to show at trial (id. at 46), the Court may presume that counsel did inform Rains of the elements of the crime. Henderson, 426 U.S. at 647; Stumpf, 545 U.S. at 183; Williams, 513 F. App'x at 470.

Henderson, moreover, was "unique because the trial judge found as a fact that the element of intent was not explained" to the defendant and because the defendant had an "unusually low mental capacity." Henderson, 426 U.S. at 647. Here, in contrast, there is no evidence that Rains had an unusually low mental capacity,¹ and the judge who presided over Rains' plea determined that Rains understood the nature of the charge to which he was pleading guilty. (Plea Tr. at 10, Aug. 13, 2012.)

¹ Rains' attorney testified at the state evidentiary hearing that Rains' conversations with him "were very fluid and very intelligent" and that Rains did not appear to have any difficulty understand the nature of second-degree murder. (Ginther Hr'g Vol. I at 8, 16-17, May 3, 2013.)

The Court concludes from the record that Rains' plea was voluntary, knowing, and intelligent. Therefore, the decision of the Michigan Court of Appeals – that Rains' plea was valid – was objectively reasonable, and Rains is not entitled to habeas relief on the basis of his first claim.

B. Claim Two: Insufficient Factual Basis for the Plea

Rains contends that the factual basis for his guilty plea was insufficient because the intent element for second-degree murder (malice) was not established at the plea proceeding. The Michigan Court of Appeals concluded on review of this claim that a sufficient factual basis was established at Rains' plea and that the circuit court abused its discretion by finding otherwise and by granting Rains' motion to withdraw his plea.

This Court finds no merit in Rains' claim because "an express admission of guilt . . . is not a constitutional requisite to the imposition of criminal penalty. An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime." North Carolina v. Alford, 400 U.S. 25, 37 (1970). "The requirement that a sentencing court must satisfy itself that a sufficient factual basis supports the guilty plea is not a requirement of the Constitution, but rather a requirement created by rules and statutes." United States v. Tunning, 69 F.3d 107, 111 (6th Cir. 1995). Thus, Rains' claim is not cognizable on habeas review. Bonior v. Conerly, 416 F. App'x 475, 478 (6th Cir. 2010).

Even if Rains' claim were cognizable here, it lacks merit for the following reasons. In Michigan,

[t]he elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. People v. Bailey, 451 Mich. 657, 669, 549 N.W.2d 325 (1996).

Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. People v. Aaron, 409 Mich. 672, 728, 299 N.W.2d 304 (1980).

People v. Goecke, 579 N.W.2d 868, 878 (Mich. 1998). "A factual basis for acceptance of a plea exists if an inculpatory inference can reasonably be drawn by a jury from the facts admitted by the defendant even if an exculpatory inference could also be drawn and defendant asserts the latter is the correct inference." In re Guilty Plea Cases, 235 N.W.2d 132, 145 (Mich. 1975).

The first two elements of second-degree murder were satisfied when Rains admitted at the plea proceeding that the victim died because he hit her. (Plea Tr. at 9, Aug. 13, 2012.) And a reasonable jury could infer that the third and fourth elements were satisfied when Rains admitted that he hit the victim in the back of the head with a hammer. See id. This admission satisfied the malice element because a jury could reasonably conclude from Rains' admission that he had the intent to do great bodily harm. See People v. Williams, 337 N.W.2d 903, 904 (Mich. Ct. App. 1983)(stating that, "[a]n inference of an intent to do great bodily harm could reasonably be drawn by a jury from defendant's admission that he hit his victim on the back of the head with a baseball bat"). At a minimum, a reasonable jury could infer from Rains' admission that he acted in wanton and willful disregard of the likelihood that the natural tendency of his behavior was to cause death or great bodily harm.

Rains' admission that he hit the victim in the back of the head with a hammer also satisfied the fourth element of second-degree murder (a death caused without justification or excuse). Although Rains apparently stated after the killing that the victim had held a gun to his head, see Preliminary Examination Tr. Vol. I at 37-38, 73-74, Jan. 11, 2012, he admitted at the plea proceeding that he hit the victim in the back of the head. A jury could reasonably conclude from Rains' admission that he did not act in self defense and that there was no justification or excuse for the murder.

To summarize, Rains' challenge to the factual basis for his plea is not a cognizable claim on habeas review and, even if it were, the Michigan Court of Appeals reasonably concluded that there was a sufficient factual basis for Rains' plea.

V. Conclusion

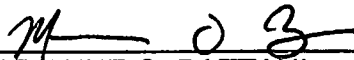
The state appellate court's rejection of Rains' claims did not result in a decision that was contrary to Supreme Court precedent, an unreasonable application of Supreme Court precedent, or an unreasonable application of the facts. The Court therefore denies Rains' petition for the writ of habeas corpus.

VI. Denial of a Certificate of Appealability; Leave to Appeal In Forma Pauperis

Before Rains may appeal this Court's decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b)(1). A certificate of appealability 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). "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) (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

Reasonable jurists could not disagree with the Court's assessment of Rains' claims, nor conclude that the issues deserve encouragement to proceed further. The Court therefore declines to issue a certificate of appealability. Rains nevertheless may proceed in forma pauperis on appeal, because he was granted in forma pauperis status in this Court and an appeal could be taken in good faith. Fed. R. App. P. 24(a)(3)(A).



MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

Dated: 1-23-2017