United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 9, 2025
Lyle W. Cayce
Clerk

No. 24-50371

AVERY B. CRAWFORD,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*,

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 5:22-CV-158

ORDER:

Avery B. Crawford, Texas prisoner # 02214933, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 application challenging his conviction for aggravated robbery. Crawford argues that (i) he was denied his right of self-representation in violation of the Sixth Amendment; (ii) his trial counsel rendered ineffective assistance when he failed to object to hearsay testimony by a law enforcement officer that violated his rights under the Confrontation Clause; (iii) his appellate counsel rendered ineffective assistance when he failed to properly

brief the Confrontation Clause issue on direct appeal; and (iv) he is actually innocent.

As a preliminary matter, Crawford does not reprise the following claims that he raised in his § 2254 application: (1) he was denied the right to be represented by conflict-free counsel; (2) his Fourteenth Amendment rights were violated when the trial court failed to inquire about counsel's conflict of interest; (3) his trial counsel rendered ineffective assistance when he failed to (a) subject the State's case to meaningful adversarial testing; (b) object to the use of extraneous offense evidence during the punishment phase or request a limiting instruction; and (c) discover and present evidence of his innocence at trial; (4) he was entitled to relief under the cumulative errors doctrine; (5) his constitutional rights were violated when he was subjected to excessive bail, the trial court "refuse[d] to adjudicate the issues of constitutional violations," he was "denied a meaningful appeal by the reappointment of same trial counsel on direct appeal with conflicts of interest," and the state habeas court was prejudiced, biased, and conflicted; (6) his conviction was based on false testimony provided by the State; and (7) the State suppressed evidence of his innocence. Because he fails to reprise these claims in his COA motion, they are abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

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); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When the district court denies relief on the merits, an applicant must show 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 relief on procedural grounds, a COA should issue if an applicant establishes, at least, that jurists of reason would find it debatable

whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Id.*

Crawford fails to meet the requisite standard. *See id.* His motion for a COA is DENIED.

IRMA CARRILLO RAMIREZ
United States Circuit Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AVERY B. CRAWFORD, TDCJ No. 02214933, Petitioner, v. BOBBY LUMPKIN, Director, Texas Department of Criminal Justice, Correctional Institutions Division, Respondent.	§ § § § § § § § § § § §	CIVIL NO. SA-22-CA-0158-OLG

MEMORANDUM OPINION AND ORDER

Before the Court is Petitioner Avery B. Crawford's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1), wherein he challenges the constitutionality of his 2018 state court conviction for aggravated robbery with a deadly weapon. Also before the Court are Petitioner's memorandum in support (ECF No. 8), Respondent Bobby Lumpkin's Answer (ECF No. 13), and Petitioner's Reply (ECF No. 16) thereto.[1]

Having reviewed the record and pleadings submitted by both parties, the Court concludes Petitioner is not entitled to relief under the standards prescribed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *See* 28 U.S.C. § 2254(d). Petitioner is also denied a certificate of appealability.

I. Background

In August 2018, a Bexar County jury convicted Petitioner of one count of aggravated robbery with a deadly weapon. *State v. Crawford*, No. 2017CR0602 (186th Dist. Ct., Bexar Cnty., Tex. Aug. 1, 2018); (ECF No. 14-32 at 4-5). Following a separate punishment hearing,

[1] In addition, Petitioner filed several supplemental pleadings which the Court has considered in evaluating Petitioner's § 2254 petition. (ECF Nos. 22, 28, and 37).

the jury found Petitioner to be a habitual offender and sentenced him to seventy-five years of imprisonment. *Id.*

On direct appeal, the Fourth Court of Appeals of Texas affirmed Petitioner's conviction in published opinion. *Crawford v. State*, 595 S.W.3d 792 No. 04-18-00555-CR, 2018 WL 6793353 (Tex. App.—San Antonio, Nov. 20, 2019, pet. ref'd); (ECF No. 14-2). The Texas Court of Criminal Appeals then refused his petition for discretionary review. *Crawford v. State*, No. PD-1318-19 (Tex. Crim. App. March 25, 2020); (ECF No. 14-11).

Following his direct appeal proceedings, Petitioner challenged the constitutionality of his conviction by filing an application for state habeas corpus relief on January 25, 2021. *Ex parte Crawford*, No. 92,813-01 (Tex. Crim. App.); (ECF No. 14-29 at 4-28). Based, in part, on the findings of the state habeas trial court, the Texas Court of Criminal Appeals denied the application without written order on January 5, 2022. (ECF No. 14-21). Petitioner later filed a second application for state habeas corpus relief on November 1, 2022, which the Texas Court of Criminal Appeals dismissed as a subsequent application pursuant to Tex. Code Crim. Proc. Art. 11.07, Sec. 4. *Ex parte Crawford*, No. 92,813-02 (Tex. Crim. App.); (ECF Nos. 30-1, 30-5 at 4-22).

Petitioner initiated the instant federal proceedings on February 14, 2022. (ECF No. 1 at 13). In this petition (ECF No. 1) and the memorandum in support (ECF No. 8) that later followed, Petitioner raised a total of eight allegations challenging the constitutionality of his underlying state court conviction. On March 28, 2023, Petitioner amended his § 2254 petition with an additional four claims for relief. (ECF No. 28).

II. Petitioner's Allegations

In his original federal petition (ECF No. 1) and memorandum in support (ECF No. 8), Petitioner set forth the following claims for relief:[2]

(1) He was denied the right to represent himself at trial;

(2) He was denied the right to be represented by counsel without a conflict of interest;

(3) He was denied a fair trial by the trial court's failure to inquire about counsel's conflict of interest;

(4) His trial counsel rendered ineffective assistance by failing to subject his case to meaningful adversarial testing by requesting a jury instruction on the "one-witness rule";

(5) Trial counsel rendered ineffective assistance by failing to raise an objection based on the Confrontation Clause;

(6) Trial counsel rendered ineffective assistance by failing to object to the use of extraneous offense evidence at the punishment phase;

(7) He was denied the right to effective assistance of counsel on direct appeal; and

(8) The above allegations cumulatively denied his constitutional rights.

Petitioner also raises the following claims in his supplemental memorandum in support (ECF No. 28) filed on March 28, 2023:

(9) Newly discovered evidence demonstrates that he is actually innocent of the charged offense;

(10) His conviction was based on false testimony presented by the State;

(11) His trial counsel rendered ineffective assistance by failing to discover and present the evidence of his innocence at trial; and

(12) The newly discovered evidence was impermissibly suppressed by the State.

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[2] For reasons unknown to the Court, Respondent reordered Petitioner's allegations into six claims, including subparts, instead of eight claims as raised by Petitioner. (ECF No. 13 at 1-2). For clarity's sake, the Court has ordered the allegations as originally listed by Petitioner.

III. Standard of Review

Petitioner's federal habeas petition is governed by the heightened standard of review provided by the AEDPA. 28 U.S.C.A. § 2254. Under § 2254(d), a petitioner may not obtain federal habeas corpus relief on any claim that was adjudicated on the merits in state court proceedings unless the adjudication of that claim either: (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. *Brown v. Payton*, 544 U.S. 133, 141 (2005). This intentionally difficult standard stops just short of imposing a complete bar on federal court relitigation of claims already rejected in state proceedings. *Harrington v. Richter*, 562 U.S. 86, 102 (2011) (citing *Felker v. Turpin*, 518 U.S. 651, 664 (1996)).

A federal habeas court's inquiry into unreasonableness should always be objective rather than subjective, with a focus on whether the state court's application of clearly established federal law was "objectively unreasonable" and not whether it was incorrect or erroneous. *McDaniel v. Brown*, 558 U.S. 120 (2010); *Wiggins v. Smith*, 539 U.S. 510, 520-21 (2003). Even a strong case for relief does not mean the state court's contrary conclusion was unreasonable, regardless of whether the federal habeas court would have reached a different conclusion itself. *Richter*, 562 U.S. at 102. Instead, a petitioner must show that the decision was objectively unreasonable, which is a "substantially higher threshold." *Schriro v. Landrigan,* 550 U.S. 465, 473 (2007); *Lockyer v. Andrade*, 538 U.S. 63, 75-76 (2003).

So long as "fairminded jurists could disagree" on the correctness of the state court's decision, a state court's determination that a claim lacks merit precludes federal habeas

relief. *Richter*, 562 U.S. at 101 (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). In other words, to obtain federal habeas relief on a claim previously adjudicated on the merits in state court, Petitioner must show that the state court's ruling "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; *see also Bobby v. Dixon*, 565 U.S. 23, 24 (2011).

IV. Analysis

A. Self-Representation (Claim 1)

A week before Petitioner's trial, the trial court held a hearing on Petitioner's request to replace his court-appointed attorney, Mr. Ed Shaughnessy, with new counsel. (ECF No. 14-30 at 50-62). Following the denial of Petitioner's request, the following discussion took place:

> PETITIONER: Okay. Well, then, I'd rather just go and take my chances pro se, Your Honor.
>
> THE COURT: Well, I'm not going to do a pro se hearing right now. But I'm going to have you continue to work with Mr. Shaughnessy on these cases.

Id. at 58. Petitioner then reurged the court to replace Mr. Shaughnessy with another attorney, which the trial court again denied. *Id.* at 59-62. No further mention of Petitioner's alleged desire to proceed *pro se* was mentioned. Nevertheless, Petitioner now argues that, based on this brief exchange, he was denied the right to self-representation under *Faretta v. California*, 422 U.S. 806 (1975).

1. Procedural Default

Petitioner first raised this allegation in his initial application for state habeas corpus relief. (ECF No. 14-29 at 9-10). Citing *Ex parte Clore*, 690 S.W.2d 899 (Tex. Crim. App. 1985), the state habeas trial court rejected the allegation because it could have been raised on direct appeal. (ECF No. 14-32 at 176). The Texas Court of Criminal Appeals later adopted the state habeas

court's findings and denied Petitioner's state habeas application. (ECF No. 14-21). Based on this procedural history, Petitioner's claim is now procedurally barred from federal habeas review.

Under the doctrine of procedural default, this Court is precluded from reviewing "claims that the state court denied based on an adequate and independent state procedural rule." *Davila v. Davis*, 582 U.S. 521, 527 (2017). The state habeas court's finding in this case constitutes such a denial. The state court determined Petitioner's allegation was procedurally defaulted under *Ex parte Clore*, which found that habeas corpus should not be used as a substitute for an appeal. This rule—barring consideration of claims that could have been but were not raised on direct appeal—has been repeatedly used by the Texas Court of Criminal Appeals since *Ex parte Clore* was decided. *Ex parte Townsend*, 137 S.W.3d 79, 81-82 (Tex. Crim. App. 2004); *Ex parte Gardner*, 959 S.W.2d 189, 199 (Tex. Crim. App. 1998). It is also "an adequate state ground capable of barring federal habeas review." *Aguilar v. Dretke*, 428 F.3d 526, 535 (5th Cir. 2005) (citing *Busby v. Dretke*, 359 F.3d 708, 719 (5th Cir. 2004)).

This procedural bar to federal review may be overcome by demonstrating "(1) cause for the procedural default and actual prejudice as a result of the alleged violation of federal law or (2) that failure to consider his claims will result in a fundamental miscarriage of justice." *Smith v. Johnson*, 216 F.3d 521, 524 (5th Cir. 2000) (internal quotation marks and citation omitted). As discussed below, Petitioner fails to make this showing.

2. Appellate Counsel

With the benefit of liberal construction, Petitioner appears to argue that the failure of his appellate counsel[3] to raise a *Faretta* claim on direct appeal constitutes cause and prejudice to excuse his procedural default. (ECF Nos. 8 at 30, 16 at 20); *see, e.g.*, *Hernandez v. Thaler*, 630

[3] Petitioner's trial counsel, Ed Shaughnessy, also represented Petitioner on direct appeal. (ECF No. 14-5).

F.3d 420, 426 (5th Cir. 2011) ("The filings of a federal habeas petitioner who is proceeding *pro se* are entitled to the benefit of liberal construction."). Indeed, in certain circumstances counsel's ineffectiveness in failing to properly preserve a claim for review in state court will suffice to excuse a procedural default. *See Edwards v. Carpenter*, 529 U.S. 446, 451 (2000). But such an ineffective-assistance-of-appellate-counsel (IAAC) claim must itself be presented to the state courts as an independent claim before it may be used to establish cause for a procedural default. *Id.* at 451-52.

Here, Petitioner did not raise an IAAC claim concerning the failure to raise a *Faretta* violation in his state habeas corpus application. This failure renders such a claim unexhausted. *See Martinez v. Johnson*, 255 F.3d 229, 238 (5th Cir. 2001). His unexhausted claim is procedurally barred if Texas courts would treat the claim as procedurally defaulted if presently raised. *See Bagwell v. Dretke*, 372 F.3d 748, 755 (5th Cir. 2004). Texas courts would do so under the abuse-of-the-writ doctrine, a doctrine recognized as an adequate and independent procedural rule in this context. *See Rocha v. Thaler*, 626 F.3d 815, 832 (5th Cir. 2010); *Beazley v. Johnson*, 242 F.3d 248, 264 (5th Cir. 2001). Thus, the IAAC claim itself is procedurally defaulted.

Consequently, Petitioner's procedurally defaulted IAAC claim can serve as cause to excuse the procedural default of Petitioner's *Faretta* claim only if he can satisfy the cause-and-prejudice standard with respect to the IAAC claim itself. To establish cause, a petitioner must demonstrate that some objective factor external to the defense impeded his efforts to comply with the state's procedural rule. *Murray v. Carrier*, 477 U.S. 478, 488 (1986). In his reply, Petitioner argues that he did not obtain a copy of the transcript of the aforementioned pre-trial hearing until April 2021, after his initial state habeas application had been filed. (ECF No. 16 at

4-5). While this may be true, Petitioner has not identified any external factor that prevented him from obtaining the record earlier, much less one that prevented him from raising the IAAC claim in his state habeas application. After all, Petitioner was present at the pre-trial hearing in question and thus aware of the alleged *Faretta* violation, and presumably became aware that his appellate counsel did not raise a *Faretta* claim by the time he received notice that his conviction had been affirmed on appeal in November 2019. Further, neither Petitioner's *pro se* status nor his ignorance of the law is sufficient cause to excuse a procedural default. *See Saahir v. Collins*, 956 F.2d 115, 118 (5th Cir. 1992). Thus, Petitioner fails to establish cause to excuse the procedural default of his IAAC claim, which therefore cannot serve as cause to excuse the procedural default of his *Faretta* claim.

3. The *Martinez* Exception

Finally, Petitioner cites *Martinez v. Ryan*, 566 U.S. 1 (2012), to establish cause to excuse his procedural default. (ECF Nos. 16 at 5, 22 at 4-5). In *Martinez*, the Supreme Court carved out a "narrow" exception to the procedural default of claims concerning the ineffective assistance of trial counsel. *Trevino v. Thaler*, 569 U.S. 422 (2013). In this case, however, the procedural default is not barring a claim of ineffective assistance of trial counsel, but one challenging the denial of Petitioner's right to self-representation under *Faretta*. Thus, Petitioner's reliance on *Martinez* and *Trevino* is misplaced.[4]

In sum, because Petitioner fails to demonstrate cause to excuse the procedural default of his *Faretta* claim or that a miscarriage of justice will result if the Court does not consider the claim on the merits, the claim is procedurally barred from the Court's review.

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[4] To the extent Petitioner contends that *Martinez* may excuse the procedural default of his IAAC claim (which could then excuse the default of his *Faretta* claim), his reliance is similarly misplaced. The Supreme Court has held that the *Martinez* exception does not apply to the procedural default of an IAAC claim. *Davila*, 582 U.S. at 531.

B. Conflict of Interest (Claims 2, 3)

Petitioner next contends that he was denied his Sixth Amendment right to conflict-free representation. According to Petitioner, a conflict of interest existed between him and his court-appointed attorney, Mr. Shaughnessy, because (1) he had previously filed a grievance against Mr. Shaughnessy with the state bar due to disagreements with counsel's representation, and (2) Mr. Shaughnessy had witnessed a bailiff assault him prior to trial but did not move for a change of venue or recusal. Petitioner also contends that the trial court's failure to inquire into the conflicts of interest violated his constitutional rights. As discussed below, the state court's denial of these claims during Petitioner's state habeas proceedings was not unreasonable.

1. Trial Counsel's Alleged Conflict (Claim 2)

The Sixth Amendment protects a defendant's right to effective assistance of counsel. *See Strickland v. Washington,* 466 U.S. 668, 684-86 (1984). To establish a deprivation of that right, a defendant ordinarily must show "that counsel's representation fell below an objective standard of reasonableness" and "that the deficient representation caused prejudice." *Coble v. Quarterman,* 496 F.3d 430, 435 (5th Cir. 2007) (citations omitted). Prejudice is presumed, however, in the narrow class of cases where counsel "actively represented conflicting interests" and that "an actual conflict of interest adversely affected his lawyer's performance." *Cuyler v. Sullivan,* 446 U.S. 335, 350 (1980).

"A conflict [of interest] exists when defense counsel places himself in a position conducive to divided loyalties." *United States v. Medina*, 161 F.3d 867, 870 n.1 (1998). But there is no actual conflict of interest unless "defense counsel is compelled to compromise his or her duty of loyalty or zealous advocacy to the accused by choosing between or blending the divergent or competing interests of a former or current client." *United States v. Palacios*, 928

F.3d 450, 455 (5th Cir. 2019); *Perillo v. Johnson*, 205 F.3d 775, 781 (5th Cir. 2000). In other words, the *Cuyler* standard applies only to claims of ineffective assistance of counsel resulting from conflicts of interest caused by multiple representation. *See United States v. Newell*, 315 F.3d 510, 516 (5th Cir. 2002); *Beets v. Scott*, 65 F.3d 1258, 1270-72 (5th Cir. 1995). The standard enunciated in *Strickland* applies when a prisoner alleges a conflict of interest of a different ilk. *Beets*, 65 F.3d at 1272.

Here, Petitioner contends that counsel had a conflict of interest because of a previously filed grievance and the fact that counsel took no legal action despite witnessing a bailiff assault him pre-trial. Because the alleged conflict is premised on a conflict between counsel's interests and those of Petitioner, rather than between the interests of multiple clients, the standard of *Strickland* applies and the presumption of prejudice under *Cuyler* has no application. *See Newell*, 315 F.3d at 516; *Beets*, 65 F.3d at 1270-72. As such, Petitioner must demonstrate both that (1) counsel's performance was deficient, and (2) a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland,* 466 U.S. at 694. He does neither.

To start, Petitioner's complaints about counsel amount to, at most, disagreements about trial strategy issues rather than a conflict of interest. But "[m]ere disagreement about strategic litigation decisions is not a conflict of interest." *United Stated v. Fields*, 483 F.3d 313, 353 (5th Cir. 2007) (citation omitted). Conflicts of interest occur when counsel "is prevented, by his own self interest or by his interest in another's welfare, from vigorously promoting the welfare of his client." *Vega v. Johnson*, 149 F.3d 354, 360 (5th Cir. 1998). If counsel is required to choose between advancing his client's interests in a fair trial or advancing other interests, including his own, to the detriment of his client's interest, a conflict of interest may exist. *See Bostick v.*

Quarterman, 580 F.3d 303, 307 (5th Cir. 2009) ("A speculative or potential conflict is not enough; rather, a conflict exists when counsel is compelled to compromise duties of loyalty to his client.").

Petitioner failed to allege sufficient facts demonstrating a conflict of interest between himself and counsel. The record does not suggest counsel faced a choice between advancing Petitioner's interests or advancing other interests instead. Nor does the record suggest that Petitioner's interest in a fair trial diverged from counsel's interest, even if they differed in opinion as to how best to achieve that goal. Thus, Petitioner's conclusory allegation of a conflict is insufficient for obtaining habeas corpus relief. *Perillo,* 205 F.3d at 781.

Moreover, even assuming a conflict of interest existed, Petitioner has not shown that such a conflict had an adverse impact or effect on counsel's performance or otherwise prejudiced Petitioner in any way. An adverse effect may be established with evidence that some plausible alternate defensive strategy or tactic could have been pursued but was not because of the actual conflict impairing counsel's performance. *Palacios*, 928 F.3d at 455; *Perillo*, 205 F.3d at 781. While Petitioner argues that the alleged conflict prevented counsel from seeking a change of venue or recusal following Petitioner's encounter with the bailiff, Petitioner has not shown any such motion would have been successful. *See Miller v. Thaler*, 714 F.3d 897, 904 n.6 (5th Cir. 2013) (counsel is not required to make futile motions or objections). Indeed, during Petitioner's state habeas proceeding, counsel provided an affidavit stating that such motions were not pursued because "[a]t no time did [he] come into possession of any facts that could have conceivably supported the filing of either of those motions." (ECF No. 14-32 at 14).

Petitioner fails to show that the state court's adoption of counsel's reasoning or ultimate rejection of Petitioner's conflict of interest allegation was contrary to, or involved an

unreasonable application of *Strickland* or that it was an unreasonable determination of the facts based on the evidence in the record. The Sixth Amendment right to counsel does not guarantee an accused a "meaningful attorney-client relationship." *Morris v. Slappy*, 461 U.S. 1, 14 (1983). Nor does a defendant's mere dissatisfaction or disagreement with his attorney's strategy give rise to a conflict. *Fields*, 483 F.3d at 353. Because he has not shown that counsel acted under the influence of an actual conflict or that his performance was adversely affected as a result, Petitioner has not demonstrated that a constitutional violation occurred.

2. The Trial Court's Inquiry (Claim 3)

In a related allegation, Petitioner contends that the trial court erred by failing to inquire into counsel's alleged conflict of interest. According to Petitioner, the court was aware of the conflict due to Petitioner's *pro se* motions but refused to inquire further into them. This refusal, Petitioner argues, resulted in the trial court refusing to replace Mr. Shaughnessy with different counsel.

Petitioner is correct that a trial court is obligated to inquire into a potential conflict of interest that has been brought to the court's attention. *See Holloway v. Arkansas*, 435 U.S. 475, 484 (1978). But a petitioner alleging a failure to conduct an inquiry must establish an actual conflict of interest adversely affected counsel's performance to obtain relief. *Mickens v. Taylor*, 535 U.S. 162, 174 (2002). A trial court does not have an affirmative duty to inquire into the *possibility* of a conflict of interest or investigate a non-specific and conclusory assertion of a conflict of interest. *See Fields*, 483 F.3d at 353 (finding that a merely "vague, unspecified possibility of conflict" does not trigger a duty to inquire). If an "actual conflict of interest" is shown, the court must conduct a hearing to determine whether the defendant knowingly and

voluntarily waives his right to conflict-free representation. *United States v. Carpenter*, 769 F.2d 258, 262-63 (5th Cir. 1985).

As previously discussed, Petitioner has not demonstrated an actual conflict of interest between himself and Mr. Shaughnessy, much less shown that any alleged conflict had an adverse impact on counsel's representation. In any event, the trial court was apprised of a potential conflict issue between Petitioner and counsel and held a hearing on the issue. (ECF No. 14-30 at 50-62). Petitioner was heard and was permitted to freely testify as to his strained relationship with counsel and to his belief that counsel was not filing the proper motions. *Id.* The trial court heard such testimony, as well as a statement from counsel, and denied Petitioner's request for the appointment of new counsel, implicitly determining that Petitioner did not make a proper showing of an actual conflict of interest. Petitioner has not shown this inquiry was inadequate, much less established that the state court's rejection of this allegation was unreasonable. Relief is therefore denied.

C. Trial Counsel (Claims 4-6)

Petitioner raises several more claims alleging that he was denied the right to effective assistance by his trial counsel, Edward Shaughnessy. Each of these allegations was raised during petitioner's state habeas proceedings and rejected by the Texas Court of Criminal Appeals. As discussed below, Petitioner fails to demonstrate the state court's rejection of these allegations was either contrary to, or an unreasonable application of, Supreme Court precedent.

1. The *Strickland* Standard

As previously discussed, Sixth Amendment claims concerning the alleged ineffective assistance of trial counsel (IATC claims) are reviewed under the familiar two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a petitioner

cannot establish a violation of his Sixth Amendment right to counsel unless he demonstrates (1) counsel's performance was deficient and (2) this deficiency prejudiced his defense. 466 U.S. at 687-88, 690. According to the Supreme Court, "[s]urmounting *Strickland*'s high bar is never an easy task." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010).

When determining whether counsel performed deficiently, courts "must be highly deferential" to counsel's conduct, and a petitioner must show that counsel's performance fell beyond the bounds of prevailing objective professional standards. *Strickland,* 466 U.S. at 687-89. Counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Burt v. Titlow*, 571 U.S. 12, 22 (2013) (quoting *Strickland*, 466 U.S. at 690). To demonstrate prejudice, a petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. Under this prong, the "likelihood of a different result must be substantial, not just conceivable." *Richter*, 562 U.S. at 112. A habeas petitioner has the burden of proving both prongs of the *Strickland* test. *Wong v. Belmontes*, 558 U.S. 15, 27 (2009).

Finally, IATC claims are considered mixed questions of law and fact and are analyzed under the "unreasonable application" standard of 28 U.S.C. § 2254(d)(1). *See Gregory v. Thaler*, 601 F.3d 347, 351 (5th Cir. 2010). Where, as here, the state court adjudicated the IATC claims on the merits, a court must review a petitioner's claims under the "doubly deferential" standards of both *Strickland* and Section 2254(d). *See Woods v. Etherton*, 578 U.S. 113, 117 (2016) (citing *Cullen v. Pinholster*, 563 U.S. 170, 190 (2011)); *Knowles v. Mirzayance*, 556 U.S. 111, 112 (2009). In such cases, the "pivotal question" is not "whether defense counsel's performance fell below *Strickland*'s standards," but whether "the state court's application of the *Strickland*

standard was unreasonable." *Richter*, 562 U.S at 101. That is to say, the question to be asked in this case is not whether counsel's actions were reasonable, but whether "there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.* at 105.

2. Jury Instruction (Claim 4)

Petitioner contends that he was essentially convicted on the testimony of one witness, the complainant, without any corroborating circumstances. Because the complainant's testimony was unsupported, Petitioner maintains that counsel should have requested a jury instruction pursuant to Article 38.17 of the Texas Code of Criminal Procedure, which provides:

> In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement is not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction.

Petitioner believes this would have been the best response to the prosecution's improper questions during voir dire concerning the "one-witness rule," as it would have properly explained the law to the jury.

Petitioner raised this allegation during his state habeas proceedings. In response, trial counsel submitted an affidavit wherein he explained his reasons for not requesting this instruction:

> [Petitioner] also makes a related assertion that the undersigned was ineffective for failing to request a jury charge on the "one witness rule". No such charge was requested for the simple reason that the charge, if it had been requested, would have been properly denied by the trial court as an improper comment on the evidence.

(ECF No. 14-32 at 15). The state habeas trial court found trial counsel's affidavit to be truthful and credible and that Petitioner "was not denied his Sixth Amendment right to effective assistance of counsel." (ECF No. 14-33 at 1, 3). These findings and conclusions were then

adopted by the Texas Court of Criminal Appeals when it denied Petitioner's state habeas application. (ECF No. 14-21).

Petitioner fails to show that the state court's ruling was an unreasonable application of *Strickland*. Trial counsel generally have broad discretion when it comes to deciding how best to proceed strategically, and such choices, made after a thorough investigation of the law and facts relevant to plausible options, are virtually unchallengeable. *Strickland*, 466 U.S. at 673; *Ward v. Stephens*, 777 F.3d 250, 264 (5th Cir. 2015) (noting the Supreme Court has emphasized counsel has "wide latitude in deciding how best to represent a client."). Moreover, counsel's performance cannot be considered deficient or prejudicial if counsel fails to raise a non-meritorious argument. *See Miller*, 714 F.3d at 904 n.6 (counsel is not required to make futile motions or objections); *Roberts v. Thaler*, 681 F.3d 597, 612 (5th Cir. 2012) ("the failure to lodge futile objections does not qualify as ineffective assistance") (quoting *Koch v. Puckett*, 907 F.2d 524, 527 (5th Cir. 1990)).

Here, trial counsel's affidavit—adopted by the state habeas trial court and ultimately by the Texas Court of Criminal Appeals—explained that he did not seek the aforementioned jury instruction because it would have been denied as improper under state law. Indeed, Petitioner provides no authority, and the Court can find none, for his assertion that aggravated robbery is a crime that requires two witnesses or one witness "with corroborating circumstances" to authorize a conviction. *See* Tex. Penal Code § 29.03 (aggravated robbery); *cf.* Tex. Code Crim. Proc. art. 38.15 (treason) & 38.18(a) (perjury).

Petitioner has not shown that counsel's assessment was incorrect, much less demonstrated that the state court's ruling on trial counsel's strategy "was so lacking in justification that there was an error well understood and comprehended in existing law beyond

any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103. Consequently, viewing the allegation under the "doubly" deferential review encompassed by *Strickland* and the AEDPA, Petitioner's claim cannot survive. *Id.* at 105.

3. The Confrontation Clause (Claim 5)

Petitioner's fifth allegation challenges the trial counsel's failure to raise a Confrontation Clause objection concerning alleged hearsay testimonial statements from Petitioner's mother, Barbara Sattiewhite, made to one of the investigating officers at the crime scene. Specifically, Petitioner contends counsel should have objected to the following testimony by Bexar County Sheriff's Deputy Ricardo Vijil:

> STATE: Now, without saying what she said, would you categorize Barbara Sattiewhite as cooperative or uncooperative when you arrived?
>
> VIJIL: When I arrived, with me, she—she cooperated and she told me who the actor was.
>
> STATE: Okay.
>
> VIJIL: Yes.
>
> STATE: And she identified her son?
>
> VIJIL: Yes. She identified her son to be the actor.

(ECF No. 14-17 at 23).[5] As discussed below, any objection by counsel on this basis would have been futile. *Roberts*, 681 F.3d at 612 ("the failure to lodge futile objections does not qualify as ineffective assistance").

The Confrontation Clause of the Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. Under the Confrontation Clause, the admission of "testimonial

[5] Petitioner also contends that Sattiewhite's statement was repeated during the testimonies of two other officers as well as the complainant, Angela Green, and that counsel should have objected during their testimonies as well. However, there is no mention of Sattiewhite's statement during these testimonies. As such, the Court will focus only on the testimony of Deputy Vijil.

statements" of a witness who did not appear at trial is barred unless the witness "was unavailable to testify, and the defendant had [] a prior opportunity for cross-examination." *United States v. Duron-Caldera*, 737 F.3d 988, 992 (5th Cir. 2013) (quoting *Crawford v. Washington,* 541 U.S. 36, 53-54 (2004)).

The Supreme Court has defined "testimonial" as "[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Crawford,* 541 U.S. at 51. Statements are nontestimonial "when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." *Michigan v. Bryant*, 562 U.S. 344, 356 (2011) (citing *Davis v. Washington,* 547 U.S. 813, 822 (2006)). They are testimonial "when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.*

Here, Sattiewhite's informal statement to Deputy Vijil as the first responder on the scene of an aggravated robbery does not constitute a "testimonial statement" under *Crawford. See Bryant*, 562 U.S. at 367 (requiring an inquiry "that accounts for both the declarant and the interrogator."). Indeed, "statements to the police—whether spontaneous or in response to preliminary questions—when police are called to a crime scene shortly after a crime are not testimonial because the interaction was not initiated by police, nor was the interaction formal or structured." *McDavid v. State*, No. 10-15-00112-CR, 2015 WL 7873639, at *3 (Tex. App.—Waco 2015) (citing *Ruth v. State*, 167 S.W.3d 560, 569 (Tex. App.—Houston [14th Dist.] 2005)). Petitioner therefore fails to demonstrate counsel's performance was either deficient or that he was prejudiced in any way by counsel's failure to object, and relief is denied.

4. Extraneous Offenses (Claim 6)

In his last IATC claim, Petitioner contends that he was denied effective counsel at the punishment phase of trial. Specifically, Petitioner faults counsel for failing to object or request a limiting instruction on the admission of evidence (a firearm and a video) related to a charge that was still pending. Petitioner contends he was prejudiced by the State's ability to use evidence from a charge that had yet to be proven and was therefore inadmissible.

Similar to his previous allegations, Petitioner raised this claim for relief during his state habeas proceedings. In response, trial counsel stated the following in his affidavit:

> [Petitioner]'s claim suffers from a fatal flaw. The evidence in question was not offered or admitted during the guilt phase of trial. It was admitted during the punishment phase of the trial and as a result was not inadmissible on the theory that constituted inadmissible extraneous misconduct on the part of [Petitioner]. Consequently such an objection would have been properly overruled if one had been lodged and no prejudice to [Petitioner] had been demonstrated [with] respect to this assertion.

(ECF No. 14-32 at 16).

Petitioner has not adequately rebutted the strategic reason given by counsel for not objecting or submitting a limiting instruction to the court. Again, trial counsel generally have broad discretion when it comes to deciding how best to proceed strategically, with such choices being virtually unchallengeable. *Strickland*, 466 U.S. at 673. And counsel's performance cannot be considered deficient or prejudicial if counsel fails to lodge a futile motion or objection. *Roberts*, 681 F.3d at 612.

Counsel correctly explained that the evidence in question presented at the punishment phase would clearly have been admitted whether or not he lodged an objection. Nothing in Texas law requires that there be a final conviction in order for extraneous offenses to be admissible at the punishment phase of trial. *Hogue v. Johnson*, 131 F.3d 466, 478 n. 16 (5th Cir. 1997). Nor does the prosecution need to prove beyond a reasonable doubt that the defendant

committed the unadjudicated extraneous offenses entered into evidence at the punishment phase. *Turner v. Johnson,* 106 F.3d 1178, 1189 (5th Cir. 1997). Consequently, Petitioner has not shown that the state court's rejection of this claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103. Relief is denied.

D. Appellate Counsel (Claim 7)

In his seventh allegation, Petitioner contends he received ineffective assistance of counsel during his direct appeal proceedings. A criminal defendant is constitutionally entitled to effective assistance of appellate counsel when he has a right to appeal under state law. *Evitts v. Lucey*, 469 U.S. 387 (1985); *United States v. Phillips*, 210 F.3d 345, 348 (5th Cir. 2000). The familiar standard set out in *Strickland* to prove that counsel rendered unconstitutionally ineffective assistance applies equally to both trial and appellate attorneys. *Smith v. Robbins*, 528 U.S. 259, 285 (2000); *Dorsey v. Stephens*, 720 F.3d 309, 319 (5th Cir. 2013). Thus, to obtain relief, Petitioner must demonstrate that (1) appellate counsel's conduct was objectively unreasonable under then-current legal standards, and (2) there is a reasonable probability that, but for appellate counsel's deficient performance, the outcome of Petitioner's appeal would have been different. *See Robbins*, 528 U.S. at 285; *Higgins v. Cain*, 720 F.3d 255, 260-61 (5th Cir. 2015). Petitioner does not meet this requirement.

Petitioner contends appellate counsel was ineffective for failing to adequately litigate the Confrontation Clause issue on direct appeal. Had counsel clearly explained Deputy Vijil's testimony concerning Barbara Sattiewhite's statements, Petitioner contends, the results of his direct appeal proceedings would have been different. As discussed in the previous section, however, Petitioner's Confrontation Clause objection was properly denied by the trial court.

And appellate counsel is not required to raise every possible non-frivolous claim on appeal. *See Jones v. Barnes*, 463 U.S. 745, 751-52 (1983) ("Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.").

Because the allegation in question is without merit, appellate counsel was not deficient for failing to brief the issue further. For the same reason, there is no likelihood Petitioner would have obtained relief had the issue been briefed differently, and therefore no prejudice was caused by appellate counsel's failure to do so. Petitioner's allegation concerning appellate counsel was rejected by the state court during his state habeas proceedings, and Petitioner has not shown this rejection on the merits to be contrary to, or an unreasonable application of, the *Strickland* standard. *Richter*, 562 U.S. at 101. Federal habeas relief is therefore denied.

E. Cumulative Error (Claim 8)

Petitioner's eighth claim for relief reiterates his previous allegations and argues that the cumulative effect of all the errors denied him a fair trial, direct appeal, and state habeas corpus proceeding.[6] But as discussed throughout this opinion, Petitioner has not demonstrated that *any* constitutional error occurred. The Fifth Circuit has made it clear that cumulative error analysis is only appropriate where there is error to cumulate. *Derden v. McNeel*, 938 F.2d 605, 609 (5th Cir. 1991); *United States v. $9,041,598.68*, 163 F.3d 238, 250 (5th Cir. 1999). Allegations that, alone, are insufficient to demonstrate constitutional error cannot be combined to create reversible error. *United States v. Moye*, 951 F.2d 59, 63 n. 7 (5th Cir. 1992) ("Because we find no merit to

[6] In his memorandum in support, Petitioner also challenges his pre-trial bail amount as excessive. (ECF No. 8 at 29). Petitioner's subsequent conviction renders his challenge to the bail amount moot because even if he were to prevail on the issue, no relief is available. *See Murphy v. Hunt*, 455 U.S. 478, 481-82 (1982) (defendant's conviction rendered constitutional claim to right to pretrial bail moot). For this reason, Petitioner later waived this allegation in his reply brief. (ECF No. 16 at 20). As such, the Court will only address Petitioner's cumulative-error claim.

any of Moye's arguments of error, his claim of cumulative error must also fail."); *Mullen v. Blackburn*, 808 F.2d 1143, 1147 (5th Cir. 1987) ("Twenty times zero equals zero."). There is therefore nothing for this Court to cumulate.

Furthermore, even assuming Petitioner had established some sort of constitutional error, federal habeas relief would still not be warranted because the cumulative error doctrine provides habeas relief only where the constitutional errors committed in the state court so fatally infected the trial that they violate the trial's fundamental fairness. *Derden*, 938 F.2d at 609. Petitioner has made no such demonstration.

F. Actual Innocence (Claim 9)

In his supplemental memorandum in support (ECF No. 28), Petitioner contends he is actually innocent of the charged offense. According to Petitioner, a post-conviction affidavit provided by his mother, Barbara Sattiewhite, establishes the falsity of testimony given by Deputy Vijil, which in turn demonstrates his innocence based on the "one-witness rule." Because Petitioner's innocence claim is not a cognizable federal habeas claim, however, the merits of the allegation need not be reached.

"Freestanding" claims of actual innocence, such as the allegation now before the Court, do not provide a valid basis for federal habeas relief. *Dowthitt v. Johnson*, 230 F.3d 733, 741 (5th Cir. 2000) (citing *Herrera v. Collins*, 506 U.S. 390, 400 (1993)). "This rule is grounded in the principle that federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution—not to correct errors of fact." *Herrera*, 506 U.S. at 399. Although the *Herrera* court left open the question of whether, in a capital case, "a truly persuasive demonstration of 'actual innocence' made after trial would . . . warrant habeas relief if there were no state avenue open to process such a claim," 506 U.S. at 417, the Fifth Circuit has

consistently rejected this theory.[7] *See Cantu v. Thaler*, 632 F.3d 157, 167 (5th Cir. 2011); *In re Swearingen*, 556 F.3d 344, 348 (5th Cir. 2009); *Graves v. Cockrell*, 351 F.3d 143, 151 (5th Cir. 2003) (collecting cases). Because the Fifth Circuit does not recognize freestanding claims of actual innocence on federal habeas review, Petitioner's allegation must be rejected.

Alternatively, even if an actual-innocence claim could be the basis for federal relief, it would only be cognizable if there were no state procedure available for making the claim. *Herrera*, 506 U.S. at 417; *Graves*, 351 F.3d at 151. Such is not the situation in Texas, where state procedures are available to raise claims in clemency proceedings or a state habeas petition. *See* Tex. Crim. Proc. Code art. 48.01 (West 2020); *Lucas v. Johnson*, 132 F.3d 1069, 1075 (5th Cir. 1998). Indeed, this allegation was raised by Petitioner during his second state habeas corpus proceeding and ultimately rejected by the Texas Court of Criminal Appeals. Thus, Petitioner's freestanding claim of actual innocence must be denied.

G. Petitioner's Remaining Allegations (Claims 10-12)

Petitioner's final three allegations stem from his actual-innocence claim discussed above. Specifically, Petitioner contends: (1) his conviction was based on false testimony presented by the State concerning statements made by Barbara Sattiewhite, Petitioner's mother, (2) his trial counsel rendered ineffective assistance by failing to discover and present the actual statements made by Sattiewhite, and (3) these statements were impermissibly suppressed by the State. As discussed below, these allegations are subject to denial by this Court as procedurally defaulted because the state court dismissed the claims as an abuse of the writ.

Procedural default occurs where a state court clearly and expressly bases its dismissal of a claim on a state procedural rule, and that state procedural rule provides an independent and

[7] In later revisiting the issue of actual innocence, the Supreme Court declined to resolve the question of whether freestanding actual-innocence claims are to be recognized in federal habeas proceedings. *House v. Bell*, 547 U.S. 518, 555 (2006).

adequate ground for the dismissal. *Davila*, 582 U.S. at 527; *Canales v. Stephens*, 765 F.3d 551, 562 (5th Cir. 2014) (citing *Maples v. Thomas*, 565 U.S. 266, 280 (2012)). The "independent" and "adequate" requirements are satisfied where the state court clearly indicates that its dismissal of a particular claim rests upon a state ground that bars relief, and that bar is strictly and regularly followed by the state courts. *Roberts*, 681 F.3d at 604 (citing *Finley v. Johnson*, 243 F.3d 215, 218 (5th Cir. 2001)). This doctrine ensures that federal courts give proper respect to state procedural rules. *Coleman*, 501 U.S. at 750-51.

Here, the Texas Court of Criminal Appeals refused to consider Petitioner's allegations when he raised them for the first time in his second state habeas application, dismissing the application as subsequent under Texas Code of Criminal Procedure Article 11.07 § 4(a)-(c). (ECF Nos. 30-1, 30-5 at 4-45). That statute, codifying the Texas "abuse of the writ" doctrine, has repeatedly been held by the Fifth Circuit to constitute an "adequate and independent" state procedural ground that bars federal habeas review. *Ford*, 910 F.3d at 237; *Canales*, 765 F.3d at 566; *Smith v. Johnson*, 216 F.3d 521, 523 (5th Cir. 2000); *Fearance v. Scott*, 56 F.3d 633, 642 (5th Cir. 1995).

Consequently, Petitioner is precluded from federal habeas review unless he can show cause for the default and resulting prejudice, or demonstrate that the Court's failure to consider his claim will result in a "fundamental miscarriage of justice." *Coleman*, 501 U.S. at 750-51; *Busby v. Dretke*, 359 F.3d 708, 718 (5th Cir. 2004). Petitioner did not attempt to demonstrate cause and prejudice to excuse the default in his supplemental memorandum in support. (ECF No. 28). Nor has he made any attempt to demonstrate that the Court's denial of the claim will result in a "fundamental miscarriage of justice." Thus, circuit precedent compels the denial of Petitioner's claims as procedurally defaulted.

To overcome this procedural hurdle, Petitioner contends that his actual-innocence claim should be used as a gateway to obtain federal review under the standard set forth in *Schlup v. Delo*, 513 U.S. 298, 329 (1995). However, "tenable actual-innocence gateway pleas are rare," and, under *Schlup*'s demanding standard, the gateway should open only when a petitioner presents new "evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." *McQuiggin v. Perkins*, 569 U.S. 383, 386, 401 (2013) (*quoting Schlup*, 513 U.S. at 316). In other words, Petitioner is required to produce "*new* reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence"—sufficient to persuade the district court that "no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 324.

Petitioner does not meet this demanding standard. Indeed, Petitioner's actual-innocence argument relies exclusively on evidence—a statement from his mother, Barbara Sattiewhite—that was available at the time of Petitioner's trial. This does not constitute "*new* reliable evidence," nor does it establish Petitioner's innocence. Moreover, Petitioner's argument was already rejected by the state court during Petitioner's state habeas proceedings and does not undermine confidence in the outcome of his trial. Consequently, the procedural default of any claims raised in Petitioner's federal habeas petition will be not excused under the actual-innocence exception established in *Schlup*.

V. Certificate of Appealability

The Court must now determine whether to issue a certificate of appealability (COA). *See* Rule 11(a) of the Rules Governing § 2254 Proceedings; *Miller–El v. Cockrell*, 537 U.S. 322, 335-36 (2003) (citing 28 U.S.C. § 2253(c)(1)). A COA may issue only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The

Supreme Court has explained that the showing required under § 2253(c)(2) is straightforward when a district court has rejected a petitioner's constitutional claims on the merits: 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). This requires a petitioner to show "that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller–El*, 537 U.S. at 336 (citation omitted).

The issue becomes somewhat more complicated when the district court denies relief on procedural grounds. *Id.* In that case, the petitioner seeking COA must show both "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." *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack,* 529 U.S. at 484). In other words, a COA should issue if the petitioner *not only* shows that the lower court's procedural ruling is debatable among jurists of reason, but also makes a substantial showing of the denial of a constitutional right.

A district court may deny a COA *sua sponte* without requiring further briefing or argument. *See Alexander v. Johnson,* 211 F.3d 895, 898 (5th Cir. 2000). For the reasons set forth above, the Court concludes that jurists of reason would not debate the conclusion that Petitioner was not entitled to federal habeas relief. As such, a COA will not issue.

VI. Conclusion and Order

After careful consideration, the Court concludes that Petitioner's Claims 1, 10, 11, and 12 are procedurally barred from federal habeas review. Concerning the remainder of Petitioner's allegations, Petitioner has failed to establish that the state court's rejection of the allegations on

the merits during his state habeas corpus proceedings was either (1) contrary to, or involved an unreasonable application of, clearly established federal law. as determined by the Supreme Court of the United States, or (2) based on an unreasonable determination of the facts in light of the evidence presented in the petitioner's state trial, appellate, and habeas corpus proceedings. As a result, Petitioner's federal habeas corpus petition does not warrant federal habeas corpus relief.

Accordingly, based on the foregoing reasons, **IT IS HEREBY ORDERED** that:

1. Federal habeas corpus relief is **DENIED** and Petitioner Avery B. Crawford's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED WITH PREJUDICE**;

2. No Certificate of Appealability shall issue in this case; and

3. All remaining motions, if any, are **DENIED**, and this case is now **CLOSED**.

SIGNED this the 22 day of April, 2024.

ORLANDO L. GARCIA
United States District Judge

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