NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11033

KENARD SINGH,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:19-cv-00617-RBD-PRL

Before NEWSOM, BRASHER, Circuit Judges, and HUCK,* District Judge.

* Honorable Paul Huck, Senior United States District Judge for the Southern District of Florida, sitting by designation.

PER CURIAM:

Kenard Singh, a state prisoner, appeals the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. He argues that the performance of his attorney, Jack Maro, at his hearing on the motion to vacate his plea and sentence, was so deficient that it wasn't just ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984)—it was no assistance at all under *United States v. Cronic*, 466 U.S. 648 (1984). The distinction matters because *Strickland* requires the petitioner to show that counsel's performance actually prejudiced him; when *Cronic* applies, prejudice is presumed.

The state court applied *Strickland* and found that Maro's representation wasn't ineffective, and thus denied Singh's motion for postconviction relief. Singh argues that *Strickland* doesn't apply, and that he is entitled to a presumption of prejudice under *Cronic*, because his attorney entirely failed to oppose the state's case alleging noncompliance with his plea agreement.

We affirm the denial of Singh's petition under the "highly deferential standards" that apply when federal courts review state-court decisions under § 2254. *Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1034 (11th Cir. 2022) (en banc) (citation modified).

I

A

Singh was charged in Florida state court with first-degree felony murder for the death of Douglas Tripp, arising out of an attempted home-invasion robbery at Tripp's home on the night of March 8, 2022.

Seven months later, Singh gave a proffer—a sworn statement to the prosecutor—detailing the events that occurred the day of the killing. According to Singh, he, Brenton Crabtree, and Keith Crabtree drove to Tripp's house to rob him. On the way there, Singh saw Brenton load a black semiautomatic pistol with bullets in the rear passenger seat of the car and put the gun in his waistband. When they arrived, Brenton tried to lure Tripp outside, first by throwing a rock at a car window and then by throwing a pail at the front door. Singh next saw Brenton looking through an open window and, moments later, heard multiple gunshots. Brenton later said he shot Tripp because Tripp saw him and looked angry.

Five months after the proffer, Singh entered into a plea agreement to a reduced charge of second-degree murder and a 21-year sentence. In exchange, Singh promised to testify truthfully at any proceeding against Brenton "consistent with [his] sworn proffered testimony." The plea was accepted, and Singh was sentenced to 21 years in prison.

Two months later, Singh testified at Brenton's trial as required by his plea agreement. Singh's in-court testimony departed from his proffer in two ways. First, Singh repeatedly denied seeing Brenton load a gun in the car before arriving at Tripp's house, or seeing bullets at all, even after being confronted with his contrary statements in the proffer. Second, he denied *seeing* Brenton throw a rock at a car window, though he admitted to *hearing* it happen. The jury nevertheless convicted Brenton.

B

Because of Singh's inconsistent testimony, the state moved to vacate either his sentence alone or both his guilty plea and sentence together. The state notified Singh's private defense attorney, Jack Maro, of the hearing on this motion. But a few days earlier, Maro had filed a notice of nonrepresentation with the court, stating that his representation had terminated because the time to appeal Singh's conviction and sentence had expired.

At the hearing on the motion to vacate, the trial judge noticed Maro sitting in the audience and asked, "Are you not his counsel?" Maro replied, "No, sir. Judge, I filed a notice with the court." Motion to Vacate Hr'g Tr. at 3. Maro explained that "Singh [was] no longer [his] responsibility" because Singh's sentencing had concluded and the time to appeal his sentence had expired. *Id.* The judge was unconvinced that Maro could end his representation of Singh so easily. If Singh's plea required him to testify truthfully on the penalty that it could be "undone," then, the judge asked Maro, "why wouldn't it be appropriate for the counsel who [was] part of the negotiated plea[] to remain until that portion is resolved?" *Id.* at 5–6. Maro explained that he had a "conflict" with Singh, who hadn't paid him. *Id.* at 6. The judge rejoined that Maro's conflict with Singh was "unrelated to th[e] State's present motion." *Id.* at 12. Stressing that he wanted to "resolv[e] the motion today," the judge ultimately ordered Maro to "stay for today" and represent Singh at the hearing. *Id.* at 11–12.

During this conversation with Maro, the judge emphasized that he had a "visceral reaction" to Singh's testimony, that it was "fundamentally apparent" that Singh hadn't even tried to comply with the plea agreement. *Id.* at 10. "[A]t the proffer . . . [Singh] said, I saw the gun, I saw the guy load the gun, and then when he was at the trial, what gun, what gun, you know." *Id.* The judge continued that the state might be "better off just rolling the dice and having this guy go to prison for life if he gets convicted. . . ." *Id.*

After it was decided that Maro would represent Singh, the state presented its motion to vacate Singh's sentence alone or both his plea and sentence. It identified the two contradictions between Singh's proffer and his trial testimony, and it played the audio of a post-trial jail call in which Singh purportedly said: "I tried to help him but it didn't work. . . . I said I didn't see him kill nobody. I said, um, I didn't see no gun. I never seen him load up no bullets, none of that shit." *Id.* at 15. On the call, Singh also said that, if asked to testify again, "I'm gonna say I don't remember nothing." *Id.* at 16.

The trial judge asked the parties to clarify what its options were if it granted the motion to vacate. The state cited *Metellus v. State*, 900 So. 2d 491 (Fla. 2005), for the proposition that the court could vacate Singh's sentence and resentence him for second-degree murder, for up to life in prison. Or, the state continued, the court could vacate Singh's plea *and* sentence and retry him for first-degree felony murder. The state expressed its preference for the first option.

In response, Maro cited a case with a slightly "different spin," *Forsythe v. State*, 840 So. 2d 440, 442 (Fla. Dist. Ct. App. 2003), to show that "the state ha[d] the option of withdrawing from the agreement, and either going to trial or seeking a new agreement." Motion to Vacate Hr'g Tr. at 21.

Regarding the state's allegations, Maro admitted that he "didn't sit through the trial" and said—

> [I]t's more of a factual determination, you know, you're going to have to make. Are they of such a nature . . . that it undermined the intent of the plea agreement and basically . . . torpedo[ed] the State's case in chief substantially and if you believe that it did, and obviously, you've just ruled accordingly. I mean, there's not much else I can say to you as far as that's concerned.

Id. at 25–26. Maro then returned to discussing Singh's options, recognizing that if Singh "maintain[s] his guilty plea," it would expose him to a life sentence immediately. *Id.* at 27–28. Maro suggested that the court appoint a public defender: "Maybe he [would] best be served with a new set of eyes on this. . . . I think it would [be] appropriate maybe to appoint the public defender." *Id.* at 29.

Ultimately, the trial judge granted the state's motion and vacated both Singh's plea and sentence. In the court's view, Singh showed a "completely unmitigated substantial noncompliance with the plea agreement," *id.* at 32, by "lying about critical issues at trial," *id.* at 18. "He was trying to be probably as unclear as possible for anybody to hear as he was talking, as opposed to speaking up like an adult so people could hear him." *Id.* at 30–31. "So he wants to be stupid and make those calls," the judge said, "I'll help him be stupid." *Id.* at 31. Though Singh could try renegotiating with the state, the judge warned: "It will never be 21 years again. Never. I mean, there's no point in rewarding somebody for the behavior they just did." *Id.* at 32. "That was absolutely absurd what [he] did." *Id.* "[I]t was beyond belief to sit and listen to him. . . . [A]ll he had to do was just do the right thing and he would have been on his way." *Id.* at 33. The court also appointed Singh a public defender, who moved to reconsider the order vacating Singh's plea and sentence. The trial court denied the motion, and Singh headed to trial.

A few weeks before his trial, the state offered a plea offer of 35 years in prison—but Singh rejected it. At trial, the jury found him guilty of first-degree felony murder, and the court sentenced him to mandatory life imprisonment. The Fifth District Court of Appeal affirmed the judgment in a summary per curiam opinion.

C

Singh timely filed a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. As relevant here, Singh asserted that Maro provided ineffective assistance by failing to subject the state's case to meaningful adversarial testing at the hearing on the motion to vacate Singh's plea and sentence, citing both *Strickland* and *Cronic*.

At the corresponding evidentiary hearing, Singh testified that after securing the plea, Maro essentially stopped communicating with him and didn't help him prepare for Brenton's trial. And when Maro was forced to act as Singh's attorney at the motion-to-vacate hearing, Maro and Singh had no conversation with each other or any opportunity to discuss the facts or Singh's options. Singh did, however, admit to making the jail call.

Maro testified in response that, in his view, Singh's sentencing on the plea agreement—before Brenton's trial—essentially "finished the case." Evidentiary Hr'g Tr. at 82. All Singh had to do was "just step up and say what he said in the proffer," so Maro thought his legal responsibilities were "over" before the hearing happened. *Id.* at 82–83. Maro arrived at the hearing intending just to "bear witness[] to the plea, the proffer, and the sentencing," so he sat in the audience and not at the counsel table. *Id.* at 83. Because Maro didn't believe he was Singh's lawyer, he didn't sit through Brenton's trial and "didn't have a clue" about Singh's alleged violation of his plea agreement. *Id.* at 84. But after a colloquy with the trial judge, it became "very clear" that the judge "was going forward" with the hearing and wanted Maro to represent Singh. *Id.* Having been pressed into service, Maro believed the "best option" was for the judge to allow Singh to withdraw his plea, "letting [the prosecutor] and the defense renegotiate" a plea for the judge's approval. *Id.* at 87.

The state postconviction court denied Singh's postconviction motion. The court applied *Strickland* and found that Singh had demonstrated neither "error [n]or prejudice." State Ct. Order on R. 3.850 Mot. at 4. The court reasoned that Maro had "correct[ly]" anticipated that it was better for Singh to attempt to renegotiate a plea with the prosecutor—who did later offer a plea deal for 35 years—than to "simply agree to resentencing when the Defendant would be exposed to a life sentence" before a "clearly displeased judge." *Id.* at 5–6, 8. On appeal, the Fifth District Court of Appeal affirmed the postconviction court's ruling in a summary per curiam order.

Singh timely petitioned for habeas corpus relief in federal court under 28 U.S.C. § 2254. He argued in relevant part that the state postconviction court erred in applying *Strickland* rather than *Cronic*. The district court denied the petition, concluding that the Supreme Court had not "squarely addresse[d]" this issue or "clearly establishe[d] that *Cronic* should replace *Strickland* in this factual context." Dist. Ct. Order at 22. Thus, the court held, "it cannot be said that the state court unreasonably applied clearly established federal law." *Id.* at 23 (citation modified). This is Singh's appeal of the denial of his habeas petition.

II

We review the district court's denial of a state prisoner's § 2254 petition de novo. *See Reed v. Sec'y, Fla. Dep't of Corr.*, 593 F.3d 1217, 1239 (11th Cir. 2010). But we review the state habeas court's decision with deference, granting relief only if its adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," or "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 state-court decision is "contrary to" clearly established federal law if a state court (1) arrives at a conclusion opposite to that reached by the Supreme Court on a question of law, or (2) decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *See Williams v. Taylor*, 529 U.S. 362, 405–06 (2000). A state court decision is an "unreasonable application of" Supreme Court precedent only if it is "objectively unreasonable," not just incorrect. *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). To obtain relief, the 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." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

III

A

"A petitioner asserting a claim of ineffective assistance of counsel ordinarily must satisfy the requirements of *Strickland*." *Castillo v. Fla., Sec'y of Dep't of Corr.*, 722 F.3d 1281, 1286 (11th Cir. 2013). This means that he "must affirmatively prove *both* deficient performance *and* actual prejudice." *Id.* (emphasis added). To show actual prejudice, the petitioner must establish 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.

The Supreme Court has recognized, however, that certain circumstances "are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *Cronic*, 466 U.S. at 658. Prejudice is presumed when—but only when—either "(1) there is a complete denial of counsel at a critical stage of the trial, (2) counsel entirely fails to subject the prosecution's case to meaningful adversarial testing," or (3) it is so unlikely that counsel could have performed as an effective adversary that the trial is "inherently unfair." *Castillo,* 722 F.3d at 1286 (citation modified) (quoting *Cronic*, 466 U.S. at 659–61). *Cronic* applies only to "a very narrow spectrum of cases," when counsel is so ineffective "that the defendant [i]s in effect denied any meaningful assistance at all." *Stano v. Dugger*, 921 F.2d 1125, 1153 (11th Cir. 1991) (en banc). "Consequently, the burden of proof under *Cronic* is a very heavy one." *Id.* (citation modified). "If an attorney is present and contests the prosecution's case, any errors he commits are to be judged under the *Strickland* standard, which requires a showing of actual prejudice." *Castillo*, 722 F.3d at 1288.

Singh relies on *Cronic*'s second exception, arguing that Maro "entirely fail[ed] to subject the prosecution's case to meaningful adversarial testing." *Cronic*, 466 U.S. at 659. Under this exception, "the attorney's failure must be complete." *Bell v. Cone*, 535 U.S. 685, 697 (2002). It's "reserved for situations in which counsel has '*entirely failed* to function as the client's advocate' by failing to meaningfully oppose the prosecution's case." *Castillo*, 722 F.3d at 1287 (emphasis in original) (quoting *Florida v. Nixon*, 543 U.S. 175, 179, 189 (2004)).

Two Supreme Court decisions—*Bell v. Cone*, 535 U.S. 685 (2002), and *Florida v. Nixon*, 543 U.S. 175 (2004)—clarify the scope of *Cronic*'s second exception.

In *Bell*, a capital defendant's counsel failed to introduce mitigating evidence and waived closing argument at the sentencing hearing, which resulted in a death sentence for his client. 535 U.S. at 691, 696. But because counsel had argued for life imprisonment (instead of death) in his opening argument, contending that his client was mentally unwell, addicted to drugs, and felt remorse for his actions, the Court deemed this insufficient to trigger *Cronic*. *Id.* at 701–02. It wasn't a *complete* failure, the Court reasoned, because counsel had failed to oppose the prosecution only "at specific points," rather than "throughout the . . . proceeding as a whole." *Id.* at 697.

In *Nixon*, the Court held that *Cronic* didn't apply where trial counsel, without the defendant's consent, conceded that the defendant was guilty of capital murder as part of his strategy to avoid a death sentence. 543 U.S. at 190–92. Because "[a]ttorneys representing capital defendants face daunting challenges in developing trial strategies, not least because the defendant's guilt is often clear," the Court concluded that it can be reasonable for counsel to simply try to avoid execution by "persuad[ing] the trier that his client's life should be spared." *Id.* at 191. "Counsel cannot be deemed ineffective for . . . his unwillingness to engage in 'a useless charade.'" *Id.* at 192 (quoting *Cronic*, 466 U.S. at 656 n.19).

B

Although it's a close call whether the state court was correct to apply *Strickland* instead of *Cronic*,[1] it wasn't unreasonable for the court to do so. Therefore, we affirm the district court's denial of Singh's § 2254 petition.

On the one hand, when Singh was facing the unraveling of his guilty plea and 21-year sentence as well as the possibility of life in prison, Maro was sitting in the audience and insisting that he wasn't Singh's lawyer. Maro wasn't prepared for the hearing, hadn't investigated any potential defenses, and hadn't consulted with Singh in anticipation of the hearing. And when pressed into service, Maro "piggy-backed onto the State's position" and didn't challenge its version of the facts. Appellant's Br. at 30. He "didn't have a clue" whether Singh had complied with the plea agreement because he didn't sit through Brenton's trial. Evidentiary Hr'g Tr. at 84. He merely described the issue of noncompliance as a "factual determination" and stated "there's not much else I can say." Motion to Vacate Hr'g Tr. at 26. He didn't make "any substantive comment" until "two-thirds of the way through the hearing," Appellant's Br. at 32, effectively conceding Singh's violation and focusing exclusively on whether "to vacate just the sentence, or to vacate the plea and sentence," *id*. at 33.

---

[1] Under *Wilson v. Sellers*, we "look through" the state appellate court's summary per curiam affirmance to the state postconviction court's reasoning. 584 U.S. 122, 125 (2018).

On the other hand, it's not clear that Maro's advocacy rises—or falls—to the level of a "complete" failure, as *Cronic* requires. *See Bell*, 535 U.S. at 697. First, Maro did cite a different case than did the government to argue for vacating both Singh's plea and sentence, not just his sentence as the government preferred. This distinction is nontrivial because vacating just the sentence would have immediately exposed Singh to a life sentence before a "clearly displeased" judge. In so doing, Maro provided some assistance—during at least a portion of the hearing—suggesting that his failures were "at specific points" rather than throughout the "proceeding as a whole." *See id.* Second, as the state postconviction court pointed out, the trial judge was predisposed to find that Singh had violated the plea agreement for "lying about critical issues at trial." Motion to Vacate Hr'g Tr. at 18; *see id.* at 10 (expressing the trial judge's "visceral reaction" to Singh's testimony); *id.* (stating that it was "fundamentally apparent" that Singh didn't try to comply with the plea agreement). Faced with these comments, Maro reasonably could have concluded that it would be "a useless charade" to challenge the judge's own assessment of the trial testimony. *See Nixon*, 543 U.S. at 192. Therefore, it could well have been strategic to concede Singh's violation and use the rest of the time to persuade the judge to vacate both the plea and sentence—as Maro did.

Thus, there is at the very least the possibility of "fairminded disagreement" over whether *Cronic* was the correct standard. *See Harrington*, 562 U.S. at 103. Even if it was incorrect to apply *Strickland*, the state court's decision to do so was not "objectively unreasonable." *See Lockyer*, 538 U.S. at 75. Furthermore, the state court's decision wasn't contrary to clearly established federal law because no Supreme Court decision had "squarely addresse[d]" this issue or "clearly establishe[d] that *Cronic* should replace *Strickland* in this novel factual context." *Wright v. Van Patten*, 552 U.S. 120, 125 (2008). Therefore, under § 2254, we defer to the state court's application of *Strickland* and hold that the district court properly denied Singh's habeas petition.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 03, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-11033-GG
Case Style: Kenard Singh v. Secretary, Department of Corrections, et al
District Court Docket No: 5:19-cv-00617-RBD-PRL

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing.

Costs
No costs are taxed.

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 18, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-11033-GG
Case Style: Kenard Singh v. Secretary, Department of Corrections, et al.,
District Court Docket No: 5:19-cv-00617-RBD-PRL

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11033

KENARD SINGH,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:19-cv-00617-RBD-PRL

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before NEWSOM, BRASHER, Circuit Judges, and HUCK,* District Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

* Honorable Paul Huck, Senior United States District Judge for the Southern District of Florida, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 27, 2026

Clerk - Middle District of Florida
U.S. District Court
207 NW 2ND ST
OCALA, FL 34475

Appeal Number: 23-11033-GG
Case Style: Kenard Singh v. Secretary, Department of Corrections, et al.,
District Court Docket No: 5:19-cv-00617-RBD-PRL

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel. A copy of the court's decision was previously forwarded to counsel on the date it was issued.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

MDT-1 Letter Issuing Mandate

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11033

KENARD SINGH,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:19-cv-00617-RBD-PRL

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: December 3, 2025

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: FEBRUARY 27, 2026

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

KENARD SINGH,

Petitioner,

v. Case No. 5:19-cv-617-RBD-PRL

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

Respondents.
_______________________________/

ORDER

Petitioner seeks a Writ of Habeas Corpus ("Petition," Doc. 1; "Memorandum," Doc. 2) under 28 U.S.C. § 2254. Respondents filed a Response and Appendix. (Docs. 10, 11). Petitioner filed a Reply ("Reply," Doc. 14), and it is ripe for review.

Petitioner alleges two grounds for relief. The Petition is denied.

I. Procedural History

The State Attorney's Office for the Fifth Judicial Circuit in and for Marion County, Florida charged Petitioner, by indictment, with principal to murder in the first degree – felony murder. (Doc. 11-1 at 5). On October 22, 2012, Petitioner gave a sworn statement to the prosecutor detailing the events that occurred the day of the killing. (Doc. 11-1 at 7–72). On March 27, 2013, Petitioner entered into a plea agreement with the State to a reduced charge of principal to second degree murder. (Doc. 11-1 at 74–76). In exchange for the reduced charge and a 21-year sentence, Petitioner was required to testify at any proceeding against Brenton Crabtree "consistent with sworn proffered testimony given October 22, 2012." *Id.* at 74–75. The plea was accepted, and Petitioner was sentenced to 21 years in prison. *See* Doc. 11-1 at 78–97, 99–107.

On May 8, 2013, Petitioner testified at Brenton Crabtree's trial. (Doc. 11-1 at 138–201). On May 13, 2013, Petitioner's trial counsel, Jack Maro, filed a notice of non-representation. (Doc. 11-1 at 204–05). On May 17, 2013, the State moved to vacate sentence or plea and sentence alleging that Petitioner failed to comply with the terms of the negotiated plea by providing testimony that was not consist with the sworn proffer. (Doc. 11-1 at 207–97). The State served Mr. Maro with a copy of the motion to vacate. *Id.* at 209.

On May 21, 2013, the trial court held a hearing on the motion to vacate. (Doc. 11-1 at 299–333). On May 22, 2013, the trial court entered its written order granting the motion and vacated the judgment and sentence. (Doc. 11-1 at 335–38). The order further granted Mr. Maro's motion to withdraw, appointed the Public Defender to represent Petitioner, and set the case for trial. *Id.* at 337.

On June 17, 2013, Petitioner moved to disqualify the trial judge, the Honorable Brian Lambert. (Doc. 11-1 at 340–44). On June 18, 2013, the trial court denied the motion as legally insufficient because it was untimely. (Doc. 11-1 at 346–385). On July 12, 2013, Petitioner petitioned for a writ of prohibition in Florida's Fifth District Court of Appeal ("Fifth DCA") to prohibit Judge Lambert from presiding over the case. (Doc. 11-1 at 387–98). The State responded to the petition and Petitioner replied. (Doc. 11-1 at 400–04, 406–09). On August 8, 2013, the Fifth DCA denied the petition. (Doc. 11-1 at 411).

On November 25, 2013, Petitioner moved for reconsideration of the order vacating his sentence and judgment. (Doc. 11-1 at 413–18). On November 27, 2013, the motion was denied. (Doc. 11-1 at 420).

On December 9-11, 2013, Petitioner's trial on the charge of principal to first degree felony murder was held. *See* Doc. 11-1 at 422–794; Doc. 11-2 at 1–235. The jury found Petitioner guilty as charged in the indictment. (Doc. 11-2 at 237). He was sentenced to life in prison. (Doc. 11-2 at 239-44). Petitioner appealed. (Doc. 11-2 at 246–83, 323–29). The Fifth DCA *per curiam* affirmed and issued mandate. (Doc. 11-2 at 331, 333); *Singh v. State*, 163 So. 3d 1222 (Fla. 5th DCA 2015) (Table).

Petitioner moved for postconviction relief under Rule 3.850, Fla. R. Crim. P., raising three grounds of ineffective assistance of counsel. (Doc. 11-2 at 335–62). The successor judge, the Honorable Jonathan Ohlman, denied the motion after an evidentiary hearing. (Doc. 11-3 at 145-285). Petitioner appealed. (Doc. 11-3 at 287). The Fifth DCA *per curiam* affirmed after oral arguments. (Doc. 11-3 at 375, 377). Petitioner moved for rehearing, for rehearing *en banc*, and requested a written opinion. (Doc. 11-3 at 379–84). The motion was denied, and mandate issued on August 19, 2019. (Doc. 11-3 at 386, 388).

II. Legal Standards

A. Standard of Review Under the Antiterrorism Effective Death Penalty Act ("AEDPA")

Under the AEDPA, federal habeas relief may not be granted on a claim adjudicated on the merits in state court unless the adjudication of the claim:

> (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.

28 U.S.C. § 2254(d). The phrase "clearly established Federal law," encompasses only the holdings of the United States Supreme Court "as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000).

"[S]ection 2254(d)(1) provides two separate bases for reviewing state court decisions; the 'contrary to' and 'unreasonable application' clauses articulate independent considerations a federal court must consider." *Maharaj v. Sec'y for Dep't of Corr.*, 432 F.3d 1292, 1308 (11th Cir. 2005). The meaning of the clauses was discussed by the Eleventh Circuit in *Parker v. Head*, 244 F.3d 831, 835 (11th Cir. 2001):

> Under the "contrary to" clause, a federal court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a question of law or if the state court decides a case differently than [the United States Supreme Court] has on a set of materially indistinguishable facts. Under the 'unreasonable application' clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from [the United States Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case.

Even if the federal court finds that the state court applied federal law incorrectly, habeas relief is appropriate only if that application was "objectively unreasonable."[1] *Id.* Finally, under § 2254(d)(2), a federal court may grant a writ of habeas corpus if the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." A determination of a factual issue made by a state court, however, will be presumed correct, and the habeas petitioner must rebut the presumption of correctness by clear and convincing evidence. *See Parker*, 244 F.3d at 835-36; 28 U.S.C. § 2254(e)(1).

---

[1] In considering the "unreasonable application" inquiry, the Court must determine "whether the state court's application of clearly established federal law was objectively unreasonable." *Williams*, 529 U.S. at 409. Whether a state court's decision was an unreasonable application of law must be assessed in light of the record before the state court. *Holland v. Jackson*, 542 U.S. 649, 652 (2004) (*per curiam*); *cf. Bell v. Cone*, 535 U.S. 685, 697 n. 4 (2002) (declining to consider evidence not presented to state court in determining whether its decision was contrary to federal law).

B. Standard for Ineffective Assistance of Counsel

In *Strickland v. Washington*, the Supreme Court established a two-part test for determining whether a convicted person may have relief because his counsel rendered ineffective assistance. 466 U.S. 668, 687-88 (1984). A petitioner must establish that counsel's performance was deficient and fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. *Id.* This is a "doubly deferential" standard of review that gives both the state court and the petitioner's attorney the benefit of the doubt. *Burt*, 134 S. Ct. at 13 (citing *Cullen v. Pinholster*, 131 S. Ct. 1388, 1403 (2011)).

The focus of inquiry under *Strickland*'s performance prong is "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688-89. In reviewing counsel's performance, a court must adhere to a strong presumption that "counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. The petitioner must "prove, by a preponderance of the evidence, that counsel's performance was unreasonable[.]" *Jones v. Campbell*, 436 F.3d 1285, 1293 (11th Cir. 2006). A court must "judge the reasonableness of counsel's conduct on the facts of the particular case, viewed as of the time of counsel's conduct," applying a "highly deferential" level of judicial scrutiny. *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000) (quoting *Strickland*, 466 U.S. at 690).

Petitioner's burden to show *Strickland* prejudice is also high. *Wellington v. Moore*, 314 F.3d 1256, 1260 (11th Cir. 2002). Prejudice "requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland*, 466 U.S. at 687. So, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

C. Exhaustion

The AEDPA precludes federal courts, absent exceptional circumstances, from granting habeas relief unless a petitioner has exhausted all means of available relief under state law. Exhaustion of state remedies requires that the state prisoner "fairly presen[t] federal claims to the state courts in order to give the State the opportunity to pass upon and correct alleged violations of its prisoners' federal rights[.]" *Duncan v. Henry*, 513 U.S. 364, 365 (1995) (citing *Picard v. Connor*, 404 U.S. 270, 275-76 (1971)). The petitioner must apprise the state court of the federal constitutional issue, not just the underlying facts of the claim or a similar state law claim. *Snowden v. Singletary*, 135 F.3d 732 (11th Cir. 1998). In addition, a federal habeas court is precluded from considering unexhausted claims that would clearly be barred if returned to state court. *Coleman v. Thompson*, 501 U.S. 722, 735 n.1 (1991).

If a petitioner attempts to raise a claim in a manner not permitted by state procedural rules, he is barred from pursuing the same claim in federal court. *Alderman v. Zant*, 22 F.3d 1541, 1549 (11th Cir. 1994). Therefore, a federal court must dismiss those claims or portions of claims that have been denied on adequate and independent procedural grounds under state law. *Coleman*, 501 U.S. at 750.

A petitioner can avoid the application of procedural default by establishing: (1) objective cause for failing to properly raise the claim in state court; and (2) actual prejudice from the alleged constitutional violation. *Spencer v. Sec'y, Dep't of Corr.*, 609 F.3d 1170, 1179-80 (11th Cir. 2010). To show cause, a petitioner "must demonstrate that some objective factor external to the defense impeded the effort to raise the claim properly in state court." *Wright v. Hopper*, 169 F.3d 695, 703 (11th Cir. 1999); *Murray v. Carrier*, 477 U.S. 478 (1986). To show prejudice, a petitioner must demonstrate there is a reasonable probability the outcome of the proceeding would have been different. *Crawford v. Head*, 311 F.3d 1288, 1327-28 (11th Cir. 2002).

A second exception, known as the fundamental miscarriage of justice, only occurs in an extraordinary case, where a "constitutional violation has probably resulted in the conviction of one who is actually innocent[.]" *Murray*, 477 U.S. at

479-80. Actual innocence means factual innocence, not legal insufficiency. *Bousley v. United States*, 523 U.S. 614, 623 (1998). To meet this standard, a petitioner must "show that it is more likely than not that no reasonable juror would have convicted him" of the underlying offense. *Schlup v. Delo*, 513 U.S. 298, 327 (1995). "To be credible, a claim of actual innocence must be based on [new] reliable evidence not presented at trial." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup*, 513 U.S. at 324).

III. Analysis

A. Ground One

Petitioner asserts his constitutional rights were violated when the state trial court vacated his judgment and sentence and forced him to proceed to trial after finding that he violated his plea agreement with the State. (Doc. 2 at 17-23). He argues that the trial court's conclusion that he violated his plea agreement was wrong and therefore his judgment and sentence should not have been vacated.

Petitioner raised this claim on direct appeal arguing that any non-compliance with the plea agreement was insubstantial. (Doc. 11-2 at 259–68). In response, the State argued that Rule 3.170(g)(2)(A) of the Florida Rules of Criminal Procedure permits the State to move to vacate a plea and sentence based on the defendant's non-compliance with the specific terms of a plea agreement. (Doc. 11-2 at 307–12). The State argued that the plea agreement required Petitioner to testify at the co-defendant's trial consistent with his sworn statement to the police but at the trial he denied seeing the co-defendant possess the gun and ammunition. The Fifth DCA affirmed without an opinion. (Doc. 11-2 at 331).

Respondents argue that this claim is not exhausted because it was not presented as a federal constitutional issue before the state courts. *See Snowden v. Singletary*, 135 F.3d 732, 736 n.4 (11th Cir. 1998) ("[O]nly claims that were raised as federal constitutional issues before the state courts have been exhausted in the state courts."); *see also Ziegler v. Crosby*, 345 F.3d 1300, 1307 (11th Cir. 2003) (finding that the petitioner's federal habeas claims were not raised in the state court when the direct appeal made no references to the federal constitutional issues raised in the federal habeas petition), *cert. denied*, 543 U.S. 842 (2004). Additionally, Respondents argue that this claim is not subject to federal review "because a federal court may not inquire into the validity of the state courts' application of its state law. (Doc. 10 at 21).

Petitioner replies that his direct appeal did put the State on notice of the federal nature of his claim by relying on *Forsythe v. State*, 840 So. 2d 440 (5th DCA 2003) and *Spencer v. State*, 623 So. 2d 1211 (Fla. 4th DCA 1993). (Doc. 14 at 2) Petitioner claims the Florida courts relied upon and applied the decision in *Santobello v. New York*, 404 U.S. 527 (1971), and the inclusion of a citation to

Santobello adequately put the State on notice of his intention to raise a federal claim. *Id*.; (Doc. 11-2 at 266–67).

In *Santobello*, the United States Supreme Court held that a defendant may not be bound to a plea agreement following a prosecutorial breach of an enforceable provision of such an agreement. 404 U.S. at 262. In that case, the State had promised in a plea deal that it would make no sentencing recommendation, but the prosecutor (apparently unaware of that commitment) asked the state trial court to impose the maximum penalty of one year. Defense counsel immediately objected. *Id*. at 259. The trial judge proceeded anyway to impose the 1-year sentence, reassuring Santobello that the prosecutor's recommendation did not affect his decision. *Id*. at 259–60. The Supreme Court vacated the conviction and remanded the case because "the interests of justice" would be best served. *Id*. at 262.

In this case, Petitioner, not the State, breached the plea agreement. Specifically, the plea agreement required him to testify in any proceeding against Brenton Crabtree "consistent with sworn proffered testimony given October 22, 2012." (Doc. 11-1 at 74–75). In the sworn proffer, Petitioner made several references to having seen Crabtree with a gun, having seen Crabtree loading the gun in the vehicle they were in, and testified to several other acts by Crabtree. *See* Doc. 11-1 at 31–54. Following Crabtree's trial, the State moved to vacate the sentence or the plea and sentence due to Petitioner's testimony. (Doc. 11-1 at 207–09). At Crabtree's trial, Petitioner denied seeing a gun, denied seeing Crabtree load the gun, and testified to other details of the offense contrary to his proffered testimony. *See* Doc. 11-1 at 148–49, 153–56, 166–67.

In granting the motion to vacate the trial court did not arrive at a conclusion opposite to that reached by *Santobello*. The motion was based on a set of facts materially distinguishable from the facts of *Santobello*–that the Defendant, not the State, breached the plea agreement. Moreover, the trial court's ruling was not based on an unreasonable determination of the facts in light of the evidence in the state court proceedings. 28 U.S.C. § 2254(d)(1)-(2). This claim is without merit.

B. Ground Two

Petitioner asserts Mr. Maro rendered ineffective assistance after Mr. Maro failed to adequately represent him at his motion to vacate plea and sentence hearing. (Doc. 1 at 8–9; Doc. 2 at 23–29). He states that Mr. Maro failed to move for a continuance of the hearing because he was not prepared and failed to subject the State's case to adversarial testing. Petitioner claims that Mr. Maro could have argued that he was not in violation of the plea agreement because any violation was *de minimis* and did not rise to the level of substantial noncompliance. (Doc. 2 at 27). Petitioner argues that the State's "entire" closing argument in Crabtree's trial focused on Petitioner's testimony and that his testimony "was the basis for the conviction." *Id*. at 27–28.

Petitioner argues that at the motion to vacate plea hearing, the "State only presented evidence of two factual noncompliance issues: (1) the Petitioner had previously testified in a proffer that he saw the gun in the car after they got the bullets and saw Crabtree lading [sic] the gun at this time, and (2) the Petitioner saw Crabtree throw a rock that smashed the driver's side window of the vehicle in front of the victim's house." (Doc. 2 at 27). Petitioner claims these two issues "were minimal in comparison to the remainder of" his testimony. *Id*. If Mr. Maro had prepared for the hearing, he would have been able to argue those points; instead, he relied on the State's position and recollection of events. *Id*.

Petitioner raised this claim in his Rule 3.850 motion. (Doc. 11-2 at 345–56). Following an evidentiary hearing, the state court denied the claim:

> In his first ground for relief, the Defendant alleges his attorney, Mr. Maro, provided ineffective assistance of counsel because counsel failed to subject the State's motion to vacate to adversarial testing. More specifically, Defendant alleges counsel erred by failing to move for a continuance, failing to investigate the facts and failing to prepare for the hearing. The Defendant's first ground should be denied.
>
> The Defendant has not demonstrated error or prejudice. The transcript from the motion hearing indicates counsel did make preparations in anticipation of the hearing. Counsel read the motion and transcript prior to the hearing. *Motion to Vacate Hr'g Tr. 33, May 21, 2013*. Counsel conducted research and reviewed case law prior to the hearing. *Evidentiary Hearing Tr. 100, March 29, 2018*. Counsel provided the court with a more recent case than the case law the State relied on. *Motion to Vacate Hr'g Tr. 20-21, May 21, 2013*. Counsel

explained to the court counsel no longer represented the defendant (*Tr. 3-6*); counsel was not at the codefendant's trial (*Tr. 6, 10.*), counsel had a conflict due to unpaid fees (*Tr. 6-8.*), and there would be post-hearing complications if the court refused to recognize counsel no longer represented the Defendant (*Tr. 11.*). Counsel requested the court delay the proceeding and appoint the Office of the Public Defender to represent the Defendant. *Motion to Vacate Hr'g Tr. 3-12, May 21, 2013*. Clearly Judge Lambert was not inclined to grant the Defendant a continuance.[1] *Tr. 11*. Over counsel's objection, the court pressed forward with the State's motion and pressed counsel to "acquiesce" into "sitting at the table" with the Defendant. Counsel agreed to do so if the Defendant was comfortable with counsel representing him. *Tr. 10*. Defendant was present for all of this exchange, but did not object.

> [1] Judge Lambert stated, "Well, but my point is resolving the motion today."

At the postconviction evidentiary hearing, counsel explained his thought processes and his strategy while representing the Defendant at the hearing on the State's motion to vacate. Counsel testified that given the court's temperament and findings that the Defendant materially breached the plea agreement,[2] counsel believed it would be harmful to the Defendant to maintain the guilty plea and simply agree to resentencing when the Defendant would be exposed to a life sentence. *3.850 Evidentiary Hearing Tr. 26, 85-88, March 29, 2018*. Counsel believed it would be better to place the Defendant back in the same position the Defendant was in prior to the Defendant's plea so the public defender could attempt to renegotiate a plea with the prosecutor. *Tr. 88*. Counsel had already successfully negotiated the Defendant's sentencing exposure down from a life sentence, to 25 years, and then to 21 years. *Id*. Counsel stated that he knew from past experiences that the prosecutor was a reasonable person. *Id*. Counsel was correct. The State of Florida did ultimately soften and agree to a plea offer less than the minimum mandatory life term. *Tr. 49-50, 59-60, 112-113*.

> [2] Both counsel and the court understood that the court would have to make a factual determination whether there was a material breach of the agreement and that an

argument could be made that the Defendant had not materially breached the agreement. Judge Lambert stated, "I mean, you know, because, I mean the flip side of all this regardless of what he may have said, the State obviously got a first-degree murder conviction and a life sentence, so you know, the State could–I guess depending on which side of the eye you're sitting on is we got one despite him or we got one because I helped them. I guess that's a matter of editorial interpretation." Tr. 12. Counsel recognized the court had already determined there was a material breach of the agreement and argued the court could find there was no material breach of the agreement. Tr. 26.

Counsel correctly read the court's temperament and disposition that day. Prior to the hearing, the court stated:

> THE COURT: … But, I mean, the factual context of this today is he pled with the understanding he needed to do that. Now it's gonna be undone. It seems like he needs to have somebody here on his behalf. Why wouldn't you be the logical person to be here on his behalf? You don't have a conflict as to what caused him to be in the position today. It's *frankly his own*–and just so you appreciate, I know you weren't at the trial, it was clear–I had a *visceral reaction* to it as I listened to him testifying thinking why did the State make a deal with *this guy* about to testify about anything. He's testifying to nothing. In fact, he's testifying not helpfully. I mean, it was *fundamentally apparent that he was doing that*.
>
> I mean, and I read the proffer. You were present at the proffer where he said, I saw the guy had the gun, I saw the guy load the gun, and then when he was at the trial, what gun, what gun, you know. *Stunningly*, I mean, I don't know why you make deals with anybody frankly. If that's the analysis–if that's the benefit you get from plea deals, *you're better off just rolling the dice and having this guy go to prison for life* if he gets convicted too.
>
> *Motion to Vacate Hr'g Tr. 9-10, May 21, 2013.*

Later during the hearing, Judge Lambert's findings only reinforced counsel's concerns.

THE COURT: I mean, he's 21, plus he'd have his gain time so he'd shave off three plus years there. And so, he'd–plus he had a year in, so 17 years from now, he'd be out. I know that's a long time, but Brenton is there until he dies now. And now that's what he's exposing himself to because he's decided that it was better to help Mr. Crabtree than just to proceed with the agreement that he–it really was a visceral reaction when I was listening to this, him testifying as what I would term–I would like to use about his effort when he was testifying. He was trying to be probably as unclear as possible for anybody to hear as he was talking, as opposed to speaking up like an adult so people could hear him.

In fact–fortunately, Ms. Arnold was better able to understand what he was saying because she would repeat his answers in the next question so at least I could follow along. So, he wants to be stupid and make those calls, I'll help him be stupid. I have no, you–this is the epitome, it seems to me, of we make a deal and give you a chance to come out with some part of your life still left and make different changes, and he chooses to take probably the most critical things of his testimony, "Oh, I don't see the gun" and "I don't see the bullets," when the testimony of everything else was, they asked him to get the gun and he got Timmy, the other guy, to get the gun and then they used his phone to call for the bullets and then they got the bullets. And he saw Brenton load the bullets and put it in his waistband.

And all of a sudden when he was at trial, "Who me, was I there, I didn't see any of that." I mean, that kind of put the gun and bullets in Crabtree's hands and led to the–you know, because Crabtree's position, was he did it. Or at least Keith Crabtree's position was that. I don't remember if Brenton Crabtree's was that, but, you know–

So, no, it is a completely unmitigated substantial non-compliance with the plea agreement. I find that and I grant their motion. And if he wants to go, I mean, I'll appoint different counsel now and if they want to try to renegotiate with the State, that's up to them. It will never be 21 years again. Never. I mean, there's no point in rewarding somebody for the behavior they just did. I mean, then I would say to the State, you should never enter into any agreements. It's pointless to enter into any agreements. I mean, it was apparent that they were a little distressed about the fact that their witness, who was putting everybody–putting the shooter at the scene, all of a sudden, couldn't remember anything about anything very well.

So, I just as soon he go on a first degree murder charge. That's fine with me. I'll vacate the whole thing. So, we'll see you at trial unless you rethink some other deal that maybe I'll approve with the State as to something. But I'm not, you know, we're not going to tolerate that behavior of you. That was absolutely absurd what you did. So, you go back and you–the motion's granted. Get him out of here. Time to go.

It was–Jack it was beyond belief to sit and listen to him.

MR. MARO: Yeah. I read it.

THE COURT: It was unbelievable.

MR. MARO: I read it. You know–

THE COURT: No gun, no bullets, no nothing.

MR. MARO: It's–it's a shame. It really is.

THE COURT: No, it's–all he had to do was just do the right thing and he would have been on his way and he–but that's ridiculous. If he wants to rethink something with the State, but there is a price for that.

Motion to Vacate Hr'g Tr. 30-33, May 21, 2013.

When counsel expressed that the Defendant was left with a Hobson's choice of maintaining his plea to a crime that was punishable by life (and being resentenced by a clearly displeased judge) or going to trial on a crime that carried a mandatory life term, the Court left some hope for the Defendant stating, "And I don't know that he needs to make that choice today, frankly. I mean, if you file a motion to withdraw after this and I appoint the public defender, then the public defender can be involved…" *Tr. 78-28* [sic]. The State of Florida did ultimately make plea offers less than the mandatory life term the Defendant faced.

> Under the circumstances, counsel's performance was not outside the broad range of reasonably competent performance. Nor has the Defendant demonstrated prejudice or that there is a reasonable probability the result of the proceeding would have been different. Defendant was subsequently represented by the Office of the Public Defender. The assistant public defender raised the very issues the Defendant now raises when the public defender filed the November 25, 2013 Motion to Reconsider Vacation of Defendant's Sentence. Judge Lambert considered the motion on the merits and denied it. Defendant cannot demonstrate prejudice where the issues counsel failed to raise were ultimately raised by a second attorney and rejected by the trial court and the appellate court. The Defendant's first ground for relief should be denied.

(Doc. 11-2 at 622-27). Singh was granted a belated appeal. (Doc. 11-3 at 287; 289-330, 364-73). Oral arguments were held before the Fifth DCA on June 18, 2019. *See* Doc. 11-3 at 375. The Fifth DCA *per curiam* affirmed. (Doc. 11-3 at 377). Petitioner's Motion for Rehearing, Motion for Rehearing En Banc, and Request for Written Opinion (Doc. 11-3 at 379-84) were denied and stricken as legally insufficient (Doc. 11-3 at 386).

Petitioner argues that the state court applied the wrong federal precedent in analyzing the effectiveness of Mr. Maro at the motion to vacate plea and sentence hearing. (Doc. 2 at 24-28). Petitioner contends that *United States v. Cronic*, 466 U.S. 648 (1984), provides the proper framework for analyzing his claim, not *Strickland*. Petitioner further argues that the state court's decision was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. (Doc. 2 at 28-29).

"A state court acts contrary to clearly established federal law if it confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court of the United States and nevertheless arrives at a result different from its precedent." *Reese v. Sec'y, Fla. Dep't of Corr.*, 675 F.3d 1277, 1286 (11th Cir. 2012) (quotation marks omitted). A state court's decision is based on an unreasonable application of clearly established federal law if it "identifies the correct governing legal rule but unreasonably applies it to the facts of the particular state prisoner's case, or when it unreasonably extends, or unreasonably declines to extend, a legal principle from Supreme Court case law to a new context." *Id.* (quotation marks omitted). "[C]learly established law" under § 2254(d) refers to the holdings of the Supreme Court at the time of the relevant state court decision. *Yarborough v. Alvarado*, 541 U.S. 652, 660-61 (2004). Where the Supreme Court has "give[n] no clear answer, ... it cannot be said that the state court unreasonably applied clearly established Federal law." *Wright v. Van Patten*, 552 U.S. 120, 126 (2008) (quotation marks omitted and alterations adopted).

"The question under AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). "A state court's application of federal law is not unreasonable so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Kilgore v. Sec'y, Fla. Dep't of Corr.*, 805 F.3d 1301, 1312 (11th Cir. 2015) (citation omitted). When the final state court to adjudicate the merits of a petitioner's claim simply affirms or denies a lower court's decision without explaining its reasoning, the federal habeas court should "look through" to the last reasoned state court decision and assume that the unexplained decision adopted that reasoning. *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018).

Additionally, "a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). A state court's implicit factual findings are also entitled to deference. *See Blankenship v. Hall*, 542 F.3d 1253, 1272 (11th Cir. 2008) (explaining, in the context of deference under § 2254(d)(2), that federal courts should "make the common sense judgment that material factual issues were resolved by the trial court in favor of the judgment when it was reasonable for that court to have done so in light of the evidence" (citation omitted)).

The Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel. U.S. Const. amend. VI. To succeed on a claim of ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient, and (2) the deficient performance prejudiced his defense. *Strickland*, 466 U.S. at 687. Failure to establish either prong is fatal. *Id*. at 697. When analyzing an ineffective-assistance claim under § 2254(d), our review is "doubly" deferential. *Harrington v. Richter*, 562 U.S. 86, 105 (2011). Thus, "the question is not whether counsel's actions were reasonable," but "whether there is any reasonable argument that counsel satisfied *Strickland's* deferential standard." *Id*.

And it was in a different context that *Cronic* "recognized a narrow exception to *Strickland's* holding that a defendant who asserts ineffective assistance of counsel must demonstrate not only that his attorney's performance was deficient, but also that the deficiency prejudiced the defense." *Florida v. Nixon*, 543 U.S. 175, 190 (2004) (discussing *Cronic*). *Cronic* held that a Sixth Amendment violation may be found "without inquiring into counsel's actual performance or requiring the defendant to show the effect it had on the trial," *Bell v. Cone*, 535 U.S. 685, 695 (2002), when "circumstances [exist] that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified," *Cronic*, *supra*, at 658. Prejudice may be presumed under *Cronic* where, and only where: (1) there is a "complete denial of counsel" at a "critical stage" of the trial, (2) "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing," or (3) under the "circumstances the likelihood that counsel could have performed as an effective adversary was so remote as to have made the trial inherently unfair." *Id*. at 659-61 (emphasis added); see also *Bell*, 535 U.S. at 695-96 (discussing the three scenarios in which *Cronic* applies). The Eleventh Circuit has held, in an *en banc* decision, *Cronic's* presumption of prejudice "applies to only a very narrow spectrum of cases where the circumstances leading to counsel's ineffectiveness are so egregious that the defendant was in effect denied any meaningful assistance at all." *Stano v. Dugger*, 921 F.2d 1125, 1153 (11th Cir. 1991) (en banc).

Petitioner argues that his claim fits within the second exception identified in *Cronic* because his counsel "allowed the State to make a one-side argument, without any adversarial testing…" (Doc. 2 at 28). Petitioner claims that Mr. Maro was not prepared to represent him at the hearing and should have requested a continuance. Petitioner states that due to this lack of preparation, Mr. Maro put forth no arguments or evidence to support Petitioner's position and relied on the State's recollection of events. *Id.* at 27.

No decision of the Supreme Court, however, squarely addresses the issue in this case or clearly establishes that *Cronic* should replace *Strickland* in this factual context. Nor does Petitioner identify such a case. Supreme Court precedents do not clearly hold that counsel's failure to present argument at a hearing on a motion to vacate plea but "made an effort to get him the best result I could," *see* Doc. 11-3 at 103, should entail the application of *Cronic*. In fact, the case cited by Petitioner, *Wiggins v. Smith*, 539 U.S. 510 (2003), relied on *Strickland* to determine counsel's effectiveness.

Because Supreme Court precedent gives no clear answer to the question presented, let alone one in Petitioner's favor, "it cannot be said that the state court 'unreasonabl[y] appli[ed] clearly established Federal law.'" *Carey v. Musladin*, 549 U.S. 70, 77 (2006) (quoting 28 U.S.C. § 2254(d)(1)). Further, the state court findings were reasonable, in accord with, and not contrary to, the principles of *Strickland*, which the state court cited as the controlling authority on ineffective assistance of counsel claims. Finally, the state court's findings were not unreasonable, given the evidence in the state court proceedings. 28 U.S.C. § 2254(d)(2). Under the explicit terms of § 2254(d)(1)-(2), therefore, relief is unauthorized.

IV. Certificate of Appealability

This Court should grant an application for certificate of appealability only if Petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing "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); *see also Lamarca v. Sec'y Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). But a prisoner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

Petitioner has not shown that reasonable jurists would find the district court's assessment of the constitutional claims and procedural rulings debatable or wrong. Petitioner has failed to make a substantial showing of the denial of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

V. Conclusion

It is ORDERED and ADJUDGED:

1. The Petition for Writ of Habeas Corpus (Doc. 1) is DENIED, and the case is DISMISSED with prejudice.
2. Petitioner is DENIED a certificate of appealability.
3. The Clerk of Court shall enter judgment for Respondents and close this case.

DONE and ORDERED in Orlando, Florida on February 27, 2023.

ROY B. DALTON JR.
United States District Judge

Copies furnished to:

Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

KENARD SINGH,

Petitioner,

v. **Case No: 5:19-cv-617-RBD-PRL**

SECRETARY, DEPARTMENT OF CORRECTIONS and FLORIDA ATTORNEY GENERAL,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Pursuant to the Order of the Court entered on February 27, 2023, the Petition for Writ of Habeas Corpus is DENIED, and the case is DISMISSED with prejudice.

ELIZABETH M. WARREN, CLERK

s/L. Burget, Deputy Clerk

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders**: Courts of Appeals have jurisdiction conferred and strictly limited by statute:

    (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291**: Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).

    (b) **In cases involving multiple parties or multiple claims**, a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

    (c) **Appeals pursuant to 28 U.S.C. Section 1292(a)**: Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

    (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

    (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:

    (a) **Fed.R.App.P. 4(a)(1)**: A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

    (b) **Fed.R.App.P. 4(a)(3)**: "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

    (c) **Fed.R.App.P.4(a)(4)**: If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

    (d) **Fed.R.App.P.4(a)(5) and 4(a)(6)**: Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

    (e) **Fed.R.App.P.4(c)**: If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal**: Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal**: A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).