

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JASON DIAZ

vs.

THE STATE OF TEXAS

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI**

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Petitioner Jason Diaz respectfully requests a 60-day extension of time, until May 15, 2026, within which to file a petition for writ of certiorari. The United States District Court for the Southern District of Texas – Houston Division denied Diaz’ habeas corpus petition (28 U.S.C. §2254) on April 15, 2025, and the United States Court of Appeals for the Fifth Circuit denied Petitioner’s motion for certificate of appealability on October 27, 2025. The Fifth Circuit then denied a petition for rehearing *en banc* on December 16, 2025. The orders denying relief are attached. This Court has jurisdiction under 28 U.S.C. § 1257.

2. Absent an extension, a petition for writ of certiorari would be due on March 16, 2026. *See* U.S.S.Ct.R 13.1. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case. During the past 45 days, undersigned counsel's calendar has been extraordinarily busy; in addition to his normal caseload, counsel conducted an evidentiary hearing on a post-conviction application for writ of habeas corpus in Bexar County, Texas, in *Ex parte Navarro-Depaz*, No. DC2018CR13056 in the 437th Judicial District Court on January 23, 2026, and an oral argument in *Leyva v. State*, No. 14-24-00960-CR in the 14th Court of Appeals on January 29, 2026. Further, the requested extension is necessary because undersigned counsel has not yet received Petitioner's signed *in forma pauperis* oath. Petitioner is currently incarcerated in the Texas Department of Criminal Justice, where sending/receiving legal mail is often delayed due to administrative issues.

3. This case raises a critical question concerning the Sixth Amendment's guarantee of effective assistance of counsel. Trial Counsel advised Petitioner to speak to investigators about his alleged illegal drug use and sexual conduct with a minor while Trial Counsel was actively representing Petitioner in post-indictment probation revocation proceedings at the time of the police interview, and this unreasonable advice directly resulted in Petitioner being charged with a first-degree felony (aggravated sexual assault of a child). However, the lower courts denied

Petitioner's ineffective assistance of claim, reasoning that Petitioner's constitutional right to effective assistance of counsel had not yet attached to the first-degree felony because he had not been formally charged with that crime at the time of the police interview. The lower courts' ruling has led to the absurd result that the State could not use the evidence from the police interview against Petitioner at his probation revocation proceedings (due to receiving ineffective assistance of counsel at the interview with respect to these charges), but it could use the evidence to prosecute a new, higher charge due to the loophole that Petitioner was not yet entitled to effective assistance with respect to that criminal charge.

4. Undersigned counsel requires additional time to draft the petition with respect to this novel, complex legal issue. Further, Petitioner cannot file the petition until his motion to proceed *in forma pauperis* is prepared, and this motion requires Petitioner's signed oath of indigency. Undersigned counsel is rendering discounted legal services on the petition for writ of certiorari, and Petitioner has not paid for any legal services.

5. Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari to Friday, May 15, 2026.

Dated: March 4, 2026.

Respectfully submitted,

/s/ Christopher M. Perri_____

Christopher M. Perri

1304 Nueces St.

Austin, Texas 78701

Phone: (512) 269-0260

Fax: (512) 675-6186

chris@chrisperri.com

State Bar No. 24047769

COUNSEL FOR PETITIONER

JASON DIAZ

ATTACHMENTS

- 1. U.S. District Court's Order Denying Relief*
- 2. Fifth Circuit's Order Denying Motion for Certificate of Appealability*
- 3. Fifth Circuit's Order Denying Petition for En Banc Rehearing*

ENTERED

April 17, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JASON DIAZ,
TDCJ #02319295,
Petitioner,

VS.

ERIC GUERRERO,¹
Respondent.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. H-23-01614

MEMORANDUM AND ORDER

State inmate Jason Diaz (TDCJ #02319295), represented by counsel, filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254 and a brief in support to challenge his conviction and sentence. Doc. Nos. 1 & 3. Respondent has filed an Answer and the pertinent state court records. *See* Doc. No. 9, 12 & 13 and attachments thereto. After carefully considering the petition, brief in support, answer, record, and applicable law, the Court DISMISSES the petition on the merits with prejudice and DENIES a certificate of appealability.

¹ Bobby Lumpkin was the previous named respondent in this action. Eric Guerrero has succeeded Lumpkin as Director of the Texas Department of Criminal Justice, Correctional Institutions Division. Under Rule 25(d) of the Federal Rules of Civil Procedure, Guerrero is automatically substituted as a party.

I. BACKGROUND AND PROCEDURAL HISTORY

In August 2019, Diaz and his then-attorney, Mr. Gary Eudy, met for an interview with Deputy Investigator Kalan Turner of the Harris County Sheriff's Office. At that time, Diaz was on deferred adjudication in four separate cases: (1) a 2018 deferred adjudication for unauthorized use of a motor vehicle; (2) a 2018 deferred adjudication for possession with intent to deliver methamphetamine 1-4 grams; (3) a 2019 deferred adjudication for manufacturing with intent to deliver controlled substance less than 1 gram of oxycodone; and (4) a 2019 deferred adjudication for manufacturing with intent to deliver methamphetamine 4-200 grams.²

During the interview, Turner questioned Diaz about his encounters with a young female individual, A.F.³ Diaz told Turner that the first time he picked up A.F. was in early 2019, having met her online.⁴ Diaz stated that he picked up A.F. off a residential roadway in Cypress, Texas. He told Turner that he and A.F. got high and had sex at his apartment.⁵ He stated that the second time he picked up A.F. was in May 2019 at a church off Highway 290.⁶ He said that A.F. threw her phone out of the window because she did not want to be

² See Doc. No. 12-15 at 88-115, State Habeas Corpus Record ("SHCR"), at 86-113 (Orders of Deferred Adjudication, Conditions of Community Supervision, and Motions to Adjudicate Guilt). On June 25, 2020, the presiding judge of his criminal case discharged his community supervision period and dismissed all four of these cases after Diaz was sentenced to 30 years imprisonment for the aggravated sexual assault of a child case. See *id.* at 124-130, SHCR at 120-128 (State's Writ Exhibit K).

³ Doc. No. 13-2, Presentence Investigation ("PSI") Hearing Transcript, at 38-39 (under seal). To protect the identity of the minor victim, the Court refers to her as "A.F."

⁴ *Id.* at 39:11-15.

⁵ *Id.* at 39:15-24.

⁶ *Id.* at 41:3-9.

tracked, and that this alarmed him.⁷ Diaz stated that he thought that A.F. was eighteen, or if she lied about her age, she was 17.⁸ After the interview, Diaz was charged with continuous sexual abuse of a child under 14. He agreed to plead guilty in exchange for the charge to be reduced to aggravated sexual assault of a child.⁹

Diaz affirmed that the following allegations were true in his Judicial Confession he signed in connection with his guilty plea:

In open court and prior to entering my plea, I waive the right to trial by jury. I also waive the appearance, confrontation, and cross-examination of witnesses, and my right against self-incrimination. The charges against me allege that in Harris County, Texas, DIAZ, JASON, hereafter styled the Defendant, heretofore on or about JANUARY 1, 2019, CONTINUING THROUGH MAY 28, 2019, did then and there unlawfully, during a period of time of thirty or more days in duration, commit at least two acts of sexual abuse against a child younger than fourteen years of age, including an act constituting the offense of aggravated sexual assault of a child, committed against A.F. on or about January 1, 2019, and an act constituting aggravated sexual assault of a child, committed against A.F. on or about May 28, 2019, and the Defendant was at least seventeen years of age at the time of the commission of those acts.¹⁰

At the PSI hearing, Diaz acknowledged the sexual encounters with A.F. in January and May 2019.¹¹ He indicated that he provided her with Xanax, methamphetamine, and marijuana at that time.¹² Diaz testified to his history of addiction and asked for probation, promising to get help.¹³ Deputy Investigator Turner testified regarding the August 2019

⁷ *Id.* at 41:12-15.

⁸ *Id.* at 42:20-43:1.

⁹ *See id.* at 85:5-11; Doc. No. 12-1, Clerk's Record ("CR") at 30, 42.

¹⁰ CR at 31.

¹¹ Doc. No. 13-2 at 85:15-23.

¹² *Id.* at 88:7-12.

¹³ *Id.* at 80:23-83:6.

interview as set forth above, and A.F.'s grandmother and father testified to the devastating effects that the encounters with Diaz had on A.F.¹⁴ Diaz presented several character witnesses and family members who asked the judge for leniency and to sentence Diaz to probation.¹⁵

The Honorable Josh Hill, the presiding judge of Diaz's criminal case, accepted Diaz's guilty plea to aggravated sexual assault of a child under 14 in cause number 1646652 in the 232nd Judicial District Court of Harris County, Texas, and sentenced Diaz to 30 years in TDCJ.¹⁶ The Thirteenth Court of Appeals dismissed Diaz's direct appeal on his motion for voluntary dismissal. *Diaz v. State*, No. 13-20-00346-CR, 2021 WL 161393 (Tex. App.—Corpus Christi-Edinburg, Jan. 14, 2021, no pet.) (mem. op.) (not designated for publication). Diaz filed a state application for habeas corpus on May 17, 2021, which was denied without written order on February 8, 2023. *Ex parte Diaz*, No. WR-92,844-01 (Tex. Crim. App. Feb. 8, 2023); Doc. No. 12-18 (Action Taken Sheet). He timely filed this federal petition for habeas corpus. Doc. No. 1.

In his federal petition, Diaz claims that his trial counsel was ineffective: (1) when he advised Diaz to talk about the alleged offense with investigators without first discussing facts of the case with Diaz, without advising Diaz of his constitutional right to remain silent, and without explaining to Diaz the elements of sexual assault of a child (Ground

¹⁴ *Id.* at 6-32.

¹⁵ *Id.* at 50-77.

¹⁶ *Id.* at 106-107; CR at 32, 60 (Judgment).

One); and (2) when he failed to obtain a plea offer from the State and then advised Diaz to plead guilty with the false promise of probation (Ground Two). Doc. No. 1 at 6.

II. STANDARD OF REVIEW

The writ of habeas corpus provides an important, but limited, examination of an inmate's conviction and sentence. *See Harrington v. Richter*, 562 U.S. 86, 103 (2011) (noting that “state courts are the principal forum for asserting constitutional challenges to state convictions”). The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), codified as amended at 28 U.S.C. § 2254(d), “imposes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt”; it also codifies the traditional principles of finality, comity, and federalism that underlie the limited scope of federal habeas review. *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotations omitted).

AEDPA “bars relitigation of any claim ‘adjudicated on the merits’ in state court, subject only to the exceptions in [28 U.S.C.] §§ 2254(d)(1) and (d)(2).” *Richter*, 562 U.S. at 98. “When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.” *Id.* at 99. For AEDPA to apply, a state court need not state its reasons for its denial, nor must it issue findings, nor need it specifically state that the adjudication was “on the merits.” *Id.* at 98-99.

To the extent that the petitioner exhausted his claims, they were adjudicated on the merits by state courts. This Court, therefore, can only grant relief if “the state court’s adjudication of the merits was ‘contrary to, or involved an unreasonable application of, clearly established Federal law.’” *Berghuis v. Thompkins*, 560 U.S. 370, 378 (2010) (quoting 28 U.S.C. § 2254(d) (1)). The focus of this well-developed standard “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). Where a claim has been adjudicated on the merits by the state courts, relief is available under § 2254(d) *only* in those situations “where there is no possibility fairminded jurists could disagree that the state court’s decision conflicts with” Supreme Court precedent. *Richter*, 562 U.S. at 102.

Whether a federal habeas court would have, or could have, reached a conclusion contrary to that reached by the state court on an issue is not determinative under § 2254(d). *Id.* (“even a strong case for relief does not mean that the state court’s contrary conclusion was unreasonable.”). Thus, AEDPA serves as a “guard against extreme malfunctions in the state criminal justice systems,” not as a vehicle for error correction. *Id.* (citation omitted); *see also Wilson v. Cain*, 641 F.3d 96, 100 (5th Cir. 2011). “If this standard is difficult to meet, that is because it was meant to be.” *Richter*, 562 U.S. at 102.

“Review under § 2254(d)(1) focuses on what a state court knew and did.” *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011). Reasoning that “[i]t would be strange to ask federal courts to analyze whether a state court’s adjudication resulted in a decision that

unreasonably applied federal law to facts not before the state court,” *Pinholster* explicitly held that “[i]f a claim has been adjudicated on the merits by a state court, a federal habeas petitioner must overcome the limitation of § 2254(d)(1) on the record that was before that state court.” *Id.* at 185. Thus, “evidence introduced in federal court has no bearing on § 2254(d)(1) review.” *Id.* Courts construe pleadings filed by *pro se* litigants under a less stringent standard than those drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519 (1972); *Bledsue v. Johnson*, 188 F.3d 250, 255 (5th Cir.1999).

III. DISCUSSION

Diaz raises claims of ineffective assistance of counsel in connection with his guilty plea. The Constitution guarantees a criminal defendant the right to effective assistance of counsel pursuant to the Sixth Amendment. *See* U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *see also McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (observing that “the right to counsel is the right to the effective assistance of counsel”). Claims for ineffective assistance of counsel (“IAC”) are analyzed under the following two-prong standard:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This 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. Thus, to prevail under the *Strickland* standard, a defendant must demonstrate both constitutionally deficient performance by counsel and actual

prejudice because of the alleged deficiency. *See Williams v. Taylor*, 529 U.S. 390, 390-91 (2000).

The first prong of the governing standard is only satisfied where the defendant shows that “counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 687. Scrutiny of counsel’s performance must be “highly deferential,” and a reviewing court must make every effort “to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Id.* at 689. There is a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *See United States v. Molina-Uribe*, 429 F.3d 514, 518 (5th Cir. 2005) (citing *Strickland*, 466 U.S. at 687-88), *cert. denied*, 547 U.S. 1041 (2006).

To prove prejudice, the second prong under *Strickland*, a defendant must demonstrate a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

Because Diaz’s ineffective-assistance claims were rejected on state habeas review, the central question is not whether this court “believes the state court’s determination’ under the *Strickland* standard ‘was incorrect but whether the determination was *unreasonable* — a substantially higher standard.” *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009) (quoting *Schriro*, 550 U.S. at 478) (emphasis added). In addition, “because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably

determine that a defendant has not satisfied that standard.” *Id.* When applied together with the highly deferential standard found in 28 U.S.C. § 2254(d), review of ineffective-assistance claims is “doubly deferential” on habeas corpus review. *Knowles*, 556 U.S. at 123; *see also Richter*, 562 U.S. at 105 (emphasizing that the standards created by *Strickland* and § 2254(d) are both “highly deferential,” and “‘doubly’ so” when applied in tandem) (citations and quotations omitted); *Beatty v Stephens*, 759 F.3d 455, 463 (5th Cir. 2014), *cert. denied*, 135 S. Ct. 2312 (2015) (same).

A. Ground One: IAC Regarding August 2019 Interview

Diaz claims that his attorney, Mr. Eudy, rendered ineffective assistance of counsel at his August 2019 interview with the Harris County Sheriff’s Department investigator because Eudy did not talk to Diaz about the facts of the case before allowing Diaz to talk to the investigator, inform him of his right to remain silent, or tell him about the elements of sexual abuse of a child.

Respondent argues that (1) Diaz’s claims are waived by a voluntary, intelligent, and knowing guilty plea; and (2) these claims are foreclosed by *Texas v. Cobb*, 532 U.S. 162, 165 (2001), and *Henderson v. Quarterman*, 460 F.3d 654, 656 (5th Cir. 2006), because the right to counsel had not attached for the child sex crime at the time of the noncustodial interview. Diaz argues that, because he was facing motions to adjudicate guilt in several other cases for which trial counsel Mr. Eudy represented him, he had the right to counsel, and counsel should have advised him not to incriminate himself at the interview.

The state habeas court found, based on the offense report excerpts and Eudy's affidavit which it found to be credible, that Eudy questioned Diaz prior to the police interview and Diaz did not mention that he had sexual relations with anyone underage; Diaz told Eudy only that he may have provided drugs to a young lady.¹⁷ The habeas court further found that when Eudy questioned Diaz before the interview, Diaz was not forthcoming with him about his potential sexual involvement with young girls and gave Eudy the impression that he had not committed any sexual offenses against minors.¹⁸ The state habeas court found that Diaz failed to show that Eudy's performance was deficient or that his actions harmed Diaz.¹⁹ The habeas court also found that "adversary judicial proceedings" had not commenced against Diaz at the time of the interview.²⁰

In *Texas v. Cobb*, the Supreme Court held that the right to counsel is "offense-specific." 532 U.S. at 165. Citing *McNeil v. Wisconsin*, 501 U.S. 171 (1991), it explained:

The Sixth Amendment right [to counsel] ... is offense specific. It cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.

Cobb, 532 U.S. at 167-68 (quoting *McNeil*, 501 U.S. at 175). Thus, "a defendant's statements regarding offenses for which he had not been charged [are] admissible notwithstanding the attachment of his Sixth Amendment right to counsel on other charged

¹⁷ Doc. No. 12-16 at 10, Supp. SHCR at 0008, at Finding of Fact No. 35.

¹⁸ *Id.* at Finding of Fact No. 36.

¹⁹ *Id.* at Finding of Fact No. 37.

²⁰ *Id.* at Finding of Fact No. 38.

offenses.” *Id.* at 168 (citing *McNeil*, 501 U.S. at 176). When the Sixth Amendment right to counsel attaches, it encompasses offenses that, although not formally charged, would be considered the same offense under *Blockburger v. United States*, 284 U.S. 299 (1932). *Id.* at 172-73.

In *Cobb*, the defendant had been charged with burglary in Walker County and was appointed counsel for that crime. *Id.* at 165. Cobb subsequently confessed to his father that he killed the two people who were missing after that burglary of their home. *Id.* Law enforcement questioned Cobb about the disappearances without his lawyer present and without obtaining permission from Cobb’s lawyer. *Id.* at 165-66. The Supreme Court rejected Cobb’s argument that the confession of the murders was obtained in violation of Cobb’s Sixth Amendment right to counsel because the right to counsel for the murders had not attached at the time of questioning because the criminal proceedings had not been initiated for that crime, although it was related to the burglary (and happened during the same criminal episode) for which Cobb had counsel.

Similarly, in *Henderson v. Quarterman*, 460 F.3d 654, 656 (5th Cir. 2006), the Fifth Circuit, following *McNeil* and *Cobb*, held that Henderson “did not have a Sixth Amendment right to counsel for capital child murder when each of the attorneys acted on her behalf prior to her being so charged,” and, therefore, there was no ineffective assistance of counsel for her interviews or map-drawing regarding where the child was buried, when she had only been charged with kidnapping at the time. *Id.* at 661. It explained that the

convicted he would have faced a minimum sentence of 25 years, a maximum sentence of life, and ineligibility for parole or community supervision.²² The state habeas court further found that Diaz did not show “that he would have insisted on going to trial on continuous sexual abuse of a child instead of pleading guilty to the judge to aggravated sexual assault of a child, given his multiple pending felony cases and potential sentencing exposure from a jury.”²³

Regarding the alleged false promise of probation, the state habeas court found that this claim is contradicted by the plea documents, in which Diaz states that “I intend to enter a plea of guilty without an agreed recommendation of punishment from the prosecutor and request that my punishment should be set by the Judge after a pre-sentence investigation report and hearing. I understand the state reserves the right to argue for full punishment at my sentencing hearing.”²⁴ Further, the habeas court found that Diaz “was admonished in writing, which [he] initialed, that he was facing the full range of punishment for a first degree felony – a maximum of life or 99 years, or a minimum of 5 years.”²⁵ The state habeas court found that Eudy never promised that Diaz would receive probation and that Diaz failed to show that Eudy was deficient or that he was harmed by Eudy’s actions.²⁶

²² Doc. No. 12-16 at 12, Supp. SHCR at 0010, at Finding of Fact No. 57 (citing Tex. Penal Code § 21.02(h), Tex. Code Crim. Proc. art. 42A.053(c)(1) and 42A.102(b)(3), and Tex. Gov’t Code § 508.145(a)(2)).

²³ *Id.* at Supp. SHCR at 0011, at Finding of Fact No. 58.

²⁴ *Id.* at Supp. SHCR at 0010, at Finding of Fact Nos. 52 & 53.

²⁵ *Id.* at Finding of Fact No. 54.

²⁶ *Id.* at Finding of Fact Nos. 55 & 56.

Official court records “are entitled to a presumption of regularity and are accorded great evidentiary weight” on habeas corpus review. *Hobbs v. Blackburn*, 752 F.2d 1079, 1081–82 (5th Cir. 1985) (citations omitted). Likewise, “[s]olemn declarations in open court carry a strong presumption of verity.” *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977). Diaz’s representations in open court on the record, as well as the trial court’s findings accepting the plea as freely and voluntarily made, are a formidable barrier to any subsequent collateral attack. *Id.* A defendant “need only understand the direct consequences of the plea; he need not be made aware of every consequence that, absent a plea of guilty, would not otherwise occur.” *United States v. Hernandez*, 234 F.3d 252, 255 (5th Cir. 2000) (per curiam).

Further, it is well established that the threat of a longer sentence if found guilty at trial does not make the plea involuntary. *See Brady v. United States*, 397 U.S. 742, 749–50 (1970) (holding that the prospect of the death penalty did not render the plea of guilty involuntary); *North Carolina v. Alford*, 400 U.S. 25, 31 (1970) (“That he would not have pleaded except for the opportunity to limit the possible penalty does not necessarily demonstrate that the plea of guilty was not the product of a free and rational choice, especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant’s advantage.”).

Diaz does not overcome the strong presumption that his plea in open court and his representations on the record to the trial judge indicate that he entered his plea intelligently, knowingly, and voluntarily. Diaz represented that he had spoken to his attorney about the

plea, he was entering it freely and voluntarily, and no person had made any promises to him regarding the punishment he would receive. He does not meet his burden to show clear and convincing evidence to overcome the state court evidentiary record establishing that he entered a voluntary and knowing plea. *See* 28 U.S.C. § 2254(e)(1).

In sum, the state court's conclusions that Diaz failed to show that his plea was involuntary and that trial counsel's assistance regarding the plea process fell below an objective standard of reasonableness are not contrary to, or an unreasonable application of *Strickland*. Therefore, he does not establish entitlement to habeas relief on this ground, and Ground Two is DENIED.

IV. CERTIFICATE OF APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a certificate of appealability when entering a final order that is adverse to the petitioner. *See* 28 U.S.C. § 2253. A certificate of appealability will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which requires a petitioner to demonstrate "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Under the controlling standard, this requires a petitioner to 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.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Where denial of

relief is based on procedural grounds, the petitioner must show not only that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right,” but also that they “would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

A district court may deny a certificate of appealability, *sua sponte*, without requiring further briefing or argument. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). For reasons set forth above, this court concludes that jurists of reason would not debate whether the ruling in this case was correct. Therefore, a certificate of appealability will not issue.

V. CONCLUSION AND ORDER

Based on the foregoing, the Court **ORDERS** as follows:

1. Petitioner Jason Diaz’s petition is **DISMISSED** with prejudice on the merits.
2. All other motions, if any, are **DENIED**.
3. A certificate of appealability is **DENIED**.

The Clerk will enter this Order, providing a correct copy to all parties of record.

SIGNED on this 15th day of April 2025.



ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE

United States Court of Appeals
for the Fifth Circuit

No. 25-20192

United States Court of Appeals
Fifth Circuit

FILED

October 27, 2025

Lyle W. Cayce
Clerk

JASON DIAZ,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-1614

ORDER:

Jason Diaz, Texas prisoner # 02319295, seeks a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 application challenging his conviction for aggravated sexual assault of a child under the age of 14. He argued in the application that his defense counsel was ineffective for (i) advising him, while representing him in post-indictment revocation proceedings for prior offenses, to speak to investigators in August 2019 regarding this offense without first discussing the facts of the case with him, advising him of his right to remain silent, or explaining the elements of

No. 25-20192

the offense (Claim 1); and (ii) subsequently failing to obtain a plea offer from the state and advising him that he would likely be sentenced to probation if he pleaded guilty (Claim 2).

Represented by counsel, Diaz now renews his Claim 1 argument. His COA motion and brief do not challenge the district court's determinations as to Claim 2 that his guilty plea was knowing, voluntary, and intelligent and that defense counsel did not perform ineffectively regarding his plea. They also do not address the district court's determination as to Claim 1 that his knowing, voluntary, and intelligent guilty plea waived his claim that trial counsel performed ineffectively with regard to the August 2019 interview. *See Smith v. Estelle*, 711 F.2d 677, 682 (5th Cir. 1983). Because Diaz has failed to brief these issues, he has abandoned any challenge to the bases for the district court's decision. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *see also Beasley v. McCotter*, 798 F.2d 116, 118 (5th Cir. 1986).

Diaz has thus failed to show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see* 28 U.S.C. § 2253(c)(2). Accordingly, his motion for a COA is DENIED.

Leslie H. Southwick

LESLIE H. SOUTHWICK
United States Circuit Judge

United States Court of Appeals
for the Fifth Circuit

No. 25-20192

United States Court of Appeals
Fifth Circuit

FILED

December 16, 2025

Lyle W. Cayce
Clerk

JASON DIAZ,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice,*
Correctional Institutions Division,

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-1614

ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

Before SOUTHWICK, *Circuit Judge.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R.40 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R.

APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.