

NO. 1

IN THE
SUPREME COURT OF THE UNITED STATES

Petitioner

Robert E. Eastwood

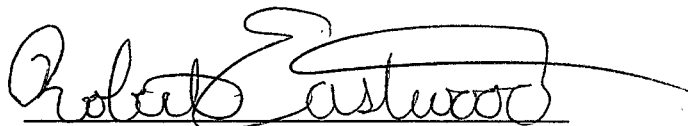
Vs.

Indiana Attorney General

Wendy Knight

Superintendent of Correctional Industrial Facility

Appendix
for Petition for Writ of Certiorari

A handwritten signature in black ink, appearing to read "Robert Eastwood", with a long horizontal flourish extending to the right.

Robert E. Eastwood DOC# 220911
5124 Reformatory Road
Pendleton, Indiana 46064

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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

December 22, 2017

JOEL M. FLAUM, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

No. 17-2253

ROBERT E. EASTWOOD,
Petitioner-Appellant,

v.

WENDY KNIGHT,
Respondent-Appellee.

Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division.

No. 1:16-cv-00204

Tanya Walton Pratt, -
Judge.

ORDER

On consideration of the petition for rehearing filed by the petitioner-appellant in the above case on December 18, 2017, both judges on the original panel have voted to deny the petition. The petition is therefore DENIED.

Appendix A

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 17, 2017
Decided November 3, 2017

Before

JOEL M. FLAUM, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

No. 17-2253

ROBERT EASTWOOD,
Petitioner-Appellant,

v.

KEITH BUTTS,
Respondent-Appellee.

Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division

No. 1:16-cv-204-TWP-DKL

Tanya Walton Pratt,
Judge.

ORDER

Robert Eastwood has filed a notice of appeal from the dismissal of his habeas corpus petition, *see* 28 U.S.C. § 2254, and an application for a certificate of appealability under 28 U.S.C. § 2253(c). We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* § 2253(c)(2).

Thus, the request for a certificate of appealability is **DENIED**. Eastwood's motion to proceed in forma pauperis is **DENIED**.

Appendix B



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ROBERT E. EASTWOOD,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 1:16-cv-00204-TWP-DKL
	)	
KEITH BUTTS, Superintendent,	)	
	)	
Respondent.	)	

**ENTRY ON PETITION FOR WRIT OF HABEAS CORPUS AND
DENYING CERTIFICATE OF APPEALABILITY**

This matter is before the Court on a Petition for Writ of Habeas Corpus filed by *pro se* Petitioner Robert E. Eastwood ("Eastwood"). Once convicted and after exhaustion or waiver of any right to appeal, a defendant is presumed to stand "fairly and finally convicted." *United States v. Frady*, 456 U.S. 152, 164 (1982). For the reasons explained in this Entry, the effort of Robert Eastwood to show otherwise with respect to his state court convictions fails. His petition for a writ of habeas corpus is therefore **denied**. In addition, the Court finds that a certificate of appealability should not issue.

I. BACKGROUND

In December 2011, Eastwood was convicted of Class A felony child molesting, Class C felony child molesting, and Class D felony fondling in the presence of a minor, in an Indiana state court proceeding. The following month, the trial court sentenced him to thirty years. These convictions were affirmed on appeal. *Eastwood v. State*, 984 N.E.2d 637 (Ind.Ct.App. 2012) (*Eastwood I*), *trans. denied*. The denial of Eastwood's petition for post-conviction relief was likewise affirmed on appeal. *Eastwood v. State*, 38 N.E.3d 1011 (Ind.Ct.App. 2015) (*Eastwood II*), *trans. denied*. The pertinent facts are recited in *Eastwood I*:

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H.S. was born on May 20, 1997, and between the summer of 2002 and the fall of 2003, she and her brother attended a daycare at the Brown County home of Eastwood and his wife. Eastwood was otherwise unemployed and spent most of his time around the house.

During afternoon naptime, H.S. would sleep in one of the bedrooms with several of the older children. On one occasion during naptime, Eastwood walked in to the room and placed his penis on H.S.'s anus. Another time, Eastwood told H.S. to put her mouth on his penis, but she refused. On other occasions, Eastwood would put his hands down H.S.'s pants, remove her clothes, put his mouth on H.S.'s vagina, or place his fingers inside her vagina.

Over the weekend of November 14–16, 2003, after H.S. and her brother had stopped attending Eastwoods' daycare, H.S. visited her great aunt, Debbie Hilligoss. At some point, Hilligoss saw H.S. attempting to put a tube of lip gloss into her vagina and rub herself with a rubber ball. When Hilligoss asked H.S. why she was doing these things, H.S. responded that she did not know. However, H.S. told Hilligoss that Eastwood had "touched her there." H.S. also stated to Hilligoss that Eastwood had "rubbed [her] privates in the front and on the back." H.S. added that Eastwood "had laid on top of her with no clothes and on her backside with no clothes."

Hilligoss called Amanda, H.S.'s stepmother, and told her what H.S. had reported to her. Amanda drove to Hilligoss's residence where they called Dana Stone, H.S.'s mother, and arranged to meet her at the McDonald's restaurant in Nashville. Hilligoss informed Stone of what H.S. had said, and they proceeded to the Brown County Sheriff's Office. When they arrived, Detective Steve Brahaum interviewed H.S.

During the interview, H.S. told Detective Brahaum that Eastwood had placed his fingers on her "front and back." H.S. explained that her front is the part she uses to go to the bathroom. H.S. also clarified that her back was her "butt." H.S. told Detective Brahaum that Eastwood did these things to her in the bedroom while the other children were sleeping. H.S. further explained that Eastwood touched her on her bottom and on her front under the clothes and that Eastwood made her touch his "doing ding—the part that boys use to go to the bathroom." She also stated that Eastwood would be on top of her, and that Eastwood would "put his front on her front" and it felt "bad." H.S. then explained to Detective Brahaum that Eastwood would sometimes lie on the bed and masturbate in front of her and that Eastwood told H.S. never to tell anyone about the incidents. At the conclusion of the interview, Detective Brahaum told H.S. to let Stone know if she remembered anything else.

The next day, Detective Brahaum and a representative from the Department of Child Services (DCS) went to the Eastwoods' residence. Although Eastwood denied any wrongdoing, the DCS shut down the daycare that day.

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On November 18, 2003, H.S. returned to the Sheriff's Office for a second interview. During that conversation, H.S. told Detective Brahaum that Eastwood would sometimes lie on the bed and ejaculate when she was next to him.

On January 16, 2004, Detective Brahaum prepared an affidavit for probable cause and obtained an arrest warrant for Eastwood. When Detective Brahaum went to the residence, he discovered that Eastwood had fled. Eastwood was ultimately tracked to Robinson, Illinois, in 2011, and Detective Brahaum requested assistance from the United States Marshals Service (Marshals Service) in executing the arrest warrant.

On September 14, 2011, Deputy Pete Kell of the Marshals Service went to Eastwood's address in Robinson. The police officers eventually located Eastwood hiding behind a shelving unit at the residence. Eastwood told Deputy Kell that he had "dragged the whole process out" because he was hoping that the police would give up and go away.

Eastwood I, 84 N.E.2d at 638-39.

The present action followed. Eastwood presented numerous claims, which the Respondent has reframed without objection as the following:

- 1) Trial counsel was ineffective for failing to object to out-of-court statements contained in two taped interviews of H.S., made by H.S. to her Aunt Debbi Hilligoss, and made by H.S. to Officer Brahaum (Eastwood's grounds One, Two, Sixteen, Seventeen);
- 2) Trial counsel was ineffective for failing to call exculpatory witnesses, namely Jennifer Reder, Jackie Eastwood, Stella McDaniel, and Tanya Jackson;
- 3) Trial counsel was ineffective for not admitting H.S.'s school records;
- 4) Eastwood's jury was composed of 12 women with 2 women as alternate jurors, which violated his Sixth Amendment right to an impartial jury because peremptory challenges were used to exclude men from the jury;
- 5) Trial counsel was ineffective for failing to object to a juror sleeping during trial;
- 6) Trial counsel was ineffective for reading and sending emails during the trial;
- 7) Trial counsel was ineffective for not objecting to the deputy prosecutor's remark during opening statements that H.S. would tell the jury about being "penetrated with [Eastwood's] penis," when the evidence did not support the statement;
- 8) Trial counsel was ineffective for not investigating a civil rights violation regarding a burning cross in Eastwood's front yard and Eastwood's receipt of death threats;

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- 9) Trial counsel was ineffective for failing to prepare Eastwood for trial and failing to discuss trial strategy;
- 10) Trial counsel was ineffective for failing to admit a letter from an attorney to Eastwood declining an offer to represent him and daycare records showing the mother owed money to the daycare;
- 11) Trial counsel was ineffective for failing to inform the jury that the State amended the charging information to remove the element of intercourse;
- 12) The evidence is insufficient to support Eastwood's conviction because it is comprised of inadmissible hearsay and incredibly dubious allegations; and
- 13) Trial counsel was ineffective for not deposing U.S. Marshal Pete Kell or conducting a "*Frank's*" hearing, failed to object to the illegal warrantless entry into his home, and failed to object to illegal arrest (Eastwood's grounds fourteen and fifteen).

II. APPLICABLE LAW

A federal court may grant habeas relief only if the petitioner demonstrates that he is in custody "in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2254(a). Eastwood's habeas petition is governed by provisions of 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").

"By its terms § 2254(d) bars relitigation of any claim 'adjudicated on the merits' in state court, subject only to the exceptions in §§ 2254(d)(1) and (d)(2)." *Harrington v. Richter*, 562 U.S. 86, 98 (2011). The three exceptions are: (1) the state court's decision was contrary to clearly established federal law; or (2) there was an unreasonable application of clearly established federal law; or (3) the decision was based on an unreasonable determination of the facts. *Id.* at 100 (citing 28 U.S.C. §§ 2254(d)(1), (2)); *see also O'Quinn v. Spiller*, 806 F.3d 974, 977 (7th Cir. 2015) ("We ask only whether the [state court's] decision was 'contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,' or 'was based on an unreasonable determination of facts in light of the evidence presented in the State court proceeding.'") (quoting 28 U.S.C. § 2254(d)(1), (2)).

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Under the “unreasonable application” prong of the AEDPA standard, a habeas petitioner must demonstrate that although the state court identified the correct legal rule, it unreasonably applied the controlling law to the facts of the case. *Williams v. Taylor*, 529 U.S. 362, 407 (2000); see also *Badelle v. Correll*, 452 F.3d 648, 653 (7th Cir. 2006). The Seventh Circuit “has defined >objectively unreasonable= as lying well outside the boundaries of permissible differences of opinion and will allow the state court’s decision to stand if it is one of several equally plausible outcomes.” *Burgess v. Watters*, 467 F.3d 676, 681 (7th Cir. 2006) (international citations and quotations omitted).

Federal habeas review exists only “as ‘a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal.’” *Woods v. Donald*, 135 S. Ct. 1372, 1376 (2015) (per curiam). AEDPA “prevents federal habeas ‘retrials’” and ensures that state court convictions are given effect to the extent possible under the law. *Bell v. Cone*, 535 U.S. 685, 693-94 (2002). The requirements of AEDPA “create an independent, high standard to be met before a federal court may issue a writ of habeas corpus to set aside state-court rulings.” *Uttecht v. Brown*, 555 U.S. 1, 10 (2007) (citations omitted). “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. Visciotti*, 537 U.S. 19, 24 (2002) (per curiam).” *Renico v. Lett*, 559 U.S. 766, 773 (2010). As one court has explained, “[i]t is this Court’s obligation to focus “on the state court decision that previously addressed the claims rather than the petitioner’s freestanding claims themselves.” *McLee v. Angelone*, 967 F.Supp. 152, 156 (E.D.Va. 1997).

In addition to the foregoing substantive standard, “[i]t is the rule in this country that assertions of error in criminal proceedings ~~must first be raised in state court in order to form the~~

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~~U.S. § 101.1(b)(1) Claims not raised are considered defaulted.~~ *Breard v. Greene*, 523

U.S. 371, 375 (1998) (citing *Wainwright v. Sykes*, 433 U.S. 72 (1977)).

Procedural default can occur in several ways, “but two are paradigmatic.” *Richardson v. Lemke*, 745 F.3d 258, 268 (7th Cir. 2014). A state prisoner can procedurally default a federal claim if he fails to “fairly present” it “throughout at least one complete round of state-court review, whether on direct appeal of his conviction or in post-conviction proceedings.” *Id.* Procedural default can also occur if the state court rejects a federal claim based on a state procedural rule “that is both independent of the federal question and adequate to support the judgment.” *Id.* (quotation marks omitted).

Clemons v. Pfister, 845 F.3d 816, 819 (7th Cir. 2017) (citing *Thomas v. Williams*, 822 F.3d 378, 384 (7th Cir. 2016)). “[T]he burden is on the petitioner to raise his federal claim in the state court at a time when state procedural law permits its consideration on the merits. . . .” *Bell v. Cone*, 543 U.S. 447, 451 n.3 (2005); *see also Hogan v. McBride*, 74 F.3d 144, 146 (7th Cir. 1996) (“Forfeiture under § 2254 is a question of a state’s internal law: failure to present a claim at the time, and in the way, required by the state is an independent state ground of decision, barring review in federal court.”). Thus, “[a] federal claim that was not raised in the state courts is procedurally barred and must be dismissed.” *Henderson v. Cohn*, 919 F.2d 1270, 1272 (7th Cir. 1990) (citing *United States ex rel. Simmons v. Gramley*, 915 F.2d 1128, 1132 (7th Cir. 1990)).

Procedural default, although otherwise a bar to federal habeas review, may be excused in certain circumstances. “A federal court may excuse a procedural default if the habeas petitioner establishes that (1) there was good cause for the default and consequent prejudice, or (2) a fundamental miscarriage of justice would result if the defaulted claim is not heard.” *Johnson v. Foster*, 786 F.3d 501, 504 (7th Cir. 2015) (internal citations omitted).

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III. DISCUSSION

Respondent asserts that several of Eastwood's claims are barred by procedural default. In his reply, Eastwood strongly disagrees and contends that each claim was in fact presented to a state court for consideration. The Court will examine each party's contentions.

A. Defaulted Claims

As noted correctly by the Respondent, Eastwood failed to present the specifications of ineffective assistance of counsel in claims 4, 5, 6, 7, 8, 10, 11, and 12 to the Indiana Supreme Court following the issuance of *Eastwood II*. This failure constitutes procedural default on those claims. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999) ("a prisoner who fails to present his claims in a petition for discretionary review to a state court of last resort" has not properly exhausted the claims for purposes of 28 U.S.C. § 2254(b)(1); the habeas petitioner's failure to present her "claims to the Illinois Supreme Court in a timely fashion has resulted in a procedural default of those claims"); *Hough v. Anderson*, 272 F.3d 878, 892-93 (7th Cir. 2001) (petitioner's failure to present issue to Indiana Supreme Court constituted procedural default). Eastwood has not shown the presence of circumstances permitting him to overcome that consequence of this default. Therefore, the merits of these claims will not be addressed.

In claim 2 of his petition, Eastwood argues that his trial attorney was ineffective by failing to present the testimonies of four witnesses. The trial court had rejected this claim on its merits in the action for post-conviction relief. On appeal, this morphed into a claim that the evidence was insufficient because the victim's testimony was incredibly dubious. The Indiana Court of Appeals rejected that claim, finding that it had been available in his direct appeal. *See Lane v. Richards*, 957 F.2d 363, 366 (7th Cir.) (issues not presented on direct appeal would be barred by procedural default), *cert. denied*, 113 S. Ct. 127 (1992). In his petition to transfer, Eastwood's contention was

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that his trial attorney's failure to call witnesses could not have been part of counsel's strategy. This vague assertion did not fairly present the claim to the Indiana Supreme Court. *See United States ex rel. Cross v. DeRobertis*, 811 F.2d 1008, 1016 (7th Cir. 1987) (if "potential witnesses are not called, it is incumbent on the petitioner to explain their absence and to demonstrate, with some precision, the content of the testimony they would have given at trial"). The failure to fairly present the claim is a procedural default and in this case is unexcused.

In claim 13, Eastwood argues that his attorney was ineffective by failing to object to certain testimony from Deputy Marshal Kell. This claim was not presented in *Eastwood II*, but did surface in the petition to transfer to the Indiana Supreme Court. In bypassing the Indiana Court of Appeals, Eastwood committed procedural default. *Lewis v. Starnes*, 390 F.3d 1019, 1026 (7th Cir. 2004) ("A habeas petitioner who has exhausted his state court remedies without properly asserting his federal claim at each level of state court review has procedurally defaulted that claim.").

B. Non-defaulted Claims

Certain specifications of Eastwood's claim of ineffective assistance of counsel were fully presented to the state courts and were decided on the merits in *Eastwood II*. Those claims are analyzed under AEDPA's deferential standard.

Strickland v. Washington, 466 U.S. 668, 684 (1984), supplies the clearly established federal law, as determined by the Supreme Court of the United States, that governs a claim of ineffective assistance of counsel.

Strickland recognized that the Sixth Amendment's guarantee that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence" entails that defendants are entitled to be represented by an attorney who meets at least a minimal standard of competence. *Id.*, at 685–687. "Under *Strickland*, we first determine whether counsel's representation 'fell below an objective standard of reasonableness.' Then we ask whether 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

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would have been different.”” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010) (quoting *Strickland*, *supra*, at 688, 694).

Hinton v. Alabama, 134 S. Ct. 1081, 1087-88 (2014) (parallel citations omitted).

The Indiana Court of Appeals reviewed the pertinent circumstances. It recognized *Strickland*’s two-part test as stating the controlling law. *Eastwood II*, at *3. Applying the *Strickland* test to the question presented, the Indiana Court of Appeals explained as to counsel not objecting to certain hearsay statements attributed to the victim (claim 1):

Eastwood asserts that trial counsel rendered ineffective assistance by failing to object, sometimes deliberately, to what the State concedes was inadmissible hearsay evidence, namely, out-of-court statements made by [H.S.]. In order to prove ineffective assistance premised upon counsel’s failure to object, the petitioner must show that an objection would have been sustained if it had been made, that the failure to object was unreasonable, and that he was prejudiced. *Potter v. State*, 684 N.E.2d 1127, 1134 (Ind. 1997).

Trial counsel testified that he deliberately did not object to most of the inadmissible hearsay because his main defense strategy was to highlight the inconsistent stories told by H.S. regarding the alleged molestations. Counsel stated that he wanted all of her prior versions and statements about the alleged molestations to be heard by the jury “because they fit the strategy that she had changed her story” and that her accusations were “inherently unbelievable.” PCR Tr. at 13. Regarding trial counsel’s failure to object to inadmissible hearsay, the postconviction court specifically concluded:

13. Although trial counsel did miss some hearsay objections and did exhibit some confusion as to the interplay between the right to confrontation and hearsay, overall his decisions to object or not to hearsay statements were considered decisions in furtherance of his trial strategy of demonstrating inconsistencies among the victim’s versions of the crimes and the implausibility of some of the victim’s claims. Trial counsel effectively pursued this strategy.
PCR App. at 224.

As our supreme court has stated, “[e]ven assuming that an objection would have been sustained, a failure to object does not constitute ineffective assistance of counsel if the decision to remain silent ‘could well have been a strategic decision by counsel.’” *Pennycuff v. State*, 745 N.E.2d 804, 815 (Ind. 2001) (quoting *Charlton v. State*, 702 N.E.2d 1045, 1051 (Ind. 1998)). Here, although trial counsel’s objections to inadmissible hearsay would have been sustained by the trial court had the objections been made, we agree with the postconviction court that

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trial counsel's failure to object was part of his trial strategy and not unreasonable under the circumstances. Moreover, Eastwood has not demonstrated that but for counsel's failure to object to the inadmissible hearsay evidence, there is a reasonable probability that the jury's verdict would have been different. His ineffective assistance of counsel claim fails.

Eastwood II, at *5-6.

Eastwood also argued in the post-conviction proceeding that his trial counsel was ineffective for failing to obtain and review daycare and school records. This is claim 3. The state courts concluded, however, that counsel had examined such records and after doing so was of the opinion that the records in no way negated Eastwood's opportunity to molest H.S., and therefore lack of opportunity was not going to be a viable defense. *Eastwood II*, at *4-5. Additionally, the Indiana Court of Appeals pointed out that Eastwood had not shown otherwise to the post-conviction court, meaning that he had failed to show prejudice in the manner required by *Strickland*. *Id.* at *5.

Claim 9 is Eastwood's final specification of ineffective assistance of counsel considered on the merits in *Eastwood II*. This claim asserts that trial counsel failed to adequately prepare Eastwood for trial. The Court of Appeals noted that there had been conflicting testimony on this subject and that the trial court "concluded that Eastwood failed to prove that his counsel's trial preparation was deficient." *Id.* (citing PCR App. at 227). There was ample factual basis on which it did so.

The Indiana Court of Appeals rejected both prongs of a meritorious *Strickland* argument as to each of the foregoing specifications. The AEDPA requires a "doubly deferential" review of a state prisoner's ineffective assistance of counsel claim. *Cullen v. Pinholster*, 131 S. Ct. 1388, 1410-11 (2011) (citation omitted). The federal habeas court must show deference both to the state court which previously reviewed the petitioner's claim, and also to trial counsel herself. *See id.*;

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Strickland, 466 U.S. at 689. Under 28 U.S.C. § 2254(d), “the question is not whether counsel’s actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*’s deferential standard.” *Harrington v. Richter*, 131 S. Ct. 770, 788 (2011).

The Indiana Court of Appeals’ analysis constitutes a reasonable application of *Strickland* to each specification of Eastwood’s claim of ineffective assistance of counsel at trial. And because it is a reasonable application of the controlling federal standard, “[u]nder AEDPA . . . it cannot be disturbed.” *Hardy v. Cross*, 132 S. Ct. 490, 495 (2011).

IV. CONCLUSION

Eastwood’s conviction withstood challenge in the Indiana courts, and thus a presumption of constitutional regularity attaches to it. See *Farmer v. Litscher*, 303 F.3d 840, 845 (7th Cir. 2002) (citing *Parke v. Raley*, 506 U.S. 20, 29-30 (1992)); *Milone v. Camp*, 22 F.3d 693, 698-99 (7th Cir. 1994).

This Court has carefully reviewed the state record in light of Eastwood’s claims and has given such consideration to those claims as the limited scope of its review in a habeas corpus proceeding permits. The claims which are properly preserved in the Indiana state courts do not warrant relief in light of the deferential standard required by the AEDPA. *Harrington v. Richter*, 131 S. Ct. 770, 562 U.S. 86, 101 (2011) (“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.”) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)); *Stern v. Meisner*, 812 F.3d 606, 610 (7th Cir. 2016) (“In other words, [the habeas petitioner] must show a complete absence of reasonableness in the [state] appellate court’s decision.”) (citing *Harrington*, 562 U.S. at 98).

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Having applied the appropriate standard of review, and having considered the pleadings and the expanded record, Eastwood's petition for writ of habeas corpus must be **DENIED**.

Judgment consistent with this Entry shall now issue.

V. CERTIFICATE OF APPEALABILITY

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing § 2254 Proceedings, and 28 U.S.C. § 2253(c), the Court finds that Eastwood has failed to show that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court therefore **declines** to issue a certificate of appealability.

SO ORDERED.

Date: 5/15/2017



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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**Additional material
from this filing is
available in the
Clerk's Office.**