

No. 24-6491

In the Supreme Court of the United States

NAWAZ AHMED,

Petitioner,

v.

BILL COOL, Warden

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

BRIEF IN OPPOSITION

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CAPITAL CASE – NO EXECUTION DATE SET

QUESTION PRESENTED

Did the Sixth Circuit correctly deny Ahmed’s request for a certificate of appealability on the basis that reasonable jurists would not find the district court’s rejection of Ahmed’s choice-of-counsel claim “debatable or wrong”?

LIST OF PARTIES

The Petitioner is Nawaz Ahmed, an inmate at the Ross Correctional Institution.

The Respondent is Bill Cool, the Warden of the Ross Correctional Institution. Cool is automatically substituted for the former Warden. *See* Fed. R. App. P. 43(c)(2); Sup. Ct. R. 35.3.

LIST OF DIRECTLY RELATED PROCEEDINGS

S.Ct. Rule 14.1(b)(iii) requires a petition for a writ of certiorari to contain “a list of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court.” Eschewing the Rule, Ahmed provides no such list. *Cf.* Pet.App.C, at 1 n.1. The Warden therefore now provides the list that is missing from Ahmed’s petition.

1. *State v. Ahmed*, 99-cr-192 (Ct. of Common Pleas, Belmont County, OH) (judgment entered February 2, 2001)
2. *State v. Ahmed*, 2001-871 (Ohio) (judgment entered August 25, 2004)
3. *State v. Ahmed*, 2001-871 (Ohio) (reconsideration denied October 27, 2004)
4. *Ahmed v. Ohio*, 04-8302 (U.S.) (certiorari denied March 28, 2005)
5. *Ahmed v. Ohio*, 04-8302 (U.S.) (rehearing denied June 13, 2005)
6. *Ahmed v. Ohio*, 05-6113 (U.S.) (certiorari denied Oct. 31, 2005)
7. *Ahmed v. Ohio*, 99-cr-192 (Ct. of Common Pleas, Belmont County, OH) (judgment entered March 8, 2005)
8. *State v. Ahmed*, 05-BE-15 (Ohio Ct. App., 7th District) (judgment entered December 28, 2006)
9. *State v. Ahmed*, 2007-216 (Ohio) (appeal denied May 16, 2007)
10. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order granting *in forma pauperis* status and appointing counsel Sept. 13, 2007)
11. *Ahmed v. Houk*, 07-4481 (6th Cir.) (appeal dismissed Feb. 8, 2008)
12. *In re: Nawaz Ahmed*, 09-3241 (6th Cir.) (appeal dismissed March 24, 2009)
13. *Ahmed v. Warden*, 2:08-cv-493 (S.D. Ohio) (administratively closed November 18, 2010)
14. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order denying motion to invalidate reassignment of case entered May 15, 2015)
15. *Ahmed v. Houk*, 15-3684 (6th Cir.) (appeal dismissed Aug. 4, 2015)
16. *Ahmed v. Houk*, 15-3684 (6th Cir.) (rehearing *en banc* denied Nov. 12, 2015)
17. *Ahmed v. Sheldon*, 15-8912 (U.S.) (certiorari dismissed May 23, 2016)

18. *Ahmed v. Sheldon*, 15-8912 (U.S.) (reconsideration denied Oct. 3, 2016)
19. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order granting counsel’s motion to withdraw entered Jan. 30, 2018)
20. *Ahmed v. Houk*, 18-3292 (6th Cir.) (appeal dismissed May 1, 2018)
21. *Ahmed v. Houk*, 18-3292 (6th Cir.) (appeal dismissed Sept. 27, 2018)
22. *Ahmed v. Shoop*, 18-9331 (U.S.) (certiorari denied Oct. 7, 2019)
23. *In re Nawaz Ahmed*, 18-9332 (U.S.) (mandamus dismissed Oct. 7, 2019)
24. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order denying habeas corpus and dismissing case entered Sept. 21, 2020)
25. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order striking *pro se* motion to appoint counsel entered Oct. 9, 2020)
26. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order striking *pro se* filing entered Nov. 30, 2020)
27. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order striking *pro se* objections to report and recommendation entered Dec. 27, 2020)
28. *Ahmed v. Houk*, 20-4187 (6th Cir.) (appeal dismissed Feb. 17, 2021)
29. *Ahmed v. Shoop*, 21-3095 (6th Cir.) (appeal dismissed March 10, 2021)
30. *Ahmed v. Houk*, 20-4187 (6th Cir.) (rehearing denied March 30, 2021)
31. *Ahmed v. Houk*, 2:07-cv-658 (S.D. Ohio) (order adopting report and recommendation and denying motion to alter judgment entered May 7, 2021)
32. *Ahmed v. Shoop*, 21-3095 (6th Cir.) (rehearing en banc denied May 18, 2021)
33. *Ahmed v. Shoop*, 20-4302 (6th Cir.) (appeal dismissed July 30, 2021)
34. *Ahmed v. Shoop*, 2:07-cv-658 (S.D. Ohio) (order adopting report and recommendation and denying motion to reopen time to file appeal entered Jan. 6, 2022)
35. *Ahmed v. Shoop*, 21-7850 (U.S.) (certiorari dismissed Oct. 3, 2022)
36. *Ahmed v. Shoop*, 22-3039 (6th Cir.) (appeal dismissed in part Nov. 14, 2022)
37. *Ahmed v. Shoop*, 22-7574 (U.S.) (certiorari denied Oct. 2, 2023)
38. *Ahmed v. Shoop*, 20-4153 (6th Cir.) (appeal dismissed March 4, 2024)

39. *Ahmed v. Shoop*, 21-3542, 22-3039 (6th Cir.) (certificate of appealability denied Nov. 5, 2024)
40. *In re Nawaz Ahmed*, No. 24-5641 (U.S.) (petition for a writ of mandamus and/or prohibition dismissed Feb. 24, 2025).
41. *Ahmed v. Cool*, No. 24-5642 (U.S.) (certiorari denied Feb. 24, 2025)

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INTRODUCTION

Nawaz Ahmed has filed numerous pro se pleadings in which he has asked the Court for various forms of relief. *See above* iii–v. None of them have had merit, and the Court has denied each of them in turn. *See id.* Ahmed’s counseled petition for a writ of certiorari should meet the same fate. His petition alleges that the Sixth Circuit erred when it denied him a certificate of appealability on whether the state trial court deprived him of his Sixth Amendment choice of counsel by preventing him from accessing his own money. *See* Pet.i. It did not.

Ahmed provides no compelling reason why the Court should grant his petition for a writ of certiorari. He has not identified any legal dispute that demands the Court’s attention and in fact concedes that “the Sixth Circuit panel cited the correct standard for issuing a [certificate of appealability].” Pet.25. And although Ahmed argues that the Sixth Circuit misapplied that standard, *see id.*, it is he who is wrong. The Sixth Circuit was right to deny Ahmed’s request for a certificate of appealability on his choice-of-counsel claim. Ahmed defaulted that claim by failing to properly raise it in state court and, even if he had preserved the claim, it would still be meritless.

JURISDICTION

The District court had jurisdiction over Ahmed’s habeas case under 28 U.S.C. §§1331, 2241(a). The Sixth Circuit had jurisdiction over the district court’s dismissal order under 28 U.S.C. §§2253, 1291. This Court has jurisdiction to review Ahmed’s petition for certiorari under 28 U.S.C. §1254(1).

STATEMENT

1. Authorities arrested Nawaz Ahmed one evening in September of 1999 at John F. Kennedy International Airport before he could embark a flight to Pakistan. *State v. Ahmed*, 103 Ohio St. 3d 27, 27 (2004). Earlier that day, Ahmed committed the quadruple murder of his soon-to-be ex-wife and her father, sister, and two-year-old niece. *Id.* at 27–29. The slain victims had their throats slashed and skulls fractured. *Id.* at 57–58. An Ohio jury convicted Ahmed of aggravated murder and recommended a death sentence, which the trial court imposed. *Id.* at 30. The Ohio Supreme Court affirmed the conviction and sentence. *Id.* at 58. The court declined Ahmed’s application to reopen the case. *State v. Ahmed*, 103 Ohio St. 3d 1496 (2004).

On postconviction review, an Ohio trial court denied Ahmed’s petition for collateral relief, the court of appeals affirmed, and the Ohio Supreme Court denied discretionary jurisdiction. *State v. Ahmed*, 2006-Ohio-7069 (Ct. App. 2006); *State v. Ahmed*, 113 Ohio St. 3d 1513 (2007).

2. His state remedies exhausted, Ahmed filed a petition for a writ of habeas corpus. The Southern District of Ohio denied Ahmed relief and dismissed his case with prejudice. Pet.App.D at 69. As relevant here, it rejected Ahmed’s claim that the state courts violated his Sixth Amendment right to hire counsel of his choosing by restricting Ahmed’s access to his bank accounts. Pet.App.D at 10–32. It held that his claim was both procedurally defaulted and meritless. *See id.* The district court denied Ahmed a certificate of appealability on his choice-of-counsel claim. Pet.App.D at 31–32.

At that point the procedural history of this case gets complicated. Ahmed sought to alter the district court’s judgment under Rule 59(e). *See Ahmed v. Houk*, No. 2:07-CV-658, 2021 WL 1827121 (S.D. Ohio. May 7, 2021) (Pet.App.B). When that effort failed, Ahmed filed a counseled appeal from the denial of his Rule 59 motion (6th Cir. No. 21-3542); *see* Pet.App.A. By then, Ahmed had already filed a *pro se* appeal of the district court’s denial of a certificate of appealability (6th Cir. No. 20-4153); *see* Pet.App.A. Ahmed’s *pro se* appeal was premature because counsel had moved to alter the judgment before Ahmed noticed his appeal. Fed. R. App. P. 4(a)(4)(B)(i). Ahmed moved to strike the counseled notice of appeal. *See Ahmed v. Shoop*, Nos. 20-4153, 21-3542, 22-3309, 2024 WL 4342868, at *1 (6th Cir. March 4, 2024). The district court denied that motion, and three months later Ahmed moved under Appellate Rule 4(a)(6) to reopen the time to appeal that denial. *Id.* at *1, 4. The district court, in turn, denied Ahmed’s motion to file a belated appeal. *Id.* at *4. Ahmed, again *pro se*, appealed the denial of his motion to reopen the time to appeal (6th Cir. No. 22-3039); *see* Pet.App.A.

The Sixth Circuit consolidated the three cases and denied Ahmed relief in each. In case number 20-4153, the court dismissed Ahmed’s *pro se* appeal from the certificate-of-appealability denial “as duplicative” of his counseled appeal. Pet.App.A at 2. And in case number 22-3039, the Sixth Circuit denied Ahmed’s motion to proceed *in forma pauperis* to challenge the denial of his motion to reopen the time to file a notice of appeal. Pet.App.A at 2. Finally, the court held this case, number 21-3542, in

abeyance to await counsel filing a certificate-of-appealability application. *See Ahmed v. Shoop*, 2024 WL 4342868, at *3.

Counsel eventually requested a certificate of appealability on two claims. In this counseled application for a certificate of appealability, Ahmed alleged 1) that the state trial court denied him the right to hire counsel of his choice and 2) that the trial court erred when it admitted certain photographs during the guilt and penalty phases of trial. Pet.App.A at 2. On November 5, 2024, the Sixth Circuit denied Ahmed's application for a certificate of appealability in case number 21-3542 and dismissed case number 22-3039 because Ahmed failed to pay the filing fee. Pet.App.A at 6.

Ahmed's petition for a writ of certiorari presents two questions, both of which challenge the portion of the Sixth Circuit's November 5, 2024 order that denied him a certificate of appealability on his right-to-counsel claim. *See* Pet.i.

REASONS FOR DENYING THE WRIT

Ahmed's petition for a writ of certiorari does not provide any compelling reason why the Court should review this case. He has not identified any circuit disagreement or other uncertainty about the legal standard that applies to a request for a certificate of appealability. He simply alleges that the Sixth Circuit misapplied that standard. *See* Pet.25. Ahmed is wrong. But even if he were not, the type of error correction that Ahmed seeks is not the type of error that warrants this Court exercising certiorari jurisdiction.

I. There is no dispute about the legal standard that courts apply when deciding whether to issue a certificate of appealability.

A federal habeas court may grant a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c)(2). A “COA ruling is not the occasion for a ruling on the merit[s] of petitioner’s claim[s].” *Miller-El v. Cockrell*, 537 U.S. 322, 331 (2003). Instead, the only question that is properly before the Court when a party appeals the denial of a certificate of appealability is whether the lower courts correctly determined that “jurists of reason could disagree with the district court’s resolution of [the] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Id.* at 327. The law on that point has been well-settled for over twenty years and does not warrant further review.

Ahmed does not appear to disagree. He does not assert that there is any conflict between the circuit courts about the relevant standard, or how to apply it. He does not even argue that the Sixth Circuit applied the wrong standard *in this case*; Ahmed admits that “the Sixth Circuit panel cited the correct standard for issuing a [certificate of appealability].” Pet.25.

The absence of any unsettled question of law provides reason enough to deny Ahmed’s petition. This Court does not aim, through certiorari, to “correct every misstep made by a lower court in the application of settled principles.” *See* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *Supreme Court Practice* §4.17, p.278 (10th ed. 2013). The Court’s review “is discretionary and depends on numerous

factors other than the perceived correctness of the judgment [it is] asked to review.”
Ross v. Moffitt, 417 U.S. 600, 617 (1974).

II. There are no other compelling reasons why the Court should grant certiorari in this case.

The Court should not make an exception to its usual certiorari practice in this case. Even if the Court were inclined to engage in routine error correction, there is simply no error here for the Court to correct. The Sixth Circuit properly applied 28 U.S.C. §2253 when it rejected Ahmed’s application for a certificate of appealability and there are at least two reasons why Ahmed is not entitled to a certificate of appealability. *First*, Ahmed procedurally defaulted his choice-of-counsel claim. *Second*, even if Ahmed had preserved that claim, the Sixth Circuit correctly determined that it is meritless.

A. Ahmed procedurally defaulted his choice-of-counsel claim by failing to properly raise that claim in state court.

“A federal habeas court generally may consider a state prisoner’s federal claim only if he has first presented that claim to the state court in accordance with state procedures.” *Shinn v. Ramirez*, 596 U.S. 366, 371 (2022). Ahmed did not properly present his choice-of-counsel claim. The direct appeal that his counsel filed in the Ohio Supreme Court did not include that claim. *See* Pet.App.D at 12. Ahmed instead raised that issue for the first time when he filed a pro se motion that asked the Ohio Supreme Court to reconsider its decision affirming his conviction and sentence. *See id.*; *see also* Docket in No. 01-871, *State v. Ahmed* (Ohio S. Ct.) (entries of Sept. 2, 3, & 7, 2004).

Ahmed's pro se motion for reconsideration did not preserve his choice-of-counsel claim for at least two reasons. First, parties in Ohio cannot raise entirely new arguments in motions for reconsideration. *See City of E. Liverpool v. Columbiana County Budget Comm'n*, 116 Ohio St. 3d 1201, 1201–02 (2007); *see also Hunter v. Shield*, 115 N.E.3d 22, 31–32 (Ohio Ct. App. 2018). Second, Ohio does not permit hybrid representation. That is, it does not allow parties who are represented by counsel to also file pro se pleadings. *State v. Martin*, 103 Ohio St. 3d 385, syl.¶1 (2004). Despite what Ahmed argues, this has been the law in Ohio for decades. *Contra* Pet.30. As early as 1987, the Ohio Supreme Court held that although a party “has the right either to appear pro se or to have counsel, he has no corresponding right to act as co-counsel on his own behalf.” *State v. Thompson*, 33 Ohio St. 3d 1, 6–7 (1987). So Ahmed's pro se motion for reconsideration, which was filed alongside a counseled motion for reconsideration, should be disregarded. *See* Mot. to Recon. in No. 01-871, *State v. Ahmed* (Ohio S. Ct. Sept. 3, 2004);

Ahmed correctly notes that the Sixth Circuit did not address the procedural-default question. It did not need to; it found that Ahmed's underlying choice-of-counsel claim was meritless and that reasonable minds therefore could not debate whether it deserved encouragement to proceed further. Pet.App.A at 4. That decision was correct, for the reason discussed in subsection B below. But the fact that the Sixth Circuit did not rely on Ahmed's procedural default when rejecting his application for a certificate of appealability does not make that default any less of a barrier to this Court's review.

Finally, even though the Sixth Circuit did not discuss procedural default in any meaningful detail, the district court did. Extensively. *See* Pet.App.D at 12–21. And the same reasons that the district court gave for concluding that Ahmed failed to preserve his choice-of-counsel claim would likewise prevent the Court from holding that the Sixth Circuit should have granted the certificate of appealability that Ahmed seeks.

B. The Sixth Circuit properly applied the applicable legal standard when it denied Ahmed’s application for a certificate of appealability

The Sixth Circuit did not rely on Ahmed’s procedural default when it rejected Ahmed’s application for a certificate of appealability because it determined that, even if Ahmed had preserved his choice-of-counsel claim, that claim was ultimately meritless. Pet.App.A at 4. The Sixth Circuit was right.

In challenging the Sixth Circuit’s decision, Ahmed repeats the arguments that he made below. *See* Pet.32–34. But every court that has considered those arguments has rejected them. The state trial court made clear, well before Ahmed’s case ever went to trial, that it was not preventing Ahmed from accessing his money, or using that money to hire counsel. The trial court noted that Ahmed was mistaken about whether the court had restricted Ahmed’s access to his funds. It explained that “I don’t have anything tied up in – I get letters from – [Ahmed] believes I have money tied up,” and indicated that Ahmed’s belief was incorrect. *See* Pet.App.D at 26 (quoting state-court transcript). The state trial court went so far as to offer Ahmed state-paid resources once he “exhausted his assets” on his defense. *Id.* at 25 (quoting state-court transcript). Along those lines, the federal-court magistrate and district

judge extensively explored the status of Ahmed’s funds. That deep-dive led the District Court to conclude that Ahmed’s “funds were always available for [him] to use to hire his own counsel.” *Id.* at 24, *see id.* at 27–28. The Sixth Circuit affirmed on that ground. *See* Pet.App.A at 4.

Ahmed does not address the lower federal courts’ decisions, or explain why those decisions were wrong. He simply repeats the same arguments that those courts rejected. But, having “presented no evidence that he was prevented from using his funds to retain private counsel,” *see* Pet.App.A at 3, Ahmed cannot show that jurists of reason would find the merits of his choice-of-counsel claim debatable—even if he had preserved that claim.

CONCLUSION

This Court should dismiss or deny the petition for a writ of certiorari.

Respectfully submitted,

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