In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-13499

ROBERT KEATON,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cv-01257-SDM-UAM

ORDER:

Robert Keaton, a Florida prisoner serving a life sentence for robbery with a firearm, aggravated battery on a law enforcement officer, and fleeing and eluding, moves this Court *pro se* for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP"), in order to appeal the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. To merit a COA, Keaton must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

Keaton has failed to make the requisite showing. First, reasonable jurists would not debate the district court's determination that Claims 2 and 3 are procedurally defaulted because Keaton did not exhaust these claims in state court. *See* 28 U.S.C. § 2254(b), (c). Keaton based Claim 2 on a juror's comments concerning the credibility of police officers, a "specific factual foundation" that was not raised in, or considered by, the state court. *Freeman v. Comm'r, Ala. Dep't of Corr.*, 46 F.4th 1193, 1217 (11th Cir. 2022).[1] Further, in the

[1] Even had Keaton exhausted this claim in the state court, the claim would be meritless. The juror repeatedly stated during *voir dire* that he would follow the court's instructions. Assuming that Keaton could show that counsel should have removed this juror, he cannot demonstrate a reasonable probability that the outcome at trial would have been different, in light of the evidence against him. *See Guardado v. Sec'y, Fla. Dep't of Corr.*, 112 F.4th 958, 995 (11th Cir. 2024) (holding that the petitioner did not show a substantial likelihood that, absent any error by trial counsel in failing to challenge three jurors, he would have received a life sentence instead of death, where the jurors insisted repeatedly that they could follow the law).

state court, Keaton raised Claim 3 in terms of prosecutorial misconduct instead of ineffective assistance of counsel. Keaton has made no argument that he is excused from the procedural default. *McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir. 2011).

In addition, as to the remaining claims, reasonable jurists would not debate whether trial counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668, 687 (1984). As to Claims 1 and 4, the trial transcript does not support Keaton's contentions that a juror fell asleep or that the prosecutor had a gun during closing arguments, and the state court found that the prosecutor's use of a mask as a demonstrative aid was not improper under state law. Even if counsel had objected, Keaton cannot demonstrate the reasonable likelihood of a different outcome at trial, in light of the evidence against him. *See id*. at 694.

As to Claim 5, contrary to Keaton's argument, the informant's tip that the suspect had switched cars was not the only evidence connecting him to the car, and, therefore the robberies, such that counsel was not deficient for failing to object. *Freeman v. Att'y Gen.*, 536 F.3d 1225, 1233 (11th Cir. 2008).

As to Claim 6, Keaton has not shown that the prosecutor shifted the burden of proof at trial. Keaton chose to testify in his defense and the prosecutor was allowed to "test[] the plausibility" of his story that a coworker had committed the robberies. *United States v. Demarest*, 570 F.3d 1232, 1242 (11th Cir. 2009). Further, the prosecutor's comments during closing arguments were appropriate under state law, and counsel was not ineffective for failing to

object. *See Miller v. State*, 926 So.2d 1243, 1254-55 (Fla. 2006) (noting that a prosecutor is allowed to argue credibility of witnesses so long as the argument is based on the evidence). Keaton has not shown that any of the referenced remarks by the prosecutor were improper.

As to Claim 7, counsel objected to the first victim's in-court identification of Keaton, and the trial court overruled the objection. Keaton has not shown that additional objections to other victims' identifications would have yielded a different result. Keaton has also not demonstrated that counsel's performance during cross-examination was deficient. Counsel elicited testimony that none of the victims mentioned Keaton's eyes to police or identified him as the robber prior to trial, and that two of them had failed to recognize Keaton when he came into the store as a customer between the second and third robberies. In addition, Keaton provided no authority for his contention that the state was required to show the victims a photo lineup prior to their in-court identifications. *Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991).

Finally, as to Claim 8, because Keaton has shown no error, there can be no cumulative error. *United States v. Waldon*, 363 F.3d 1103, 1110 (11th Cir. 2004).

Accordingly, Keaton's motion for a COA is DENIED. His motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE

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Before ROSENBAUM and ABUDU, Circuit Judges.

BY THE COURT:

Pursuant to 11th Cir. R. 22-1(c) and 27-2, Robert Keaton moves for reconsideration of this Court's June 3, 2025, order denying his motion for a certificate of appealability and denying as moot his motion to proceed *in forma pauperis*, on appeal from the denial of his *pro se* amended 28 U.S.C. § 2254 petition. Upon review, Keaton's motion is DENIED because he offers no new evidence or meritorious arguments as to why this Court should reconsider its previous order.