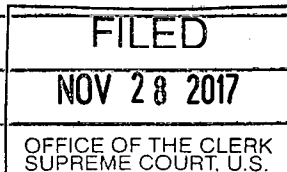


NO. \_\_\_\_\_

In The  
Supreme Court of The United States

Ronald L. Conaway - Petitioner



VS,

State of Florida  
Secretary, D.O.C. - Respondents

Emergency Motion for Extension  
of time for Petitioner to file his  
Writ of Certiorari

Due to security issues beyond my control  
with Hamilton C.I. / Main Unit, shortage of  
staff and issues that have gotten way out of  
control with synthetic K-2 drugs, locking  
the whole compound down or even separate  
dorms for little of nothing inmates on  
dead lines not being allowed to go to law library  
all other prisons I've been have allowed  
dead line inmates to be escorted  
to law library to meet our dead lines  
I am pleading with this Honorable  
Court to allow/grant a 30 day  
extension,

Respect Fully  
Submitted  
Ronald E. Conaway  
Ronald L. Conaway  
378 929  
B2102-S

11th Circuit Ct # 17-11726  
Ham. C.I. Main unit  
10650 SW 46 St.  
Jasper, Fla 32052  
Ronald L. Conaway 37829/B2102-S

Deadline Approved by staff J. Herring MS.  
See attached exhibit

|         |                                 |                                                      |
|---------|---------------------------------|------------------------------------------------------|
| Oct 31, | Tuesday                         |                                                      |
| Nov 1,  | Wednesday                       |                                                      |
| Nov 2   | Thursday                        |                                                      |
| Nov 3   | Friday                          |                                                      |
| Nov 4   | open PM only $1\frac{1}{2}$ hrs |                                                      |
| Nov 5   | Closed                          |                                                      |
| Nov 6   | Closed                          |                                                      |
| Nov 7   | Tuesday                         |                                                      |
| Nov 8   | Closed                          |                                                      |
| Nov 9   | Thursday                        |                                                      |
| Nov 10  | Closed                          |                                                      |
| Nov 11  | down locked down/No deadlines   |                                                      |
| Nov 12  | Closed                          | allowed to go                                        |
| Nov 13  | Closed                          | Law Library                                          |
| Nov 14  | Closed all A.M.                 | another staff opened                                 |
| Nov 15  |                                 | after J threatened<br>to file this legal<br>document |

(P.S. closed  $6\frac{1}{2}$  of my deadline  
to be met.)

It was allowed only  $6\frac{1}{2}$  days  
to file a Writ of Certiorari

Notes

Also note Inmate accounts here  
have also failed it Federal  
Standards, in helping inmates  
threw request DC 236 to provide  
6 month inmate statement to  
file & proceed in forma Pauperis

**STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS**

**INMATE REQUEST**

Mail Number: \_\_\_\_\_  
Team Number: \_\_\_\_\_  
Institution: HAM M/U

**TO:** ☐ Warden ☐ Classification ☐ Medical ☐ Dental  
(Check One) ☐ Asst. Warden ☐ Security ☐ Mental Health ☒ Other : Law Library

|              |                                |                     |                      |                             |                  |
|--------------|--------------------------------|---------------------|----------------------|-----------------------------|------------------|
| <b>FROM:</b> | Inmate Name<br>Conaway, Ronald | DC Number<br>378929 | Quarters<br>B-2-102S | Job Assignment<br>Grounds 1 | Date<br>10/31/17 |
|--------------|--------------------------------|---------------------|----------------------|-----------------------------|------------------|

**REQUEST**

Check here if this is an informal grievance ☐

Respectfully request to be placed on the callout for a deadline.

I need to prepare my United States Writ of Certioari

Thank you.

All requests will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. All informal grievances will be responded to in writing.

Inmate (Signature): \_\_\_\_\_ DC#: \_\_\_\_\_

**DO NOT WRITE BELOW THIS LINE**

**RESPONSE**

**DATE RECEIVED:** 10/31/17

You have been approved for a

Lawlibrary deadline.

October 31, 2017 – November 15, 2017

Tuesday-Saturday

[The following pertains to informal grievances only:

Based on the above information, your grievance is \_\_\_\_\_. (Returned, Denied, or Approved). If your informal grievance is denied, you have the right to submit a formal grievance in accordance with Chapter 33-103.006, F.A.C.]

Official (Print Name): \_\_\_\_\_

Official (Signature): \_\_\_\_\_

Date: 10-31-17

Original: Inmate (plus one copy)

CC: Retained by official responding or if the response is to an informal grievance then forward to be placed in inmate's file

This form is also used to file informal grievances in accordance with Rule 33-103.005, Florida Administrative Code.

Informal Grievances and Inmate Requests will be responded to within 10 days, following receipt by staff.

You may obtain further administrative review of your complaint by obtaining form DC1-303, Request for Administrative Remedy or Appeal, completing the form as required by Rule 33-103.006, F.A.C., attaching a copy of your informal grievance and response, and forwarding your complaint to the warden or assistant warden no later than 15 days after the grievance is responded to. If the 15th day falls on a weekend or holiday, the due date shall be the next regular work day.

DC6-236 (Effective 12/14)

Incorporated by Reference in Rule 33-103.005, F.A.C.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 17-11726-D

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RONALD L. CONAWAY,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,  
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

---

Appeal from the United States District Court  
for the Middle District of Florida

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ORDER:

Ronald L. Conaway, a Florida prisoner proceeding *pro se*, seeks a certificate of appealability ("COA"), construed from his notice of appeal, to challenge the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. He has also moved for leave to proceed on appeal *in forma pauperis* ("IFP").

I. State Convictions

Conaway was convicted by a jury of one count of robbery with a firearm, one count of false imprisonment with a firearm, and three counts of aggravated assault with a firearm in 2007. Conaway was sentenced to life imprisonment for robbery with a firearm, 15 years' imprisonment for false imprisonment with a firearm, and 5 years' imprisonment for each count of aggravated assault with a firearm, all 5 counts to be served concurrently. Conaway filed a direct appeal, arguing that the state trial court erred in denying his continuance motion. In 2008, the Florida

Second District Court of Appeal ("Second DCA") *per curiam* affirmed his convictions and sentences.

## II. State Post-Conviction Motion

In 2009, Conaway filed a *pro se* motion for post-conviction relief, pursuant to Florida Rule of Criminal Procedure 3.850, raising six grounds. Prior to an evidentiary hearing, the state post-conviction court denied some of Conaway's grounds. Following the evidentiary hearing on one remaining claim, the state post-conviction court entered a written order denying the Rule 3.850 motion in total. Conaway appealed the denial of the Rule 3.850 motion, and the Second DCA *per curiam* affirmed and denied his motion for rehearing.

## III. 28 U.S.C. § 2254 Petition

In December 2013, Conaway filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, arguing that:

- (1) the state trial court erred in denying his motion for a continuance during trial to locate Darrell Marvicsin for the purpose of calling him as a witness, which violated his Fourteenth Amendment due process right to present a complete defense and his Sixth Amendment right to present witnesses ("Claim One");
- (2) counsel was ineffective for failing to move to perpetuate Marvicsin's deposition testimony under Fla. R. Crim. P. 3.190(j) ("Claim Two");
- (3) counsel was ineffective for failing to impeach Ulysses "Jim" Valladares with his prior inconsistent statements to law enforcement concerning how much money Conaway took, from whom Conaway took the money, and who was present during the robbery ("Claim Three");
- (4) counsel was ineffective for interfering with his right to testify at trial by incorrectly advising him that the specific nature of his prior offenses would be presented if he testified ("Claim Four");
- (5) counsel was ineffective for failing to object when the prosecutor improperly advanced a golden rule argument during closing arguments ("Claim Five"); and

- (6) counsel's cumulative errors and omissions constituted ineffective assistance ("Claim Six").

The State responded that Conaway's claims were without merit and his § 2254 petition should be denied. Conaway replied, arguing that the State's response did not sufficiently address his claims and that he was entitled to relief.

The district court denied Conaway's § 2254 petition, denied him a COA, and denied him leave to proceed on appeal IFP. The court found that Conaway did not present Claim One on direct appeal, and that this claim was procedurally defaulted. Also, the district court found that Conaway did not demonstrate any cause and resulting prejudice or a fundamental miscarriage of justice to excuse the procedural default. Additionally, notwithstanding the procedural default, the district court concluded that Conaway was not entitled to relief on the merits of Claim One.

As to Claims Two through Six, the district court determined that Conaway had not met his burden to show that the state post-conviction court's decision was based on an unreasonable determination of the facts or that it was contrary to, or involved an unreasonable application of, *Strickland v. Washington*, 466 U.S. 668 (1984). The district court noted that the state post-conviction court concluded that Conaway had failed to show that his counsel's performance was deficient or that he suffered prejudice. Conaway appealed the district court's denial of his § 2254 petition.

#### IV. Motion for COA in This Court

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). The 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).

“Before 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); *see Footman v. Singletary*, 978 F.2d 1207, 1210-11 (11th Cir. 1992) (noting that the petitioner must afford the state a full and fair opportunity to address and resolve the claim on the merits); *see* 28 U.S.C. § 2254(b)(1). A federal claim is subject to procedural default where the petitioner failed to properly exhaust it in state court, and it is obvious that the unexhausted claim would now be barred under state procedural rules. *Bailey v. Nagle*, 172 F.3d 1299, 1302-03 (11th Cir. 1999). To overcome the bar arising from a procedural default, a petitioner must demonstrate either: (1) cause for the failure to properly present the claim and actual prejudice from the default; or (2) a fundamental miscarriage of justice that would result if the claim is not considered. *Id.* at 1306.

If a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the decision of the state court (1) “was contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court,” or (2) “was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding.” 28 U.S.C. § 2254(d)(1), (2). The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposes a “highly deferential standard for evaluating state-court rulings . . . and demands that state-court decisions be given the benefit of the doubt.” *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotations omitted). Thus, we review the district court’s decision *de novo*, but review the state habeas court’s decision with deference. *Reed v. Sec’y, Fla. Dep’t of Corr.*, 593 F.3d 1217, 1239 (11th Cir. 2010).

A state court's decision is "contrary to" federal law 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 th[e] Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). Additionally, habeas relief is not warranted if we find that the state court merely applied federal law incorrectly, but rather, relief is warranted only if that application was objectively unreasonable. See *Harrington v. Richter*, 562 U.S. 86, 100-01 (2011); *Renico*, 559 U.S. at 773, 778-79. "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." *Harrington*, 562 U.S. at 101 (quotation omitted).

For an ineffective-assistance claim raised in a § 2254 petition, the inquiry turns upon whether the relevant state court decision was contrary to, or an unreasonable application of, *Strickland*. *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011). To succeed on an ineffective-assistance claim under *Strickland*, the § 2254 petitioner must show that his Sixth Amendment right to counsel was violated because (1) his attorney's performance was deficient, and (2) the deficient performance prejudiced his defense. *Strickland*, 466 U.S. at 687, 697. "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. Counsel's performance is deficient only if it falls below the wide range of competence demanded of attorneys in criminal cases. *Id.* at 688.

Prejudice is established by a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. The petitioner must affirmatively prove prejudice by demonstrating that the unprofessional errors

were so egregious as to render the trial unfair and the verdict suspect. *Johnson v. Alabama*, 256 F.3d 1156, 1177 (11th Cir. 2001).

Because judicial review of counsel's performance already "must be highly deferential," a federal habeas court's review of a state court decision denying a *Strickland* claim is "doubly deferential." See *Cullen*, 563 U.S. at 189-90 (quotations omitted). Further, because "*Strickland*'s general standard has a substantial range of reasonable applications," *Harrington*, 562 U.S. at 89-90, "a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard," *Knowles v. Mirzayance*, 556 U.S. 111, 123, 129 (2009). In sum, the pertinent inquiry under § 2254(d) "is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Harrington*, 562 U.S. at 105.

#### V. Discussion of Claim One

Under Claim One, Conaway argued the state trial court erred in denying his motion for a continuance during trial to locate Marvicsin for the purpose of calling him as a witness, which violated his Fourteenth Amendment due process right to present a complete defense and his Sixth Amendment right to present witnesses. He contended that Marvicsin's testimony would have resulted in acquittals on the robbery and false-imprisonment charges.

As to Claim One, reasonable jurists would not find debatable the district court's finding that this claim was procedurally defaulted. Conaway had not exhausted a federal claim because he had not raised any argument alleging a federal constitutional violation when he presented this ground of trial court error on direct appeal. Conaway cited *Ostolaza v. State*, 943 So. 2d 1001 (Fla. 2d Dist. Ct. App. 2006), as the sole case in his appellate brief. Although the appellant in *Ostolaza* raised a Sixth Amendment claim in the state trial court, the appellate court's decision was not based on federal grounds. A single reference to a Sixth Amendment claim in *Ostolaza*

was insufficient to raise a federal argument in Conaway's direct appeal. *See Preston v. Sec'y, Fla. Dep't of Corr.*, 785 F.3d 449, 457 (11th Cir. 2015) (stating that a petitioner can exhaust a federal claim by, "for example, including . . . the federal source of law on which he relies or a case deciding such a claim on federal grounds, or by simply labeling the claim [as a federal one]"). Florida's procedural rules do not provide for successive direct appeals. *See Fla. R. App. P. 9.140(b)(1)*. Conaway could have raised Claim One on direct appeal, and, thus, this claim is procedurally defaulted. *See Bailey*, 172 F.3d at 1302-03. Also, as discussed below, Conaway's ineffective-assistance claims could not excuse the procedural default. *See United States v. Nyhuis*, 211 F.2d 1340, 1344 (11th Cir. 2000) (stating that only a meritorious ineffective-assistance claim may satisfy the cause exception to a procedural default). Additionally, Conaway did not allege any other cause and resulting prejudice or a fundamental miscarriage of justice to excuse the procedural default. *Bailey*, 172 F.3d at 1306.

Also, notwithstanding the procedural default, reasonable jurists would not find debatable the district court's alternative determination that Conaway was not entitled to relief on the merits. A court's denial of a continuance to obtain a witness may violate a defendant's right to compulsory process if a "reasonable continuance" has been sought "for the purpose of obtaining defense witnesses where it has been shown that the desired testimony would be relevant and material to the defense." *Dickerson v. Alabama*, 667 F.2d 1364, 1370 (11th Cir. 1982). In determining whether a denial of continuance violates the right to compulsory process, courts consider several factors:

[T]he diligence of the defense in interviewing witnesses and procuring their presence, the probability of procuring their testimony within a reasonable time, the specificity with which the defense is able to describe their expected knowledge or testimony, the degree to which such testimony is expected to be favorable to the accused, and the unique or cumulative nature of the testimony.

*Id.* “When a denial of a continuance forms a basis of a petition for a writ of habeas corpus, not only must there have been an abuse of discretion but it must have been so arbitrary and fundamentally unfair that it violates constitutional principles of due process.” *Hicks v. Wainwright*, 633 F.2d 1146, 1148 (5th Cir. Unit B 1981).

The record reflects that Conaway’s counsel took Marvicsin’s deposition, but did not subpoena him for trial. There was no indication that Marvicsin’s testimony could be procured within a reasonable time. *Dickerson*, 667 F.2d at 1370. Specifically, the State supplemented discovery with Marvicsin’s last known address in Ohio, but then “lost track” of Marvicsin in Ohio. Marvicsin was believed to be in North Dakota, but the record did not reflect that anyone knew his exact whereabouts in North Dakota or his contact information. Additionally, while Conaway’s counsel told the state trial court that Marvicsin’s deposition testimony contradicted Valladares’s version of events, she did not specify how it did or how it would be favorable to Conaway. *Id.* Conaway had not shown that the state trial court’s rejection of his motion for continuance was an abuse of discretion so arbitrary and fundamentally unfair that it violated his constitutional rights to compulsory process and to present a defense. *Hicks*, 633 F.2d at 1148. Thus, Conaway was not entitled to relief as to Claim One.

## VI. Discussion of Claim Two

Under Claim Two, Conaway argued that counsel was ineffective for failing to move to perpetuate Marvicsin’s deposition testimony under Fla. R. Crim. P. 3.190(j). In support, he asserted that Marvicsin was a 70-year-old man in poor health, and there was a chance that he may not live to see the trial. He contended that his counsel should have taken this action when alerted to Marvicsin’s address in Ohio. He argued that there was a reasonable probability that

Marvicsin's deposition testimony at trial would have resulted in acquittals on the robbery and false-imprisonment charges.

As to Claim Two, a review of the record supports the state post-conviction court's conclusion that Conaway had failed to show that his counsel's performance was deficient or that he suffered prejudice from his counsel's performance under *Strickland*. See *Strickland*, 466 U.S. at 687. Florida Rule of Criminal Procedure 3.190(j) states that either party may seek an order to perpetuate testimony upon affidavit that a prospective witness resides beyond the territorial jurisdiction of the court or may be unable to attend or be prevented from attending a trial or hearing; that the witness's testimony is material; and that it is necessary to take the deposition to prevent a failure of justice. Fla. R. Crim. P. 3.190(j). At Conaway's trial, the state trial court and parties discussed introducing Marvicsin's deposition. The state trial court did not allow Marvicsin's deposition because the deposition was not taken pursuant to Rule 3.190:

The [Florida] Supreme Court in *Rodriguez* [*v. State*, 609 So. 2d 493 (Fla. 1993)] has spoken on the use of depositions and specifically differentiated the use of a deposition in a civil proceeding from a criminal proceeding[,] [a]nd has specifically stated that it was their intent that [Rule 3.190(j)] was enacted to assure that both parties have an opportunity and motive to fully develop deposition testimony before it can be used as substantive evidence in a criminal case. Therefore since the earlier deposition was not taken pursuant to [Rule 3.190(j)] to perpetuate testimony, that in accordance with the ruling in [*Rodriguez*], the deposition is inadmissible.

The state post-conviction court found, and the district court agreed, that Conaway was unable to establish that his counsel was ineffective. Marvicsin was listed as the sole victim in two counts. Although the State updated Marvicsin's address to reflect his Ohio residence, it was not until after the start of trial that the State informed the defense that it could not contact Marvicsin, and, thus, it did not intend to call him, and announced a *nolle prosequi* on these counts. Conaway's counsel stated that she was unaware Marvicsin would not be called to testify,

and had presumed that the State would call him. Conaway did not demonstrate that this was an unreasonable conclusion under the circumstances. *See Strickland*, 466 U.S. at 688, 690. Also, Conaway's claim that his counsel should have moved to perpetuate Marvicsin's testimony because Marvicsin was in poor health and might not survive until trial was unsubstantiated and conclusory. *See Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991) (stating that vague, conclusory, or unsupported allegations cannot support an ineffective-assistance-of-counsel claim). In fact, Marvicsin's deposition transcript indicated that Conaway's counsel did not have reason to believe that Marvicsin was in poor health, given that Marvicsin stated that he felt pretty good for his age.

Additionally, the state post-conviction court found, and the district court agreed, that Conaway did not demonstrate prejudice as a result of his counsel's actions. *See Strickland*, 466 U.S. at 694. Notably, when Marvicsin did not testify, the State dismissed the counts that listed Marvicsin as a victim. As to the counts where Valladares was the victim, Valladares did testify. Although Conaway argued that Marvicsin's testimony would have changed his trial's outcome on the robbery and false-imprisonment counts for which Valladares was listed as the victim, he did not show a reasonable probability that Marvicsin's perpetuated testimony would have prevented his conviction on those counts. *Id.* Specifically, in Marvicsin's deposition, Marvicsin stated that he did not see Conaway take money from Valladares. He also testified that he was outside on the porch for a time while Valladares and Conaway were inside the apartment. These statements showed that, while Marvicsin had no personal knowledge about Valladares's robbery, it did not necessarily mean that Marvicsin could testify that the robbery did not occur. Also, Marvicsin's deposition testimony did not show that Conaway did not commit false imprisonment against Valladares, as Marvicsin testified that Conaway threatened Valladares with a gun and

that he “took [Valladares] inside with that gun.” Thus, reasonable jurists would not find debatable the district court’s determination that Claim Two should be denied because Conaway did not show that the state post-conviction court’s determination of this claim involved an unreasonable application of *Strickland* or that it was based on an unreasonable determination of the facts. *See Cullen*, 563 U.S. at 189; 28 U.S.C. § 2254(d).

#### VII. Discussion of Claim Three

Under Claim Three, Conaway argued that his counsel was ineffective for failing to impeach Valladares with his prior inconsistent statements to law enforcement. He claimed that Valladares gave two different versions of how many people were robbed, three different versions of how much money was taken, and two different versions of who was present when the alleged robbery took place. Specifically, Conaway asserted that Valladares told Detective Ken Powers that Conaway took \$75 directly from him and Marvicsin, and that sum consisted of \$40 from Valladares and \$35 from Marvicsin. At trial, Valladares testified that Conaway took \$41 from him and did not testify that money was taken from Marvicsin. Regarding who was present during the alleged robbery, Conaway asserted that Valladares stated in a police report that the “theft occurred while Conaway was in the apartment and no one else was close.” Conaway argued that Valladares’s trial testimony was inconsistent, as he testified that Marvicsin was also in the apartment.

As to Claim Three, a review of the record supports the state post-conviction court’s conclusion that Conaway had failed to show that he suffered prejudice from his counsel’s performance. *See Strickland*, 466 U.S. at 687. The inconsistency in whether \$40 or \$41 was taken from Valladares was minor. Also, the crux of Valladares’s testimony that supported the robbery charge—that Conaway took money from him—was not inconsistent with his prior

statements. Additionally, while Valladares did not testify that Conaway took money from Marvicsin, he was not asked about this on direct examination, and the charging document did not list Marvicsin as a victim of the robbery. Also, Conaway did not demonstrate that Valladares gave inconsistent statements about how many people were present during the robbery. The statement that “no one else was close” was vague and unclear, and it did not exclude the possibility that Marvicsin was inside the apartment but was not near Valladares. Therefore, Conaway did not demonstrate a reasonable probability that the trial’s outcome would have been different had counsel cross-examined Valladares in the manner Conaway suggested. *Id.* at 694. Thus, reasonable jurists would not find debatable the district court’s determination that Claim Three should be denied because Conaway did not show that the state post-conviction court’s determination of this claim involved an unreasonable application of *Strickland* or that it was based on an unreasonable determination of the facts. *See Cullen*, 563 U.S. at 189; 28 U.S.C. § 2254(d).

#### VIII. Discussion of Claim Four

Under Claim Four, Conaway argued that his counsel was ineffective for interfering with his right to testify at trial by incorrectly advising him that the specific nature of his prior offenses would be presented if he testified. He alleged that his counsel told him that, if he testified at trial, the jury would find out that he had been to prison for two counts of attempted second-degree murder. He contended that he involuntarily waived his right to testify at trial by relying on his counsel’s misadvice.

As to Claim Four, a review of the record supports the state post-conviction court’s conclusion that Conaway had failed to show that his counsel’s performance was deficient under *Strickland*. *See Strickland*, 466 U.S. at 687. Particularly, after a hearing, the state

post-conviction court found credible counsel's testimony that she did not inform clients that the specific nature of their offenses would be presented if they testified. *Id.* at 688, 690. In relevant part, the state post-conviction court found:

The [d]efendant testified at the evidentiary hearing that his attorney told him that the specific nature of his previous charges would come out if he testified. The State asked the [d]efendant about the trial court's discussion with him about testifying, and the [d]efendant acknowledged that the trial court did not tell him that the specific nature of his offenses would come out if he testified . . . .

At the evidentiary hearing, the [d]efendant's trial counsel . . . testified that she leaves the decision of whether or not to testify in the hands of her clients. She testified that she discusses the benefits and non-benefits of testifying with all of her clients. The State asked [counsel] what she tells her clients with regard to prior offenses: [s]he testified that[,] "I tell them that if they testify that the State can ask them have they ever been convicted of a felony or a crime of dishonesty and then they can be asked how many times." [Counsel] testified that she has never told a client that the specific nature of the convictions would come in if they testified . . . .

The court finds that the [d]efendant's testimony is not credible that his attorney told him that the specific nature of his offenses would come out if he testified. The court found [counsel's] testimony regarding what she tells her clients about testifying to be credible. The court particularly finds credible [counsel's] testimony that she does not tell her clients that the specific nature of their offenses will come out if they testify . . . . The [d]efendant has not shown that [c]ounsel's performance fell below an objective standard of reasonableness with respect to [this claim].

A federal habeas court must defer to the factual findings of the state court, and Conaway did not overcome the presumption of correctness afforded to the state post-conviction court's determination that counsel's testimony was credible. *See* 28 U.S.C. § 2254(e)(1); *Devier v. Zant*, 3 F.3d 1445, 1456 (11th Cir. 1993) (stating that, "[f]indings by the state court concerning . . . assessments of witness credibility are . . . entitled to the same presumption accorded findings of fact under 28 U.S.C. § 2254(d)"). In light of the state post-conviction court's findings, Conaway did not demonstrate that his counsel was ineffective. *See Strickland*, 466 U.S. at 687. Thus, reasonable jurists would not find debatable the district court's

determination that Claim Four should be denied because Conaway did not show that the state court's determination of this claim involved an unreasonable application of *Strickland* or that it was based on an unreasonable determination of the facts. See *Cullen*, 563 U.S. at 189; 28 U.S.C. § 2254(d).

#### IX. Discussion of Claim Five

Under Claim Five, Conaway argued that his counsel was ineffective for failing to object when the prosecutor improperly advanced a golden rule argument during closing arguments. He claimed that the prosecutor "improperly asked the jury to place themselves in the victims' position and relive what the victims experienced." In relevant part, the prosecutor made the following statements during closing arguments:

You heard from the two sisters and the dad and from the law enforcement officers that basically came after the fact and did law enforcement stuff. But [the] heart of the State's case were the two sisters and the dad, the powerful and compelling testimony that came from this witness stand. The emotion, the raw emotion as they relived what happened to them a year and a day ago.

Also, in arguing that the State's witnesses were credible, the prosecutor stated:

Some things you should consider are did the witness seem to have an opportunity to see and know the things about which the witness testified? You recall how Sara when she was reliving it she was real emotional. When she would get to certain parts she just about couldn't talk. When I asked her to point out the person who did it she just about could not do it. Is that not proof of this young lady reliving what took place a year ago, as well as her sister who was a little bit less emotional and the dad? Think about the times in his testimony when he put on the big tough exterior, you know protected my daughters, the dad role, but did you see when he was talking about his kids and not being able to protect them or do anything because Conaway had the gun, did you see how emotional he got? Was that acting? Was that like a soap opera actor who can turn on the tears because it is time to turn on the tears? Or was that genuine raw emotion of someone who was reliving what took place, a terrible episode in your life a day and a year ago?

As to Claim Five, a review of the record supports the state post-conviction court's conclusion that Conaway had failed to show that his counsel's performance was deficient under

*Strickland*. See *Strickland*, 466 U.S. at 687. Golden rule arguments “are arguments that invite the jurors to place themselves in the victim’s position during the crime and imagine the victim’s suffering. *Braddy v. State*, 111 So. 3d 810, 842 (Fla. 2012). Particularly, the state post-conviction court found that, after reviewing the State’s closing arguments, the State’s closing arguments were not an advancement of the golden rule argument. Instead, when the State’s closing arguments were read in their entire and proper context, the State’s comments and arguments were neither improper nor legally objectionable. The prosecutor’s remarks concerned the witnesses’ credibility, and the prosecutor argued that the witnesses’ emotional conditions indicated that their recollections were credible. The prosecutor did not suggest that the jurors place themselves in the victims’ positions and imagine what they experienced. See *Braddy*, 111 So. 3d at 842. Because Conaway’s argument that that the prosecutor improperly advanced a golden rule argument during closing arguments was meritless, counsel’s objection would not have been meritorious, and, thus, counsel’s performance did not constitute ineffective assistance under *Strickland*. See *Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001) (stating that counsel is not ineffective for failing to raise a non-meritorious objection); *Strickland*, 466 U.S. at 688, 690. Thus, reasonable jurists would not find debatable the district court’s determination that Claim Five should be denied because Conaway did not show that the state court’s determination of this claim involved an unreasonable application of *Strickland* or that it was based on an unreasonable determination of the facts. See *Cullen*, 563 U.S. at 189; 28 U.S.C. § 2254(d).

#### X. Discussion of Claim Six

Under Claim Six, Conaway argued that his counsel’s cumulative errors and omissions constituted ineffective assistance of counsel.

As to Claim Six, a review of the record supports the state post-conviction court's conclusion that Conaway had failed to show that his counsel's performance was deficient under *Strickland*. See *Strickland*, 466 U.S. at 687. Because Conaway did not demonstrate any meritorious ineffective-assistance-of-counsel claims, his claim of cumulative error also failed. See *Morris v. Sec'y, Dep't of Corr.*, 677 F.3d 1117, 1132 (11th Cir. 2012) (stating that, when none of the individual claims or error or prejudice have merit, "we have nothing to accumulate"). Thus, reasonable jurists would not find debatable the district court's determination that Claim Six should be denied because Conaway did not show that the state court's determination of this claim involved an unreasonable application of *Strickland* or that it was based on an unreasonable determination of the facts. See *Cullen*, 563 U.S. at 189; 28 U.S.C. § 2254(d).

Because Conaway has not shown that reasonable jurists would find debatable the denial of his § 2254 petition, he has not made the requisite showing, and his motion for a COA is DENIED. See *Slack*, 529 U.S. at 484. Conaway's motion for leave to proceed on appeal IFP is DENIED AS MOOT.

/s/ Frank M. Hull  
UNITED STATES CIRCUIT JUDGE