IN THE SUPREME COURT
OF THE UNITED STATES

IN RE: ANDRE MONTEEK EDWARDS
No._____

ON EXTRAORDINARY WRIT OF MANDAMUS TO:

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX #1: EDWARDS V. WINN, 2022 U.S. DIST. LEXIS 61234

APPENDIX #11: ECF No. 44, PG. 2

APPENDIX #12: ECF No. 49, PAGEID.3827

APPENDIX #13: COURT OF APPEALS DOCKET #22-1701, ENTRY NO. 8, PGS. 36-37

APPENDIX #15: EDWARDS V. NAGY, 2023 U.S. APP. LEXIS 6222

APPENDIX #19: IN RE EDWARDS, 2024 U.S. APP. LEXIS 19726

APPENDIX #22: COURT OF APPEALS DOCKET #23-2064

APPENDIX #24: TRANSCRIPTS EXCERPTS, AUGUST 20, 2009

APPENDIX #25: TRANSCRIPTS EXCERPTS, AUGUST 27, 2009

APPENDIX #31: TRANSCRIPTS EXCERPTS, AUGUST 28, 2009

APPENDIX #34: ECF No. 2, PGS. 119-126

APPENDIX #42: MARCH 14, 2025 DECISION OF THE SIXTH CIRCUIT

Neutral
As of: March 27, 2025 4:41 PM Z

Edwards v. Winn

United States District Court for the Eastern District of Michigan, Southern Division

March 31, 2022, Decided; March 31, 2022, Filed

Case Number: 2:19-CV-10376

Reporter
2022 U.S. Dist. LEXIS 61234 *; 2022 WL 996011

ANDRE MONTEEK EDWARDS, Petitioner, v. THOMAS WINN, Respondent.

Subsequent History: Reconsideration denied by, Motion denied by, As moot *Edwards v. Winn, 2022 U.S. Dist. LEXIS 112406, 2022 WL 2287924 (E.D. Mich., June 24, 2022)*

Reconsideration denied by, Motion denied by, Certificate of appealability denied *Edwards v. Winn, 2025 U.S. Dist. LEXIS 39660 (E.D. Mich., Mar. 5, 2025)*

Prior History: *Edwards v. Winn, 2020 U.S. Dist. LEXIS 39030 (E.D. Mich., Mar. 6, 2020)*

Core Terms

ineffective, self-defense, shooting, argues, state court, gun, defense counsel, street, assistance of counsel, sweatshirt, killing, fails, murder, prosecutorial misconduct, conflicting interest, habeas corpus, trial court, plea offer, manslaughter, cumulative, default, firearm, prosecutor's argument, shift a burden, second-degree, certificate, felony, parked, raises, reasonable inference

Counsel: **[*1]** Andre Monteek Edwards, Plaintiff, Pro se, JACKSON, MI.

For Thomas Winn, named as Warden Winn, Defendant: Andrea M. Christensen-Brown, Michigan Department of Attorney General, G. Mennen Williams Building, 4th Floor, Lansing, MI; Scott Robert Shimkus, Michigan Department of Attorney General, Lasnsing, MI.

Judges: HON. Denise Page Hood, United States District Judge.

Opinion by: Denise Page Hood

Opinion

OPINION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS, DENYING CERTIFICATE OF APPEALABILITY, AND GRANTING LEAVE TO PROCEED ON APPEAL *IN FORMA PAUPERIS*

Michigan state prisoner Andre Monteek Edwards filed a petition for a writ of habeas corpus under *28 U.S.C. § 2254*. He challenges convictions for second-degree murder, *Mich. Comp. Laws § 750.317*; felon in possession of a firearm, *Mich. Comp. Laws § 750.224f*; and possession of a firearm during the commission of a felony, *Mich. Comp. Laws § 750.227b*. He raises sixteen claims for relief (fifteen in original petition and one in a supplemental petition).[1] Respondent argues that multiple claims are procedurally defaulted and that all of Petitioner's claims are meritless. For the reasons stated, the Court denies the petition and denies a certificate of appealability. The Court grants Petitioner leave to appeal *in forma pauperis*.

I. Background

Petitioner's convictions arise **[*2]** from the shooting death of Tyrell Lee. The shooting occurred on October 9, 2008, in Flint, Michigan. Police officer Thomas Tucker responded to a report of shots fired in the area of 906 East York Street. When he arrived, he saw a man, later identified as Tyrell Lee, lying in the yard suffering from a gunshot wound to the chest. A grey Saturn vehicle was parked in the driveway. Tucker observed that the driver's side door was open and both the door and the

[1] Petitioner has also filed two motions to amend. (ECF No. 32, 36.) The Court construes the motions as motions to supplement the petition because neither seeks to add new claims for relief. Instead, Petitioner provides further argument in support of claims already raised. The Court grants both motions.

APPENDIX #1

driver's seat were stained with blood. Lee was transported to the hospital where he was declared dead.

An evidence technician collected a 9 mm spent shell casing from near the right front tire of the Saturn.

Michael Johnson testified that he and his brother Rickey Johnson lived at 906 East York Street on October 9, 2008. At about 4:00 a.m., he heard Lee yelling from outside. When Johnson went outside he saw Lee bleeding from the chest. The first thing Lee said was "...Yog, shot me." (ECF No. 14-14, PageID.1184.) Johnson testified that Petitioner was known as "Yogi" or "Yog." (*Id.*) Rickey Johnson testified that after he heard the gunshot, he heard Petitioner say "don't put your ... hands on me like that." (*Id.* at 1231.)

Petitioner was **[*3]** the sole defense witness. He testified that during the early morning hours of October 9, 2008, he was walking two dogs in the area of East York Street. It was not uncommon for him to be out in the middle of the night or for others in that neighborhood to be out then as well. He saw Lee, whom he had known for about 15 years, sitting in a Saturn SUV. Petitioner tied his dogs up across the street and then got into the passenger side of the car. Petitioner saw Lee reach down to the floorboard and come back up with a gun, which Lee placed on his lap. Lee ordered Petitioner out of his car, but before Petitioner could leave Lee grabbed Petitioner's throat. Petitioner testified that he was unable to move while Lee was choking him. Lee then started punching Petitioner, which loosened Lee's grip on Petitioner's throat, allowing Petitioner to breathe again. Petitioner wanted to exit the vehicle but was sure Lee would shoot him in the back. Petitioner grabbed the gun from Lee's lap. Lee punched him several more times. Petitioner testified that he wanted to escape but did not think he could before Lee punched him again. So, Petitioner testified, he fired the gun just as a distraction to give himself **[*4]** time to get out of the car. Petitioner did not know Lee had been shot. He exited the car, untied his dogs, and threw the gun in a vacant field. He was arrested one week later.

Following a jury trial in Genesee County Circuit Court, Petitioner was convicted of second-degree murder, being a felon in possession of a firearm, and felony firearm. On October 16, 2009, he was sentenced as a fourth habitual offender, Mich. Comp. Laws § 769.12, to concurrent sentences of 50 to 75 years for second-degree murder and 5 to 15 for felon in possession, to be served consecutively to 2 years for felony-firearm.

Petitioner filed an appeal of right, raising these claims: (i) the trial court erred in instructing the jury it could consider whether Petitioner had a duty to retreat; (ii) the prosecutor improperly disparaged defense counsel and defendant; (iii) Petitioner received ineffective assistance of counsel; and (iv) the cumulative effect of the errors denied Petitioner his right to a fair trial. Petitioner filed a pro per supplemental brief raising additional claims of prosecutorial misconduct and ineffective assistance of counsel and a claim that his right to a public trial was violated when the court closed the courtroom **[*5]** during *voir dire*. The Michigan Court of Appeals affirmed Petitioner's convictions. *People v. Edwards, No. 294826, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729 (Mich. Ct. App. June 21, 2011)*. Petitioner filed an application for leave to appeal in the Michigan Supreme Court, raising the same claims raised in the Michigan Court of Appeals, five additional ineffective assistance of counsel claims, and one prosecutorial misconduct claim. The Michigan Supreme Court denied leave to appeal, *People v. Edwards, 493 Mich. 881, 821 N.W.2d 885 (Mich. Nov. 7, 2012)*, and denied a motion for reconsideration. *People v. Edwards, 493 Mich. 931, 825 N.W.2d 86 (Mich. Jan. 25, 2013)*.

Petitioner then filed a motion for relief from judgment in the trial court. He sought relief on the grounds that counsel was ineffective in failing to object to the prosecution's burden shifting, failing to conduct a reasonable investigation, misrepresenting the facts in evidence, denying Petitioner his right to testify on his own behalf, failing to file a motion to quash, and giving erroneous advice regarding Petitioner's self-defense claim. He also argued that appellate counsel was ineffective and that the cumulative effect of these errors denied him his right to a fair trial. The trial court denied the motion. *See* Op. & Order Deny. Mot. For Relief from J., *People v. Edwards*, No. 08-023861-FC (Genesee County Cir. Ct. Aug. 14, 2017) (ECF No. 14-28). The Michigan **[*6]** Court of Appeals and Michigan Supreme Court denied Petitioner leave to appeal. *People v. Edwards, No. 341475, 2018 Mich. App. LEXIS 2229 (Mich. Ct. App. May 11, 2018)*; *People v. Edwards 503 Mich. 929, 920 N.W.2d 593 (Mich. 2018)*.

Petitioner then filed the pending petition for a writ of habeas corpus, and, later, a supplement to the petition. The petition raises these claims:

> I. Trial counsel was ineffective in failing to represent Defendant's complete defense and failing to present evidence that would have changed the outcome of trial.
>
> II. Trial counsel actively represented a conflict of interest by creating a defense that lapsed [sic] his

APPENDIX #2

representation and affected the manner in which counsel conducted the defense.

III. Trial counsel failed to consult with Edwards and advise him of counsel's decision to alter the defense.

IV. Trial counsel failed to present eyewitness testimony of Defendant's injuries.

V. Counsel failed to request instructions on the lesser included offense of involuntary manslaughter.

VI. Trial counsel was ineffective when he failed to conduct a reasonable investigation.

VII. Trial counsel was ineffective when he misrepresented facts in evidence.

VIII. Trial counsel denied Edwards his due process right to testify in his own behalf.

IX. Trial counsel's advice regarding the self defense claim constituted deficient performance **[*7]** that caused Edwards to reject a plea offer.

X. Trial counsel was ineffective when he failed to file a motion to quash.

XI. Trial counsel was ineffective when he failed to object to the prosecutor's improper burden shifting.

XII. The prosecutor committed misconduct such that a new trial is required when he argued facts not of the record.

XIII. The prosecutor unconstitutionally shifted the burden of proof in violation of the *Due Process Clause*.

XIV. The cumulative effect of these errors requires that Edwards be granted a new trial.

XV. Edwards carried his burden to excuse any alleged procedural default by demonstrating "actual innocence," "cause", & "prejudice", and ineffective assistance of appellate counsel.

XVI. Trial counsel was ineffective in failing to object to the prosecutor's misconduct.

II. Standard of Review

Review of this case is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Under the AEDPA, a state prisoner is entitled to a writ of habeas corpus only if he can show that the state court's adjudication of his claims —

> (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 **[*8]** decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

A decision of a state court is "contrary to" clearly established 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 the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor, 529 U.S. 362, 405, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000)*. An "unreasonable application" occurs when "a state court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case." *Id. at 408*. "[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Id. at 411*.

"[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 v. Richter, 562 U.S. 86, 101, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011)*. The Supreme Court has emphasized "that even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Id. at 102*. Further, "a habeas court must determine what **[*9]** arguments or theories supported or ... could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of th[e Supreme] Court." *Id.*

A state court's factual determinations are entitled to a presumption of correctness on federal habeas review. See *28 U.S.C. § 2254(e)(1)*. A petitioner may rebut this presumption with clear and convincing evidence. *See Warren v. Smith, 161 F.3d 358, 360-61 (6th Cir. 1998)*. Moreover, habeas review is "limited to the record that was before the state court." *Cullen v. Pinholster, 563 U.S. 170, 181, 131 S. Ct. 1388, 179 L. Ed. 2d 557 (2011)*.

III. Discussion

A. Ineffective Assistance of Counsel (Claims I

APPENDIX #3

through XI, XVI)

Petitioner raises twelve claims of ineffective assistance of counsel. Respondent argues that six of these claims are procedurally defaulted and that all of the claims are meritless.

Under the doctrine of procedural default, a federal court generally may not review claims that a habeas petitioner has defaulted in state court "pursuant to an independent and adequate state procedural rule." *Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991)*. The procedural default doctrine is not jurisdictional and the Court may bypass this question where proceeding directly to the merits is more efficient. *Lambrix v. Singletary, 520 U.S. 518, 525, 117 S. Ct. 1517, 137 L. Ed. 2d 771 (1997)* ("Judicial economy **[*10]** might counsel giving the [merits] question priority ..., if it were easily resolvable against the habeas petitioner, whereas the procedural-bar issue involved complicated issues of state law."). The Court will proceed to the merits of Petitioner's claims without deciding the procedural-default issue.

A violation of the *Sixth Amendment* right to effective assistance of counsel is established where an attorney's performance was deficient and the deficient performance prejudiced the defense. *Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)*. An attorney is deficient if "counsel's representation fell below an objective standard of reasonableness." *Id. at 688*. To establish that an attorney's deficient performance prejudiced the defense, the petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id. at 694*.

The standard for obtaining habeas corpus relief is "'difficult to meet.'" *White v. Woodall, 572 U.S. 415, 419, 134 S. Ct. 1697, 188 L. Ed. 2d 698 (2014)* (quoting *Metrish v. Lancaster, 569 U.S. 351, 358, 133 S. Ct. 1781, 185 L. Ed. 2d 988 (2013)*). In the context of an ineffective assistance of counsel claim under *Strickland*, the standard is "all the more difficult" because "[t]he standards created by *Strickland* and *§ 2254(d)* are both highly deferential and when the two apply **[*11]** in tandem, review is doubly so." *Harrington, 562 U.S. at 105* (internal citations and quotation marks omitted). "[T]he question is not whether counsel's actions were reasonable"; but whether "there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.*

1.

First, Petitioner maintains that counsel failed to present a complete defense. He argues that counsel failed to argue that the victim's vehicle was parked on the street at the time of the shooting, rather than in the driveway of 906 East York. In his recorded police interview which was played for the jury, Petitioner stated that the victim's vehicle was parked in the street. So this contention, in fact, was placed before the jury. Police photographs showed the victim's vehicle in the driveway and multiple witnesses also testified it was parked in the driveway. It was reasonable for defense counsel not to further highlight testimony that conflicted with photographic evidence and witness testimony. Petitioner also fails to explain what additional evidence could have been admitted to show the car's location. In addition, whether the vehicle was in the street or the driveway does not have any measurable impact on the defense. Petitioner admitted **[*12]** to firing a gun while in the car with Lee. He fails to explain how the exact location of the car impacted the strength of his defense.

Petitioner also claims counsel erred in failing to present evidence regarding a second shell casing. The victim's mother, Maxine Lee, was given a shell casing by her son Ali. Ali told her he found it on the street near where Petitioner said Lee's vehicle was located. In support of this claim, Petitioner submitted an unnotarized statement from Maxine Lee. The Michigan Court of Appeals declined to consider Maxine Lee's statement because it did not appear in the trial court record and Petitioner failed to develop an evidentiary record regarding this claim. Additionally, the state court held that defense counsel "competently, professionally and thoroughly presented defendant's self-defense theory to the jury." *Edwards, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729 at *11*.

It was also reasonable for defense counsel not to present evidence of a second shell casing. Maxine Lee did not find the casing herself and therefore could not personally attest to where and when it was found. In addition, it is unclear how evidence of a second shell casing would have assisted the defense. The Michigan Court of Appeals' denial of **[*13]** this claim was reasonable.

2.

APPENDIX #4

Petitioner argues that counsel was ineffective because he was loyal to the prosecution and labored under a conflict of interest.

A criminal defendant is entitled to the effective assistance of counsel free from conflict. Holloway v. Arkansas, 435 U.S. 475, 483-84, 98 S. Ct. 1173, 55 L. Ed. 2d 426 (1978). In Cuyler v. Sullivan, 446 U.S. 335, 345-50, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980), the Supreme Court held that prejudice is presumed if counsel is burdened by an actual conflict of interest. The presumption of prejudice applies only if the defendant demonstrates that counsel: (1) "actively represented conflicting interests;" *and* (2) that "an actual conflict of interest adversely affected his lawyer's performance." *Id. at 350, 348*. The Michigan Court of Appeals held that Petitioner failed to show "that any conflict of interest prevented defense counsel from suitably and vigorously representing" him. Edwards, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729 at *11. In his habeas petition, Petitioner fails to identify a conflict of interest and his allegation that counsel was concerned with supporting the prosecutor's case rather than presenting a strong defense is unsupported in the record. Habeas relief is denied on this claim.

3.

In his third ineffective assistance of counsel claim, Petitioner argues that defense counsel altered the defense theory from accident to self-defense without discussing **[*14]** the change with Petitioner and that the accident defense was the stronger defense and consistent with his police statement and trial testimony.

The trial court denied this claim when it denied Petitioner's motion for relief from judgment. (ECF No. 14-28, PageID.1988-89.) This decision was not contrary to, or an unreasonable application of, Supreme Court precedent. Counsel cannot be faulted for choosing the stronger of two defenses. Petitioner testified that he intentionally pulled the trigger because he wanted to give himself a chance to exit the vehicle. According to his testimony, he did not intend to shoot and kill the victim but he did intend to fire the gun. Self-defense better matched the defense's theory of the case — that Petitioner acted intentionally but justifiably. Counsel did not perform deficiently in choosing to present the defense which was supported by Petitioner's own trial testimony. *Accord* Graves v. Howerton, 2013 U.S. App. LEXIS 23568, 2013 WL 6068592, *3 (6th Cir. Feb. 28, 2013) (holding counsel was not ineffective for strategic decision to present self-defense theory because theory of self-defense aligned with defendant's own testimony).

Further, Petitioner has not shown he was prejudiced by counsel's decision. When an intentional act must be established **[*15]** as an element of a crime — as is the case with second-degree murder — satisfying the elements of the crime precludes an accident defense. *See* People v. Hess, 214 Mich. App. 33, 37, 543 N.W.2d 332 (1995). That is, accident is not regarded as an affirmative defense; rather, it constitutes the negation of an element. Jurors were instructed on the elements of second-degree murder including the requirement that the prosecutor prove beyond a reasonable doubt that Petitioner "intended to kill, or he intended to do great bodily harm to Tyrell Lee, or he knowingly created a very high risk of death or great bodily harm, knowing that death or such harm would be the likely result of his actions." (ECF No. 14-17, PageID.1742.) Jurors are presumed to follow their instructions. Weeks v. Angelone, 528 U.S. 225, 234, 120 S. Ct. 727, 145 L. Ed. 2d 727 (2000). Here, by finding Petitioner guilty of second-degree murder, the jury necessarily found that Petitioner committed an intentional act. Consequently, the jury necessarily found that the killing was not accidental. Therefore, Petitioner fails to establish prejudice.

4.

Next, Petitioner claims that counsel was ineffective for failing to request an involuntary manslaughter instruction. The Michigan Court of Appeals denied this claim based upon its holding that the facts did not support such **[*16]** an instruction. Edwards, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729 at *12. The state court explained that involuntary manslaughter is "the killing of another without malice and unintentionally, but in doing some unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm." *Id.* Petitioner consistently testified that he intentionally pulled the trigger. The "act of pulling the trigger on a gun in close proximity to the victim amounted to an unlawful act that 'tend[ed] to cause death or great bodily harm,' rendering inapplicable the elements of involuntary manslaughter." *Id.*

The state court's decision on the propriety of a jury instruction is a matter of state law the Court is bound to follow. Rashad v. Lafler, 675 F.3d 564, 569 (6th Cir. 2012). Thus, Petitioner cannot show that counsel was ineffective in failing to request the involuntary

APPENDIX #5

manslaughter instruction where the Michigan Court of Appeals held that the instruction was not justified under state law.

5.

Petitioner next argues that counsel was ineffective in failing to conduct a reasonable investigation. Much of this claim focuses on counsel's decision to present a self-defense argument. As discussed above, Petitioner has not shown that counsel was ineffective for choosing to present a self-defense **[*17]** argument. Petitioner also fails to show what additional information counsel could have obtained. The record shows that counsel consulted with Petitioner, prepared a cogent and competent defense, and was well-prepared to present the case.

Petitioner also argues that counsel should have investigated the location of Lee's car at the time of the shooting. As Petitioner points out, only he and Lee were present at the shooting. The jury heard Petitioner's statement about where the car was located through his interview with police and his testimony. Petitioner fails to show what additional information counsel could have obtained. *See Wogenstahl v. Mitchell, 668 F.3d 307, 335-36 (6th Cir. 2012)* ("[C]onclusory and perfunctory ... claims of [ineffective assistance of counsel] are insufficient to overcome the presumption of reasonable professional assistance and are insufficient to warrant habeas relief.").

Finally, Petitioner maintains that counsel was ineffective for failing to conduct a proper investigation of the victim's reputation. At the same time, he acknowledges that counsel arranged for an investigator to look into the victim's character and reputation in the neighborhood. Petitioner fails to allege what additional steps counsel should have taken **[*18]** to investigate the victim. Petitioner fails to show the state court's denial of this claim was unreasonable.

6.

Petitioner argues that counsel performed deficiently for failing to present eyewitness testimony about Petitioner's injuries. Specifically, he argues that counsel should have called Carolyn Edwards and Victoria McCree. In support of this argument, Petitioner submitted letters from Carolyn Edwards (his mother) and Victoria McCree. (ECF No. 2-2, PageID.255-57.) Neither letter is notarized. In her letter dated July 21, 2010, Carolyn Edwards writes that, on the morning of October 9, 2008, she observed her son with a scar under his eye, facial swelling, and bruises around his neck. (*Id.* at 255.) The second letter, from Victoria McCree, is undated. (*Id.* at 257.) McCree wrote that "[a]fter everything happened," she saw Petitioner with a black mark under his eye, two broken front teeth, and bruising on his neck as if he had been choked. (*Id.*)

The letters are of questionable reliability because they are not notarized, McCree's is undated, and Carolyn Edwards' letter was written over 18 months after the shooting. *See Clark v. Waller, 490 F.3d 551, 553-558 (6th Cir. 2007)* (unauthenticated affidavit from person petitioner claimed should have **[*19]** been called as a defense witness could not support ineffective assistance of counsel claim). Additionally, counsel provided a reasonable explanation for not calling these witnesses. He explained that McCree was an unwilling witness afraid to testify because her house had been shot up after the killing. (ECF No. 202, PageID.283.) He declined to call Petitioner's mother because he concluded she would not have done well on cross-examination and believed she might hurt the defense. (*Id.*) Based upon these considerations, it was not unreasonable for the state court to conclude that counsel's decision not to call these witnesses was the result of reasonable trial strategy.

7.

Petitioner argues that counsel was ineffective for promising the jury that they would hear testimony that the victim was "[n]ot a good guy", but failing to present that testimony. (ECF No. 14-13, PageID.1038.) In fact, counsel elicited testimony that the victim was "hard hitting" and "acts out — acts out ... to people he know[s]." (ECF No. 14-16, PageID.1585.) Petitioner fails to show that counsel performed deficiently by not presenting additional testimony on the victim's reputation or that he was prejudiced by counsel's **[*20]** decision.

8.

Petitioner maintains that counsel's failure to adequately assess the strength of a self-defense claim and failure to investigate Petitioner's defense of accident negatively impacted plea negotiations. The *Sixth Amendment* right to counsel extends to the plea-bargaining process.

APPENDIX #6

Lafler v. Cooper, 566 U.S. 156, 163, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012). A criminal defendant is "'entitled to the effective assistance of competent counsel'" during plea negotiations. *Id. at 162* (quoting *McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970)*). To establish prejudice in the context of a rejected plea offer, a defendant must show that but for the ineffective advice of counsel, there is a reasonable probability that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances. *Id. at 164*. The defendant must also show that the court would have accepted its terms, and that the conviction or sentence, or both, would have been less severe than under the judgment and sentence that in fact were imposed. *Id.*

At a pretrial hearing held a day before trial, defense counsel placed on the record the details of plea negotiations. (ECF No. 14-11, PageID.803-806.) The prosecutor originally offered a plea to manslaughter as a second habitual offender, and felony firearm, with a guidelines score **[*21]** of 36 to 88 months or possibly 43 to 107 months plus two years for felony firearm. (*Id.* at 804.) Petitioner rejected that offer. The prosecutor then discussed the possibility of a plea to manslaughter without the habitual offender enhancement and an agreement to drop the felony- firearm charge, but the prosecutor was unable to get approval for that offer. (*Id.* at 805.) The prosecutor indicated the original offer was still available, but Petitioner remained unwilling to accept that offer. (*Id.* at 804-05.) Defense counsel indicated on the record that he and Petitioner discussed the strengths and weaknesses of the prosecution's case when discussing the plea offers. (*Id.* at 804.) There is no evidence in the record that defense counsel promised Petitioner that he would succeed at trial, and that he should reject the plea offer. Counsel does not act ineffectively in evaluating a defendant's chances of acquittal if he proceeds to trial. Even if defense counsel made an "erroneous strategic prediction" concerning the likely outcome of the trial, this is not, by itself, proof of deficiency. *Lafler, 566 U.S. at 174*.

Petitioner maintains that, if counsel had undertaken adequate investigation, counsel would have been **[*22]** able to challenge all aspects of the prosecution's case and to secure a more favorable plea offer, which Petitioner would have accepted. Petitioner does not allege that counsel failed to communicate a plea offer to him nor does he establish that counsel incorrectly advised him on the law. In his affidavit, Petitioner details the complex plea negotiations undertaken. Counsel was clearly actively engaged in negotiations and mediated on Petitioner's behalf. Petitioner fails to substantiate his claim that, had counsel undertaken a more effective investigation, the prosecutor would have reassessed the strength of its case and determined a better plea offer was warranted. The trial court's decision that counsel was not ineffective in this regard is amply supported in the record.

9.

Counsel, Petitioner argues, also denied him the right to testify in his own defense. Petitioner does not assert that counsel prevented him from taking the stand because he did, in fact, testify in his own defense. Instead, Petitioner maintains that defense counsel did not ask questions which would have elicited testimony supporting his defense. In particular and, according to Petitioner's argument, most importantly, **[*23]** counsel did not ask Petitioner where the victim's car was parked when Petitioner entered the vehicle. Petitioner maintains that counsel steered the testimony in a different direction when it appeared Petitioner might testify as to the car's location.

The record does not support Petitioner's argument that counsel intentionally steered his testimony away from the car's location. But even if counsel did so, Petitioner fails to show how his defense would have been bolstered by his trial testimony that the vehicle was located in the street, particularly where, as here, Petitioner's statement to police included this information. Relief is denied on this claim.

10.

Petitioner maintains that counsel was ineffective for failing to challenge submission of the first-degree premeditated murder charge to the jury because it was not supported by sufficient evidence. The Sixth Circuit Court of Appeals has held that any error in the submission to a jury of a criminal charge is harmless where, as in this case, the defendant was acquitted of that charge. *Pyne v. Harry*, No. 18-2347, 2019 WL 2208303, at *3 (6th Cir. Apr. 2, 2019) (citing *Daniels v. Burke, 83 F.3d 760, 765 n.4 (6th Cir. 1996)*).

11.

Finally, Petitioner argues counsel was ineffective for

APPENDIX #7

failing to object to multiple instances of misconduct. As discussed below, Petitioner **[*24]** fails to show that the prosecutor committed misconduct. Counsel cannot be held ineffective for failing to object to conduct that was not improper. *See* Coley v. Bagley, 706 F.3d 741, 752 (6th Cir.2013) ("Omitting meritless arguments is neither professionally unreasonable nor prejudicial.").

B. Prosecutorial Misconduct

Petitioner next alleges that the prosecutor committed misconduct by arguing facts not supported by the evidence and improperly shifting the burden of proof.

A prosecutor's misconduct violates a criminal defendant's constitutional rights if it "'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2464, 91 L. Ed. 2d 144 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 643, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974)). Prosecutorial misconduct entails much more than conduct that is "undesirable or even universally condemned." Id. at 181 (internal quotation omitted). To constitute a due process violation, the conduct must have been "so egregious so as to render the entire trial fundamentally unfair." Byrd v. Collins, 209 F.3d 486, 529 (6th Cir. 2000) (citations omitted). The Darden standard "is a very general one, leaving courts 'more leeway ... in reaching outcomes in case-by-case determinations.'" Parker v. Matthews, 567 U.S. 37, 48, 132 S. Ct. 2148, 183 L. Ed. 2d 32 (2012) (quoting Yarborough v. Alvarado, 541 U.S. 652, 664, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004) (alteration in original)). "That leeway increases in assessing a state court's ruling under AEDPA," because the court "'cannot set aside a state **[*25]** court's conclusion on a federal prosecutorial-misconduct claim unless a petitioner cites ... other Supreme Court precedent that shows the state court's determination in a particular factual context was unreasonable.'" Stewart v. Trierweiler, 867 F.3d 633, 638-39 (6th Cir. 2017) (quoting Trimble v. Bobby, 804 F.3d 767, 783 (6th Cir. 2015)).

Petitioner argues that, in closing argument, the prosecutor argued facts that were not supported by the evidence. It is improper for a prosecutor to reference facts not supported by the evidence presented at trial, but a prosecutor may advance arguments based on reasonable inferences drawn from properly-introduced evidence. Stermer v. Warren, 959 F.3d 704, 728 (6th Cir. 2020).

First, he argues that the prosecutor improperly stated that whatever was in the victim's car was missing and that Petitioner pulled apart portions of the vehicle, implying a robbery had occurred even though there was no testimony that anything was missing from the vehicle. The Michigan Court of Appeals held that the prosecutor's argument was not improper because it was "premised on facts in the record and reasonable inferences arising from these facts." Edwards, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729 at *7. Specifically, the state court held that the testimony that the gearshift was askew and that the passenger-side door paneling had sustained damage as if it had been pried open were sufficient **[*26]** to support the prosecutor's theory that a robbery had occurred. *Id.* Petitioner fails to show that the state court's conclusion was unreasonable or that the prosecutor's argument deprived him of a fair trial.

Next, Petitioner argues that the prosecutor improperly stated that Petitioner knew the victim was "sitting up there" and that was where the victim always was. (ECF No. 14-16, PageID.1640.) Petitioner disagreed with the claim that he testified that the victim was always around the house where the shooting occurred. The Michigan Court of Appeals held that the prosecutor's argument was rooted in Petitioner's testimony:

> Our review of the record reveals that the prosecutor's argument had a foundation in defendant's testimony. Defendant explained at trial that the shooting had happened near 906 East York Street, in a neighborhood where he had lived for a long time and that he traversed by foot "all the time." Defendant expressed that he had known the occupants of 906 East York, Michael Johnson and Ricky Johnson, for around 12 years, the Johnsons and the victim were friends, and defendant's acquaintance with the victim stretched back approximately 15 years. In defendant's direct examination, **[*27]** when asked whether he knew if the victim "h[u]ng out at 9-0-6 East York," defendant replied, "Outside. Basically, it be next door." Defendant later specified the location where the victim routinely parked his van near 906 East York and his knowledge that the victim often played "a video game TV in" his van. In summary, the prosecutor accurately argued on the basis of defendant's testimony and reasonable inferences flowing from defendant's testimony that defendant knew the victim always or frequently spent time near 906 East York.

APPENDIX #8

*Edwards, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729, at *8*.

Petitioner's trial testimony and that of Rickey Johnson that the victim was "always there", taken together, sufficiently supported the prosecutor's argument. (ECF No. 14-14, PageID.1235.) The prosecutor's argument did not render Petitioner's trial fundamentally unfair.

Finally, Petitioner argues that the prosecutor inaccurately argued that Petitioner admitted to pointing the gun at the victim and shooting. This argument mischaracterized Petitioner's testimony that he did not shoot at the victim. Nevertheless, the state court held that this misstatement did not deprive Petitioner his right to a fair trial. The state court's adjudication of this claim was not **[*28]** objectively unreasonable. As correctly stated by the state court, the trial court instructed the jury that the attorneys' arguments were not evidence and that the jurors should only base their verdict on the admissible evidence. Juries are presumed to follow a trial court's instructions. *Richardson v. Marsh, 481 U.S. 200, 211, 107 S. Ct. 1702, 95 L. Ed. 2d 176 (1987)*. Given the trial court's instructions and the isolated nature of the prosecutor's misstatement, the Michigan Court of Appeals' adjudication of this claim was not objectively unreasonable.

Petitioner next argues that the prosecutor improperly shifted the burden of proof. The prosecutor questioned Petitioner and a police sergeant about the failure to produce the gun used in the shooting and the sweatshirt that Petitioner wore that day. The prosecution also suggested during closing arguments that Petitioner hid these items after the shooting to cover up the murder. The last state court to issue a reasoned opinion denying this claim was the trial court, which held that the prosecutor's purpose in discussing the absence of these two items was not to shift the burden of proof but to argue that the actual evidence did not comport with Petitioner's story. The trial court explained:

> The prosecution's theory **[*29]** was that the killing was not an act of self-defense. When Defendant testified that he threw the gun into a vacant field immediately after the shooting and did not call police, the prosecutor used this testimony to attack Defendant's self-defense claim. It was reasonable for the prosecutor to question why Defendant disposed of the gun and avoided the police if he had really only acted in self-defense. The purpose of this line of questioning was not to shift the burden of proof onto the Defendant, but to rebut Defendant's self-defense argument and discredit his story. In this way, the prosecution could more easily meet its burden of proof because, as the prosecutor argued, it was reasonable to infer from Defendant's testimony that the killing was not done in self-defense since Defendant admitted to discarding the gun.
>
> This same reasoning applies to the prosecutor's comments about the sweatshirt Defendant was wearing at the time of the shooting. Defendant testified that he placed the sweatshirt behind a couch at his mother's house after the shooting and never saw it again. By asking about the sweatshirt, the prosecutor was not attempting to force Defendant to produce the sweatshirt in **[*30]** order to prove his self-defense claim. Instead, the prosecutor was implying that Defendant had intentionally hidden the sweatshirt because Defendant knew he was guilty and did not want to get caught. If Defendant had done nothing wrong, then he would not have needed to hide his sweatshirt. A reasonable inference, the prosecutor argued, would be that Defendant had hidden his sweatshirt to cover up the killing, something he would not have done had the killing really been in self-defense.
>
> By testifying that he had shot the victim in self-defense, Defendant opened the door to the prosecution's line of questioning about the location of the gun and the sweatshirt. At no point did the prosecution argue or imply that Defendant must produce the items in order to prove his innocence. Therefore, the prosecutor's questions were not improper, and no prosecutorial misconduct occurred.

(8/14/17 Genesee Cir. Ct. Order at 2-3.)

In the context of the prosecutor's entire argument and in light of the jury instructions which clearly set forth the burden of proof, the Michigan Court of Appeals' decision was not contrary to or an unreasonable application of *Darden*.

C. Ineffective Assistance of Appellate Counsel

In **[*31]** his fifteenth claim, Petitioner claims that his appellate attorney was ineffective in failing to raise on direct appeal the claims raised in this habeas petition and that counsel's ineffectiveness establishes cause and prejudice to excuse his default. A petitioner does not have a constitutional right to have appellate counsel

APPENDIX #9

raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 754, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983). Strategic and tactical choices regarding which issues to pursue on appeal are "properly left to the sound professional judgment of counsel." United States v. Perry, 908 F.2d 56, 59 (6th Cir. 1990).

The claims raised in this petition and on collateral review in state court are meritless. Appellate counsel need not raise non-meritorious claims on appeal. Shaneberger v. Jones, 615 F.3d 448, 452 (6th Cir. 2010) (citing Greer v. Mitchell, 264 F.3d 663, 676 (6th Cir. 2001)). Accordingly, the Court will deny habeas corpus relief on this claim.

D. Cumulative Effect of Alleged Errors

Finally, Petitioner asserts that he is entitled to habeas relief based on cumulative error. The Court rejects Petitioner's claim because the Supreme Court has never held that cumulative errors may form the basis for issuance of a writ of habeas corpus. Lorraine v. Coyle, 291 F.3d 416, 447 (6th Cir. 2002); see also Daniels v. Jackson, 2018 U.S. App. LEXIS 37146, 2018 WL 4621942, *6 (6th Cir. July 17, 2018) (("'[T]he law of [the Sixth Circuit] is that cumulative error claims are not cognizable on habeas [review] because the Supreme Court has not spoken **[*32]** on this issue.'") (quoting Williams v. Anderson, 460 F.3d 789, 816 (6th Cir. 2006)). This cumulative-error claim, therefore, is not cognizable on habeas corpus review.

IV. Certificate of Appealability and Leave to Proceed *In Forma Pauperis* on Appeal

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability ("COA") is issued under 28 U.S.C. § 2253. A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U .S.C. § 2253(c)(2). A petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (citation omitted). In this case, the Court concludes that reasonable jurists would not debate the conclusion that the petition fails to state a claim upon which habeas corpus relief should be granted. Therefore, the Court will deny a certificate of appealability. If Petitioner nonetheless chooses to appeal, he may proceed *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

V. Conclusion

For the reasons set forth above, the Court denies the petition for writ of habeas corpus, declines to issue a certificate of appealability, and grants leave to appeal ***[*33]*** *in forma pauperis*.

The Court grants Petitioner's motions to amend **(ECF Nos. 32, 36)**. The Court denies as moot Petitioner's motion for bond pending resolution of petition **(ECF No. 34)** and motion for immediate consideration **(ECF No. 35)**.

SO ORDERED.

/s/ Denise Page Hood

Denise Page Hood

United States District Judge

DATED: March 31, 2022

End of Document

APPENDIX #10

Neutral
As of: March 27, 2025 4:48 PM Z

Edwards v. Nagy

United States Court of Appeals for the Sixth Circuit

March 15, 2023, Filed

No. 22-1701

Reporter
2023 U.S. App. LEXIS 6222 *; 2023 WL 5443886

ANDRE MONTEEK EDWARDS, Petitioner-Appellant, v. NOAH NAGY, Warden, Respondent-Appellee.

Subsequent History: Rehearing denied by, En banc, Motion denied by *Edwards v. Nagy, 2023 U.S. App. LEXIS 13443 (6th Cir., May 31, 2023)*

US Supreme Court certiorari denied by *Edwards v. Cargor, 144 S. Ct. 336, 217 L. Ed. 2d 175, 2023 U.S. LEXIS 4201, 2023 WL 6797775 (U.S., Oct. 16, 2023)*

Appeal dismissed by *Edwards v. Cargor, 2024 U.S. App. LEXIS 2492 (6th Cir. Mich., Feb. 2, 2024)*

Prior History: *Edwards v. Winn, 2022 U.S. Dist. LEXIS 112406, 2022 WL 2287924 (E.D. Mich., June 24, 2022)*

Core Terms

jurists, self-defense, conflicting interest, time of the shooting, defense counsel, district court, plea offer, ineffective, murder, street

Counsel: **[*1]** ANDRE MONTEEK EDWARDS, Petitioner - Appellant, Pro se, Muskegon, MI.

For NOAH NAGY, Warden, Respondent - Appellee: Andrea M. Christensen-Brown, Office of the Attorney General, Lansing, MI.

Judges: Before: SILER, Circuit Judge.

Opinion

ORDER

Andre Monteek Edwards, a pro se Michigan prisoner, appeals the district court's judgment denying his petition for a writ of habeas corpus, filed under *28 U.S.C. § 2254*. Edwards has filed multiple applications for a certificate of appealability ("COA"), *see Fed. R. App. P. 22(b)(1)*, and motions for the appointment of counsel.[1] For the reasons discussed below, the application and motion will be denied.

During the early morning hours of October 9, 2008, Edwards shot and killed Tyrell Lee, allegedly while the two men were sitting in of Lee's parked vehicle near 906 East York Street in Flint, Michigan. Edwards admitted that he shot Lee but claimed that he had done so in self-defense after Lee began physically assaulting him. A Michigan jury ultimately rejected Edwards's self-defense argument and convicted him of second-degree murder, being a felon in possession of a firearm, and possession of a firearm during the commission of a felony. The trial court sentenced Edwards as a fourth habitual offender, *see Mich. Comp. Laws § 769.12*, to concurrent **[*2]** prison terms of 50 to 75 years for the murder conviction and 5 to 15 years for the felon-in-possession conviction, to be served consecutively to a 2-year term for the felony-firearm conviction. The Michigan Court of Appeals affirmed Edwards's convictions on direct appeal, *People v. Edwards, No. 294826, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729, at *14 (Mich. Ct. App. June 21, 2011)* (per curiam), *perm. app. denied, 493 Mich. 881, 821 N.W.2d 885 (Mich. 2012)*, and Edwards's two post-conviction motions for relief from judgment were unsuccessful, *People v. Edwards, No. 341475, 2018 Mich. App. LEXIS 2229 (Mich. Ct. App. May 11, 2018), perm. app. denied, 503 Mich. 929, 920 N.W.2d 593 (Mich. 2018)*; *People v. Edwards, No. 356301, 2021 Mich. App. LEXIS 3310 (Mich. Ct. App. May 26, 2021), perm. app. denied, 508 Mich. 1016, 967*

[1] Edwards has filed three COA applications—on August 10, 2022, August 24, 2022, and December 22, 2022—and two motions for the appointment of counsel—on August 10, 2022, and August 24, 2022. However, Edwards now moves this court for permission to withdraw his August 10, 2022, filings. That motion is well-taken. Accordingly, the only filings that remain pending before this court are Edwards's latter two COA applications and latter appointment-of-counsel motion.

Appendix #15

N.W.2d 606 (Mich. 2022).

In January 2019, Edwards filed a § 2254 petition, which he later supplemented, claiming that trial counsel had rendered ineffective assistance in several ways (Claims I-XI, XVI), the prosecutor had committed misconduct (Claims XII and XIII), the cumulative effect of these errors deprived him of a fair trial (Claim XIV), and the district court should review the merits of any of his claims that may be procedurally defaulted (Claim XV). Bypassing any procedural-default analysis, *see* 28 U.S.C. § 2254(b)(2), the district court denied each of Edwards's claims on the merits and declined to issue him a COA. Thereafter, the district court denied Edwards's Federal Rule of Civil Procedure 59(e) motion to alter or amend the judgment. This appeal followed.

Edwards now seeks a COA from this court as to some of his claims—namely, **[*3]** Claims I, II, III, VI, VII, VIII, IX, X, and XV. Edwards's failure to raise his remaining claims in his COA applications means that those claims are deemed abandoned and not reviewable. *See* Elzy v. United States, 205 F.3d 882, 886 (6th Cir. 2000). A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). To be entitled to a COA, the movant must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude [that] the issues presented are adequate to deserve encouragement to proceed further." Miller-El, 537 U.S. at 327.

To establish ineffective assistance of counsel, a defendant must show that his attorney's performance was objectively unreasonable and that he was prejudiced as a result. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The performance inquiry requires a defendant to "show that counsel's representation fell below an objective standard of reasonableness." Id. at 688. Counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. at 690. The test for prejudice is whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding **[*4]** would have been different." Id. at 694.

Claims I & VIII. Edwards claimed that counsel was ineffective for not presenting a "complete defense" or evidence that would have changed the outcome of his trial. Specifically, Edwards argued that counsel should have presented a defense premised on Lee's vehicle having been parked on the street at the time of the shooting, rather than in the driveway of 906 East York Street (as was depicted in some police photographs). But Edwards failed to explain, and it is not otherwise clear, how the exact location of Lee's vehicle at the time of the shooting would have affected the jury's verdict, especially since it is undisputed that it was Edwards who fired the fatal gunshot. Reasonable jurists could not debate the district court's denial of this claim.

Claim II. Edwards also claimed that, by not presenting a defense premised on Lee's vehicle having been parked on the street at the time of the shooting, counsel essentially stopped advocating on his behalf and simply adopted the prosecution's version of events (that the vehicle was parked in the driveway), thus creating an actual conflict of interest. Prejudice is presumed in an ineffective-assistance claim based **[*5]** on a conflict of interest when a defendant "demonstrates that counsel 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Id. at 692 (quoting Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)). "[F]or § 2254 cases, the Sullivan standard [for presumed prejudice] does not apply to claims of conflict of interest other than multiple concurrent representation; in such cases, including successive representation, the Strickland standard applies." Stewart v. Wolfenbarger, 468 F.3d 338, 350-51 (6th Cir. 2006).

In adjudicating this claim on direct appeal, the Michigan Court of Appeals, the last court to issue a reasoned decision on the issue, found "that defense counsel [had] competently, professionally and thoroughly presented defendant's self-defense theory to the jury" and that Edwards "ha[d] not otherwise shown that any actual conflict of interest prevented defense counsel from suitably and vigorously representing [him]." Edwards, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729, at *11. Federal habeas courts must defer to a state court's factual findings and presume that they are correct, absent a showing of clear and convincing evidence to the contrary. *See* Hodgson v. Warren, 622 F.3d 591, 598 (6th Cir. 2010) (citing 28 U.S.C. § 2254(e)(1)). Because Edwards presented no evidence that counsel actively represented conflicting interests (other than his conjecture that counsel was **[*6]** sympathetic to the prosecution), reasonable jurists could not debate the district court's denial of this claim.

Claims III & IX. In his third claim, Edwards argued that

APPENDIX #16

counsel altered the defense's theory of the case from "accident" to the allegedly weaker defense of "self-defense" without first discussing the matter with him. Edwards asserted that counsel should have proceeded on an accident theory because, although he intentionally discharged the firearm, he did not intend to kill or otherwise harm Lee. Rather, he insisted that he fired the gun only to create a distraction so that he could escape from the vehicle once Lee started assaulting him. But Edwards cannot show that he was prejudiced by counsel's decision not to pursue an accident defense because the jury, by virtue of its guilty verdict, necessarily found that he "possessed some form of intent to establish the malice required for second-degree murder." *People v. Robinson, No. 314906, 2014 Mich. App. LEXIS 1852, 2014 WL 4930702, at *4 (Mich. Ct. App. Oct. 2, 2014)* (per curiam). Reasonable jurists could not debate the district court's denial of this claim.

Relatedly, in his ninth claim, Edwards argued that counsel inadequately explained Michigan's law on self-defense and the legal weaknesses of that defense, thus causing him to reject **[*7]** a plea offer. By way of context, during a pretrial hearing on August 18, 2009, Edwards rejected the prosecutor's offer to plead guilty to the lesser offense of manslaughter (as a second habitual offender) and felony-firearm, which would have yielded a guidelines range of "36 to 88 [months' imprisonment], or possibly 43 to 107 [months' imprisonment] plus two years for felony firearm." Edwards claimed that he would have accepted that offer had counsel advised him that, under Michigan law, a defendant can claim justified self-defense as a defense to homicide only if he admits that the killing was intentional (not accidental). To establish prejudice in the plea context, "a defendant must show the outcome of the plea process would have been different with competent advice." *Lafler v. Cooper, 566 U.S. 156, 163, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012)*.

On direct appeal, the Michigan Court of Appeals concluded that "no evidence tends to show that defense counsel failed to adequately communicate with defendant. To the contrary, when defendant took the stand to testify on his own behalf, defendant indicated that he and defense counsel had discussed trial strategy." *Edwards, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729, at *11*. And in denying the *Cooper*-based claim that Edwards raised in his successive motion for relief from judgment, **[*8]** the state trial court found that Edwards "was fully apprised of the plea offer[], possible sentencing guidelines and results of a guilty verdict." To that end, the trial court noted that Edwards, defense counsel, and the prosecutor had discussed the tendered plea offer on the record during a pretrial hearing on August 18, 2009, at which time Edwards confirmed that he and counsel had discussed the strengths and weaknesses of the prosecution's case while discussing the plea offer. The district court concluded that the state court's adjudication of this claim was "amply supported by the record," noting that Edwards had not "establish[ed] that counsel incorrectly advised him on the law." Because Edwards failed to make a substantial showing that he rejected the prosecutor's plea offer because counsel had misadvised him on Michigan's self-defense law, reasonable jurists could not debate the district court's resolution of this claim.

Claim VI. Edwards claimed that counsel failed to conduct a reasonable investigation in three ways. First, Edwards argued that counsel inadequately investigated whether he shot Lee accidentally, but he failed to explain what additional evidence counsel would have **[*9]** discovered had he investigated the accident theory more rigorously. *See Wogenstahl v. Mitchell, 668 F.3d 307, 335-36 (6th Cir. 2012)* (providing that "conclusory and perfunctory" allegations of ineffective assistance "are insufficient to warrant *habeas* relief"). And, as just mentioned, Edwards failed to make a substantial showing that he was prejudiced by counsel's failure to pursue an accident theory. *See Robinson, 2014 Mich. App. LEXIS 1852, 2014 WL 4930702, at *4*.

Second, Edwards asserted that counsel failed to adequately investigate where Lee's vehicle was located at the time of the shooting. However, the jury heard from Edwards, through his recorded police interview, that Lee's vehicle was parked on the street when he fired the fatal gunshot, not in the driveway. Moreover, Edwards does not explain what additional information counsel would have obtained had he conducted a more thorough investigation into the location of Lee's vehicle, which is fatal to his claim. *See Wogenstahl, 668 F.3d at 335-36*.

Third, Edwards claimed that counsel failed to deliver on the promise that he made to the jury during opening statements that he would present testimony showing that Lee was "[n]ot a good guy." But Edwards failed to explain how the outcome of his trial would have been different but for counsel's failure to present such testimony. In sum, **[*10]** because Edwards failed to make a substantial showing that he was prejudiced by counsel's investigative efforts, reasonable jurists could not debate the district court's denial of this claim.

APPENDIX #17

Claim VII. Edwards further claimed that counsel "misrepresented facts in evidence," such as the location of Lee's vehicle at the time of the shooting, Lee's body weight, and Edwards's reason for being outside during the early morning hours on the day in question (Edwards testified that he was out walking his dogs at the time he encountered Lee). But even so, Edwards failed to show that the outcome of his trial would have been different but for counsel's purported misrepresentations, especially considering the other evidence of his guilt that the State presented at trial. *See* Strickland, 466 U.S. at 694. Specifically, the State presented evidence that Edwards fled from the scene after he fired the fatal gunshot, disposed of the gun and his clothing, and evaded the police for several days, thus evidencing a consciousness of guilt. And when the police finally located Edwards approximately one week after the shooting, they did not observe any noticeable injuries on his hands, neck, or face to substantiate his assertion that Lee **[*11]** had physically attacked him. This claim is not adequate to deserve encouragement to proceed further.

Claim X. Edwards claimed that counsel was ineffective for not moving to quash a charge of first-degree murder on which he was indicted, tried, but ultimately acquitted. However, because Edwards was acquitted of the first-degree murder, any error regarding the submission of that charge to the jury was harmless. *See Pyne v. Harry*, No. 18-2347, 2019 WL 2208303, at *3 (6th Cir. Apr. 2, 2019) (citing Daniels v. Burke, 83 F.3d 760, 765 n.4 (6th Cir. 1996)). Reasonable jurists could not debate the district court's denial of this claim.

Claim XV. Finally, Edwards, claimed that, to the extent that any of the aforementioned claims is procedurally defaulted, he made the requisite showing of cause and prejudice or actual innocence to excuse that default. This claim needs no discussion because, as previously mentioned, the district court sidestepped any procedural-default analysis and instead adjudicated Edwards's claims on the merits.

For these reasons, Edwards's motion to withdraw his miscellaneous filings is **GRANTED**, his COA applications are **DENIED**, and his motion for the appointment of counsel is **DENIED** as moot.

End of Document

APPENDIX #18

Neutral
As of: March 27, 2025 4:49 PM Z

In re Edwards

United States Court of Appeals for the Sixth Circuit

August 6, 2024, Filed

No. 23-2064

Reporter
2024 U.S. App. LEXIS 19726 *

In re: ANDRE MONTEEK EDWARDS, Movant.

Prior History: *Edwards v. Winn, 2020 U.S. Dist. LEXIS 39030 (E.D. Mich., Mar. 6, 2020)*

Core Terms

district court, merits, habeas petition, successive petition

Counsel: **[*1]** In re: ANDRE MONTEEK EDWARDS, Movant, Pro se, Jackson, MI.

For KIM CARGOR, Warden, Respondent: Andrea M. Christensen-Brown, Office of the Attorney General, Lansing, MI.

Judges: Before: STRANCH, BUSH, and MATHIS, Circuit Judges.

Opinion

ORDER

Andre Monteek Edwards, a pro se Michigan prisoner, moves this court for an order authorizing the district court to consider a second or successive *28 U.S.C. § 2254* petition for a writ of habeas corpus. *See 28 U.S.C. § 2244(b)(3)*. But Edwards's main contention is that the district court erred in construing his *Federal Rule of Civil Procedure 60(b)* motion for relief from judgment as a successive habeas petition and transferring it to this court for authorization.

In 2009, Edwards was convicted of second-degree murder, possession of a firearm as a felon, and possession of a firearm during the commission of a felony (felony-firearm). The trial court sentenced him as a fourth-offense habitual offender to 50 to 75 years of imprisonment for the murder conviction, 5 to 15 years for the felon-in-possession conviction, concurrent to the sentence for the murder conviction, and 2 years for the felony-firearm conviction, consecutive to the murder and felon-in-possession sentences. The Michigan Court of Appeals affirmed Edwards's convictions on direct appeal, **[*2]** *People v. Edwards, No. 294826, 2011 Mich. App. LEXIS 1094, 2011 WL 2462729, at *14 (Mich. Ct. App. June 21, 2011)* (per curiam), *perm. app. denied, 493 Mich. 881, 821 N.W.2d 885 (Mich. 2012)*, and Edwards's state motions for relief from judgment were unsuccessful.

In 2019, Edwards moved to vacate his sentence under *28 U.S.C. § 2254*, claiming that his trial counsel had rendered ineffective assistance, that the prosecutor had committed misconduct, and that the cumulative effect of those alleged errors had deprived him of a fair trial. The district court denied Edwards's petition, concluding that his claims lacked merit, and declined to issue a certificate of appealability (COA). Edwards then unsuccessfully sought a COA from this court as to some of his ineffective-assistance claims. *Edwards v. Nagy, No. 22-1701, 2023 U.S. App. LEXIS 6222, 2023 WL 5443886, at *4 (6th Cir. Mar. 15, 2023 (order)*, *cert. denied, 144 S. Ct. 336, 217 L. Ed. 2d 175 (2023)*.

In October 2023, Edwards filed a *Rule 60(b)* motion, which he later supplemented, asserting that the district court "misconstrued the gravamen" of several of his claims, overlooked one claim, and should have held an evidentiary hearing on his habeas petition. The district court determined that Edwards's motion was, in substance, a second or successive habeas petition and therefore transferred it to this court for permission to consider it. *See 28 U.S.C. § 1631*; *In re Sims, 111 F.3d 45, 47 (6th Cir. 1997)* (per curiam). At our direction, Edwards filed a corrected motion for authorization to file a second or successive *§ 2254* petition, **[*3]** in which he opposes the transfer of his *Rule 60(b)* motion and asks us to remand to the district court for a ruling on the merits of that motion.

We must first determine whether the district court

Appendix #19

properly transferred Edwards's Rule 60(b) motion. See Howard v. United States, 533 F.3d 472, 474 (6th Cir. 2008). "Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case," in limited circumstances. Gonzalez v. Crosby, 545 U.S. 524, 528, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005). Although the order below stated that any Rule 60(b) motion is considered a second or successive § 2254 petition, Supreme Court precedent differentiates between two different types of such motions. A Rule 60(b) motion must be treated as a second or successive § 2254 petition if it presents a new claim, "attacks the federal court's previous resolution of a claim *on the merits*," or presents "new evidence in support of a claim already litigated." Id. at 531-32. It is not a second or successive habeas petition if it instead attacks "some defect in the integrity of the federal habeas proceedings" or "merely asserts that a previous ruling which precluded a merits determination was in error—for example, a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar." Id. at 532 & n.4. In short, a Rule 60(b) motion is not a second or successive habeas petition "if it does not assert, **[*4]** or reassert, claims of error in the movant's state conviction." Id. at 538.

Edwards presents three different arguments in his Rule 60(b) motion. His primary argument is that the district court misconstrued and failed to recognize pivotal aspects of several of his ineffective-assistance claims. But that is a substantive attack on the court's resolution of those claims on the merits. See In re Black, 881 F.3d 430, 431 (6th Cir. 2018) (per curiam) (explaining that the movant's argument that the district court applied the wrong standard to his ineffectiveness claims was an attack on the court's resolution of the merits of those claims); Jinks v. AlliedSignal, Inc., 250 F.3d 381, 385 (6th Cir. 2001) ("Rule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor by presenting new explanations, legal theories, or proof."). The district court therefore properly transferred his motion to this court for consideration as a second or successive § 2254 petition.

We may authorize the filing of a second or successive habeas petition only if the applicant makes a prima facie showing that the proposed petition contains a new claim that relies on either (A) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable" **[*5]** or (B) new facts that "could not have been discovered previously through the exercise of due diligence" and that, "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2), (b)(3)(C).

Edwards cannot meet these statutory requirements because, as he acknowledges, none of his arguments rely on a new, retroactively applicable rule of constitutional law or newly discovered facts that establish his actual innocence.

Edwards's second and third Rule 60(b) arguments—which challenge the district court's failure to rule on his seventh ineffective-assistance claim and refusal to hold an evidentiary hearing—attack a "defect in the integrity of the federal habeas proceedings," and thus do not qualify as second or successive claims. Gonzalez, 545 U.S. at 532; see Tyler v. Anderson, 749 F.3d 499, 508 (6th Cir. 2014) (explaining that the "district court properly found" that the appellant could have raised the district court's failure to consider a claim in a Rule 60(b) motion); Mitchell v. Rees, 261 F. App'x 825, 829 (6th Cir. 2008) (holding that a Rule 60(b) motion in which a habeas petitioner argued that he was erroneously denied an evidentiary hearing on his claims raised a **[*6]** defect in the integrity of the proceedings), *abrogated on other grounds by* Penney v. United States, 870 F.3d 459 (6th Cir. 2017).

But even assuming that the district court erred in construing these Rule 60(b) arguments as second or successive claims, we decline to return Edwards's motion to the district court for a ruling on the merits because doing so would be futile. See 28 U.S.C. § 1631 (requiring transfer only "if it is in the interest of justice"). Although the district court overlooked Edward's seventh ineffective-assistance claim—which asserted that counsel had "misrepresented facts in evidence"—this court has already determined that Edwards was not entitled to a COA on that claim because it did not "deserve encouragement to proceed further." Edwards, 2023 U.S. App. LEXIS 6222, 2023 WL 5443886, at *4. Granting relief from judgment on this claim would thus violate the law-of-the-case doctrine. See United States v. Wilson, 469 F. App'x 439, 440 (6th Cir. 2012) (per curiam). And Edwards was not entitled to an evidentiary hearing because habeas review of claims that were "adjudicated . . . on the merits" in state court, like the ones at issue here, "is limited to the record that was before the state court." Cullen v. Pinholster, 563 U.S. 170, 181, 131 S. Ct. 1388, 179 L. Ed. 2d 557 (2011); see Keeling v. Warden, Lebanon Corr. Inst., 673 F.3d

APPENDIX #20

452, 464-65 (6th Cir. 2012).

Accordingly, we **DENY** Edwards's motion for authorization to file a second or successive *§ 2254* habeas corpus petition. And for the reasons stated above, we **DENY** Edwards's **[*7]** request to return his *Rule 60(b)* motion to the district court for consideration on the merits.

End of Document

APPENDIX #21

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