

NO. 23-7509

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS JAMES MOORE

Petitioner,

vs.

SECRETARY, FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondent.

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

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION AND RESPONDENT'S ASSERTED REASONS THAT THIS COURT LACKS JURISDICTION

I. Introduction

Petitioner relies on the arguments detailed in his petition regarding the underlying merits of his claim, which are ripe for review. However, Respondent's assertions regarding this Court's jurisdiction to hear Petitioner's claim are misleading, thus necessitating this reply.

Respondent's reframing of the question presented inaccurately describes Petitioner's claim as procedurally defaulted in state court and raised in a time-barred federal habeas petition. As described below, the merits of the actual claim raised by Petitioner, an ineffective assistance of counsel claim under the Sixth Amendment, was not defaulted. Likewise, the district court scrutinized the timeliness of Petitioner's habeas petition, but due to Petitioner's innocence claim, the district court addressed the habeas petition on the merits and did not explicitly dismiss the petition on timeliness grounds. As such, Respondent's arguments that this Court lacks jurisdiction to consider Petitioner's claim are wrong.

II. No adequate and independent state ground bars this Court's review

Respondent argues this Court lacks jurisdiction because "the state court's bar to Moore's substantive closing argument claim was based on state procedural law that is independent of any federal grounds." BIO, p. 6. This argument is grounded in a misunderstanding of this Court's habeas jurisprudence and a mischaracterization of Petitioner's argument.

Petitioner argued before the Florida Supreme Court that trial counsel was ineffective for failing to object to improper prosecutorial argument. Respondent acknowledges the Florida Supreme Court “reached the merits of the ineffective assistance of counsel claim,” and the district court found the claim exhausted, but Respondent contends that the petition is not based on ineffective assistance of counsel; rather, it is based entirely on alleged prosecutorial misconduct. BIO, p. 5-6. Respondent’s attempt to separate the ineffectiveness aspect of the claim from the challenge to the improper prosecutorial argument ignores that the two were intertwined in the Florida Supreme Court’s ruling.

In addressing the merits of Petitioner’s claim, the Florida Supreme Court first set out the prosecutorial statements at issue, found that they were “ill advised” and similar to other state court cases that were found to be reversible error. The court then said the ill-advised comments in Petitioner’s case were not as pervasive as the comments in cases found to be reversible error. This analysis of the prosecutor’s comments in closing argument was in the context of determining whether trial counsel’s failure to object constituted ineffective assistance under *Strickland*.¹ Concluding that the improper comments in Petitioner’s case were more like those in cases in which the comments were not found to be so prejudicial as to vitiate the entire trial, the Florida Supreme Court ruled that trial counsel’s failure to object was not ineffective assistance under *Strickland*, and “den[ied] Mr. Moore’s claim.” *Moore v. State*, 820 So. 2d 199, 208 (Fla. 2002).

¹ *Strickland v. Washington*, 466 U.S. 668 (1984).

To preclude federal review, the state-law grounds for the decision must be both “adequate” to support the judgment and “independent” of federal law. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Moreover, “a procedural default does not bar consideration of a federal claim on either direct or habeas review unless the last state court rendering a judgment in the case ‘clearly and expressly’ states that its judgment rests on a state procedural bar.” *Harris v. Reed*, 489 U.S. 255, 263 (1989) (internal citations omitted). Here, the Florida Supreme Court expressly addressed the merits of the ineffective assistance of counsel claim, finding there was “no reasonable probability that, but for the deficiency, the result of the proceeding would have been different,” and denied Petitioner’s claim. *Moore v. State*, 820 So. 2d at 208. Accordingly, the state court expressly denied Petitioner’s claim on the merits, not based on state procedural law.

III. The District Court did not explicitly dismiss Mr. Moore’s habeas petition as untimely

Respondent argues the district court found Petitioner’s “entire habeas petition ... untimely.” BIO, p. 7. However, the district court chose not to dismiss Petitioner’s habeas petition on timeliness grounds. Rather, after analyzing the tolling periods pursuant to 28 U. S. C. § 2244(d), the district court noted that the habeas petition was untimely, but in the very next sentence, the district court explicitly stated it would review the merits of the claims because “Moore asserted an actual innocence defense at trial and raises such a claim in Ground Sixteen.” At no point did the district court dismiss the petition as untimely. In fact, the district court’s 169-page order

thoroughly discussed each claim in the habeas petition before denying the petition on the merits.

CONCLUSION

Petitioner, Mr. Moore, prays that Court grant his petition for a writ of certiorari.

Respectfully submitted,

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