No. 25-1518

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 17, 2025
KELLY L. STEPHENS, Clerk

SERGIO SHARROD HARE,)
)
Petitioner-Appellant,)
)
v.) ORDER
)
TERRY WILKINS, Warden,)
)
Respondent-Appellee.)

Before: COLE, Circuit Judge.

Michigan prisoner Sergio Sharrod Hare, through counsel, appeals the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition. Hare moves the court for a certificate of appealability (COA). The court denies Hare's COA application for the reasons below.

A. Factual and Procedural History

In a joint trial, a state jury convicted Hare and co-defendant Jerod Anthony Blond of first-degree murder, assault to commit murder, and illegally possessing firearms. Evidence at trial showed that Hare and Blond went to a house that Tavion Wells and Jerry Carter shared. There, a dispute was either already ongoing or began shortly after Hare and Blond arrived. Hare and Blond both produced pistols, and in the ensuing melee, Wells was shot and killed, and two other persons were wounded. Hare did not testify. But Blond testified and claimed that he did not bring a gun to Wells's house. Instead, Blond claimed that Carter pulled out a Glock pistol, that he struggled with Carter for control of the gun, and that the gun discharged during this fight. Blond said that Hare had a pistol and fired it once, not at anyone, but rather in an apparent attempt to stop the fight

between him and Wells. *See People v. Blond*, Nos. 344434, 344440, 2019 WL 6799700, at *1 (Mich. Ct. App. Dec. 12, 2019) (per curiam).

During the trial, Hare's attorney requested and received a recess to review with Hare a pretrial proffer that Blond had given to the prosecution. Counsel represented to the trial court that he only became aware of the proffer the evening before, complained about its late disclosure, and stated that he needed time to review it with Hare to prepare for cross-examining Blond. After a two-and-a-half-hour recess, Hare's attorney informed the court that he had reviewed Blond's proffer with Hare and was ready to proceed with the trial.

The jury therafter convicted Hare and Blond. The trial court sentenced Hare to a total term of life in prison. On appeal, Hare claimed only that his trial attorney performed ineffectively by not moving for separate trials. The Michigan Court of Appeals denied this claim. The court found that joint trials are the "norm" in Michigan, that Hare's defense and Blond's defense were not antagonistic, and that Hare failed to point to any evidence from his trial that would not have been admitted in a separate trial. *Id.* at *4. Consequently, the court found that Hare "failed to show that a motion for severance would likely have succeeded below" and thus concluded that Hare's attorney did not perform ineffectively by failing to raise a meritless or futile objection. *Id.* The court therefore affirmed Hare's convictions. The Michigan Supreme Court denied Hare leave to appeal. *People v. Hare*, 941 N.W.2d 656 (Mich. 2020) (mem.).

Hare then filed a counseled § 2254 petition in the district court. Hare renewed his claim that his trial attorney performed ineffectively by not moving for a severance (claim 1). Hare also claimed that his trial attorney inadequately investigated the case by not discovering Blond's proffer sooner. Alternatively, Hare argued that his attorney should have moved for a mistrial when he learned of Blond's statement (claim 2). Hare conceded that he did not present claim 2 to the state courts. The district court granted Hare's request for a stay of the habeas proceedings so that he could exhaust this claim in state court.

Hare then filed a counseled motion for a new trial in the trial court under Michigan Court Rule 6.500 and asserted claim 2. The trial court ruled that Hare had not shown good cause for not

raising the claim on direct appeal and, in any event, the claim lacked merit. The court thus denied the motion.

The trial court entered its order denying Hare's motion on November 22, 2021. Apparently because of a dispute over fees, Hare's post-conviction counsel did not file a delayed application for leave to appeal in the Michigan Court of Appeals until March 21, 2023. The Michigan Court of Appeals dismissed Hare's application as untimely. *People v. Hare*, No. 365401, 2023 Mich. App. LEXIS 2241 (Mich. Ct. App. Mar. 29, 2023). Hare did not seek further review in the Michigan Supreme Court.

Next, the district court reopened Hare's habeas proceedings. The court then concluded that the Michigan Court of Appeals' denial of claim 1 was not contrary to or an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). The court found that Hare procedurally defaulted claim 2 by not raising it on direct appeal and that he could not establish cause and prejudice to excuse the default. The court therefore denied Hare's petition and declined to issue a COA.

Hare appeals and now moves for a COA.

B. COA Standard

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant must demonstrate that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citation omitted). Under the Antiterrorism and Effective Death Penalty Act (AEDPA), a district court shall not grant a habeas petition with respect to any claim that was adjudicated on the merits in the state courts unless the adjudication resulted in a decision that (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court" or (2) "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). If the state courts adjudicated the petitioner's

claim on the merits, then the relevant question at the COA stage is whether the district court's application of § 2254(d) to that claim is debatable by jurists of reason. *Miller-El*, 537 U.S. at 336.

When a district court denies a claim on procedural grounds, the court may issue a COA only if the applicant shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

C. Analysis

1. Claim 1

Hare first claimed that his trial attorney should have moved for separate trials because Blond was the only witness who definitively placed a gun in his hand during the incident that led to Wells's death.

To prevail on his ineffective-assistance claim, Hare had to prove (1) that his trial "counsel's representation fell below an objective standard of reasonableness" and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 688, 694. Stated another way, Hare had to establish that his attorney performed deficiently, and that the deficient performance prejudiced his defense. Counsel's performance is "deficient" when "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690.

And to obtain federal habeas relief on this claim, Hare had to both overcome *Strickland*'s presumption that his attorney's performance was reasonable, *see id.* at 689, and show that the Michigan Court of Appeals' resolution of his ineffective-assistance claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair[-]minded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011); *see also Burt v. Titlow*, 571 U.S. 12, 15 (2013) (stating that, in evaluating ineffective-assistance claims

under AEDPA, a federal court must "use a 'doubly deferential' standard of review that gives both the state court and the defense attorney the benefit of the doubt") (quoting *Cullen v. Pinholster*, 563 U.S. 170, 190 (2011)).

Initially, Hare argues that the Michigan Court of Appeals' decision is not entitled to AEDPA deference because the court misapplied *Strickland*. Hare argues that, although *Strickland* only required him to demonstrate a reasonable probability that the trial court would have granted the motion, the state court denied the claim because he could not show that a severance motion likely would have succeeded. Hare misunderstands the state court's decision, however. *Strickland*'s reasonable-probability standard applies to the prejudice prong of an ineffective-assistance claim. *See Strickland*, 466 U.S. at 694. But the state court denied this claim at the performance prong—it found that counsel's decision not to file a severance motion that probably would not have succeeded was not objectively unreasonable. *See Blond*, 2019 WL 6799700, at *4. Accordingly, AEDPA deference applies to this claim.

In Michigan, "the court *must* sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant." Mich. Ct. R. 6.121(C) (emphasis added). And "the court *may* sever the trial of defendants on the ground that severance is appropriate to promote fairness to the parties and a fair determination of the guilt or innocence of one or more of the defendants." Mich. Ct. R. 6.121(D) (emphasis added). Hare does not contend that severing his trial from Blond's trial was mandatory. But Hare argues that the trial court probably would have granted him a discretionary severance because of the potentially confusing nature of the evidence.

If, as Hare contends, the trial evidence had the potential to confuse the jury, Blond's testimony did not appreciably add to the confusion. Blond's version of the event was just one of several that the jury had to evaluate in reaching its verdicts. And as the Michigan Court of Appeals found, Hare probably would not have been able to prevent the prosecution from calling Blond to testify against him in a separate trial. *See Blond*, 2019 WL 6799700, at *4; *see also People v. Hana*, 524 N.W.2d 682, 697 (Mich. 1994) ("[W]hen each defendant testified before his own jury,

he thereby waived his Fifth Amendment rights regarding the events in question. Thereafter, it became permissible for the prosecution to call that defendant as a witness in the trial of the codefendant."). In other words, Hare's trial likely would have been largely duplicative of Blond's trial. And Michigan courts disfavor granting a severance when separate trials will be repetitive or duplicative. *Cf. People v. Rush*, Nos. 353182, 353184, 2022 WL 128308, at *9 (Mich. Ct. App. Jan. 13, 2022) (per curiam). Under these circumstances, a competent attorney could have concluded that a severance motion would have failed. *See Premo v. Moore*, 562 U.S. 115, 124 (2011).

Consequently, reasonable jurists would not debate whether the Michigan Court of Appeals' conclusion that Hare's attorney reasonably decided not to file a severance motion was outside the range of plausible outcomes. *See Davis v. Lafler*, 658 F.3d 525, 534 (6th Cir. 2011) (en banc). Accordingly, reasonable jurists would not debate the district court's denial of this claim.

2. Claim 2

Hare then claimed that his trial attorney should have discovered Blond's proffer before trial or, alternatively, moved for a mistrial when he actually discovered it. The district court concluded that Hare procedurally defaulted this claim on direct appeal and that he could not establish cause and prejudice to excuse the default.

Federal habeas courts typically may not review a procedurally defaulted claim. *See* 28 U.S.C. § 2254(b)(1)(A); *Martin v. Mitchell*, 280 F.3d 594, 603 (6th Cir. 2002). A prisoner procedurally defaults a claim if "(1) there is a state procedural rule that is applicable to the claim, (2) the petitioner failed to comply with the rule, (3) the state courts routinely enforce the rule, and (4) the rule is an 'adequate and independent' state ground foreclosing review of a federal constitutional claim." *Whitman v. Gray*, 103 F.4th 1235, 1238 (6th Cir. 2024) (quoting *Guilmette v. Howes*, 624 F.3d 286, 290 (6th Cir. 2010)), *cert. denied*, 145 S. Ct 1060 (2025). If a state prisoner defaulted his federal claim in state court pursuant to "an independent and adequate state procedural rule," then federal habeas review is also barred unless he can demonstrate cause and

prejudice for the default or a fundamental miscarriage of justice. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991).

In Michigan, a criminal defendant must raise ineffective-assistance-of-trial-counsel claims on direct appeal. *See* Mich. Ct. R. 6.508(D)(3); *Moss v. Miniard*, 62 F.4th 1002, 1010 n.5 (6th Cir. 2023); *Bennett v. Brewer*, 940 F.3d 279, 286 (6th Cir. 2019). Hare did not raise claim 2 on direct appeal. And the trial court enforced this procedural rule when it found that Hare failed to establish good cause under Rule 6.508(D)(3) for not raising it on direct appeal. *See Shelton v. McQuiggin*, 651 F. App'x 311, 314 (6th Cir. 2016). Because Rule 6.508(D)(3) is an adequate and independent state-law ground, *see Chase v. MaCauley*, 971 F.3d 582, 591 (6th Cir. 2020) (citation omitted), reasonable jurists could not debate the district court's conclusion that Hare procedurally defaulted claim 2.

Nor would reasonable jurists debate the district court's finding that Hare failed to establish cause to excuse the default. Hare contends that he can establish cause because his post-conviction counsel abandoned him. *See Maples v. Thomas*, 565 U.S. 266, 281-83 (2012). Post-conviction counsel may have abandoned Hare after the trial court denied his motion for a new trial by not pursuing a timely appeal. But Hare procedurally defaulted claim 2 on direct appeal, so cause for defaulting this claim would have to be attributed to his appellate counsel. And Hare did not assert an ineffective-assistance-of-appellate-counsel claim in his motion for a new trial. Consequently, he cannot rely on ineffective assistance of counsel to excuse the default. *See Edwards v. Carpenter*, 529 U.S. 446, 453 (2000). Hare does not claim that he is actually innocent. *See Mack v. Bradshaw*, 88 F.4th 1147, 1160 (6th Cir. 2023), *cert. denied*, 145 S. Ct. 243 (2024); ***(id.)***. Accordingly, Hare has not demonstrated any basis to overcome the procedural default of claim 2, and the district court correctly denied relief on that ground.

Conclusion

For the reasons stated, the court **DENIES** Hare's COA application.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

Appendix 1

Hare v. Wilkins, 5-1-25, "Order and Opinion denying the habeas Petition."
(Eastern District) Case No.: 25-1518 + 21-11744

Appendix 2

Hare v. Wilkins 10-17-25 order, "denial of Certificate of appealability" (6th cir.)

Case No.: 25-1518

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Petitioner-Appellant,

v.

TERRY WILKINS, Warden,

Respondent-Appellee.

Before: COLE, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Sergio Sharrod Hare for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SERGIO HARE, Petitioner, v. TERRY WILKINS, *Warden*,[1] Respondent.	Case No. 21-11744 Honorable Laurie J. Michelson

OPINION AND ORDER DENYING HABEAS PETITION [1]

Following a jury trial in state court, Sergio Hare was convicted of first-degree premeditated murder, Mich. Comp. Laws § 750.316(A), two counts of assault with intent to commit murder, Mich. Comp. Laws § 750.83, and several firearm related offenses. Now, he has filed a petition for a writ of habeas corpus challenging his convictions pursuant to 28 U.S.C. § 2254. (ECF No. 15.) He argues that his trial counsel was ineffective for failing to move for a separate trial from his co-defendant and for failing to prepare a defense or request a mistrial. Having reviewed the petition, the Court finds that Hare's claims are without merit. Accordingly, the petition is DENIED.

[1] The Court substitutes Terry Wilkins, the current warden of Baraga Maximum Correctional Facility, as the respondent here. In a habeas case brought by an incarcerated petitioner, the proper respondent is the warden of the facility where the petitioner is incarcerated. *See* Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. § 2254, Rule 2(a) (amended 2019); *Rumsfeld v. Padilla*, 542 U.S. 426, 434–36 (2004).

I.

Hare and his co-defendant, Jarod Blond, were tried jointly, and their appeals were consolidated. As the facts detailed by the Michigan Court of Appeals are presumed correct on habeas review, *Wagner v. Smith*, 581 F.3d 410, 413 (6th Cir. 2009) (citing 28 U.S.C. § 2254(e)(1)), the Court recites them here:

> [This case] arise[s] from an incident resulting in the shooting death of Tavion Wells, and the nonfatal shooting assaults of Justice Thomas and Tamyra Thompson, early in the morning of November 19, 2016. Thomas testified that she was in her car parked outside Wells's house when she saw Blond and a taller man she could not identify. Blond aimed a gun at her and insisted that she not move, then the two men entered the house with Wells, after which a shot rang out. As [Thomas] drove away, Blond fired several shots at her.
>
> Thompson, who was also with Wells on the night of the offense, identified both defendants as having appeared at Wells's house on the night in question. Thompson stated that Blond had a gun in view; she admitted having previously been inconsistent about whether Hare also had a gun, but clarified that he had his hand in his pocket in a way that suggested to her that he was also armed. According to Thompson, Blond initially pointed his gun at Wells's housemate and herself, then ultimately shot at her as she attempted to flee from the scene.
>
> Jerry Carter, who was Wells's housemate, also identified both defendants as having been involved in the incident in question, and testified that they both displayed guns at the time. According to Carter, Blond put his gun to Carter's head, and Hare pointed his gun at Wells. Carter testified that Wells "just shook his head and he want to shut the door," and "when he shut it, [Blond] had ... got to shooting," adding that Blond "shot in the door" and Wells made a sound suggesting that he had been struck, after which defendants "pushed the door open and then they both just got to shooting in the house." Carter added that he "took off," and that as he did so, defendants "got to shooting at the car and shooting at me."
>
> The forensic pathologist who performed an autopsy on Wells's body described three bullet wounds, and recovered two bullets. He opined that two of the wounds were not immediately life threatening, but that "the wound to the back was the most immediately fatal." A search of

> Blond's place of residence turned up a Glock handgun and two magazines for it. A firearms expert testified that several spent cartridges recovered from Wells's premises were discharged from that Glock.
>
> Hare did not testify. Blond, however, testified that he did not bring a gun to Wells's home, but that Wells produced a Glock and brandished it threateningly, causing Blond to struggle with Wells over that weapon, which went off in the melee. Blond added that Hare also had a gun at the time, and that Hare fired it once—not at any person but instead in apparent hopes of putting an end to the fighting that was taking place between Blond and Wells.

People v. Blond, No. 344434, 2019 WL 6799700, at *1 (Mich. Ct. App. Dec. 12, 2019) (per curiam), *lv. den. sub. nom.* 941 N.W.2d 656 (Mich. 2020) (mem.).

On July 28, 2021, Hare (through counsel) filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) The case has undergone a lengthy procedural history. Hare's petition raised two claims of ineffective assistance of trial counsel, but one of those claims was not previously raised before the state courts. So Hare filed a motion for a stay, requesting that the Court hold his petition in abeyance while he exhausted that claim in the state courts. (ECF No. 2.) The Court granted Hare's motion, directed him to file a motion for relief from judgment with the state court by October 31, 2021, and instructed him on the procedure for returning to this Court. (ECF No. 3, PageID.46–47.)

So Hare filed a motion for relief from judgment with the trial court, which was denied. *People v. Hare*, No. 17-040842 (Mich. Cir. Ct. Nov. 22, 2021), *available at* (ECF No. 21-24). Hare's application for leave to appeal was also rejected by the

Michigan Court of Appeals as untimely. *People v. Hare*, No. 365401 (Mich. Ct. App. Mar. 29, 2023), *available at* (ECF No. 21-26, PageID.1868).

On August 18, 2023, Hare's habeas counsel, Kimberly Stout, filed a motion to withdraw—citing a breakdown in the relationship and disputes over payment of legal fees. (*See* ECF Nos. 6, 7.) The Court held a hearing on September 8, 2023. (*See* ECF No. 8.) Stout explained that Hare hired her to represent him in his state and federal post-conviction proceedings, which included exhausting the one additional claim in state court. During the hearing, the Court discussed with counsel the current posture of the state proceedings. Stout stated that she filed a motion for relief from judgment which was denied by the trial court. She had also filed a delayed application for leave to appeal with the Michigan Court of Appeals, which was denied. At the time of the hearing, however, Stout had not yet filed an application for leave to appeal to the Michigan Supreme Court because of issues she was having obtaining payment from Hare. After the Court raised concerns about the failure to exhaust Hare's state court remedies, Stout voluntarily withdrew her motion.

The Court then informed Stout that after she exhausted Hare's claim in state court, she would need to file an amended habeas petition and a motion to reopen the case—with an explanation as to why the Court should extend the time to do so. The Court further stated that once the case was reopened, she could re-file the motion to withdraw if the breakdown in her communication with Hare continued. The following month, on October 25, 2023, Stout filed a renewed motion to withdraw stating that a delayed application for leave to appeal had been filed in the Michigan Supreme Court

on September 12, 2023, and denied as untimely, such that all state remedies had been exhausted. (ECF No. 12.). The respondent, however, was not able to locate a record of this filing. (*See* ECF No. 21-27, PageID.1916.) On December 28, 2023, the Court issued an order indicating that it would "defer ruling on Stout's renewed motion for withdrawal (ECF No. 12) until she has filed an amended habeas petition and a motion to reopen the case." (ECF No. 13, PageID.67.)

Stout complied and moved to reopen this case on January 16, 2024 (ECF No. 14) and to proceed on an amended habeas petition (ECF No. 15). The Court re-opened the case and granted Stout's motion to withdraw as counsel. (ECF No. 17.) Respondent filed an answer on July 20, 2024 (ECF No. 20) and Hare filed a *pro se* reply brief (ECF No. 22). Hare's amended petition alleges ineffective assistance of trial counsel for failing to move to severe Hare's trial from his co-defendant Blond, and for failing to move for a mistrial and present a defense.

II.

The Antiterrorism and Effective Death Penalty Act ("AEDPA") "confirm[s] that state courts are the principal forum for asserting constitutional challenges to state convictions." *Harrington v. Richter*, 562 U.S. 86, 103 (2011); *see also Cullen v. Pinholster*, 563 U.S. 170, 182 (2011). To obtain relief in federal court, habeas petitioners who challenge "a matter 'adjudicated on the merits in State court' [must] show that the relevant state court 'decision' (1) 'was contrary to, or involved an unreasonable application of, clearly established Federal law,' or (2) 'was based on an unreasonable determination of the facts in light of the evidence presented in the State

court proceedings.'" *Wilson v. Sellers*, 138 S. Ct. 1188, 1191 (2018) (quoting 28 U.S.C. § 2254(d)).

"A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington*, 562 U.S. at 101. And a state court's factual determinations are presumed correct on federal habeas review, 28 U.S.C. § 2254(e)(1), with review being "limited to the record that was before the state court," *Cullen*, 563 U.S. at 181. But if a state court does not adjudicate a claim "on the merits," "AEDPA deference does not apply and [this Court] will review the claim de novo." *Bies v. Sheldon*, 775 F.3d 386, 395 (6th Cir. 2014) (internal quotations omitted).

III.

The Court begins with the familiar standard for addressing claims of ineffective assistance of counsel. To prevail, Hare must show that counsel performed "unreasonabl[y]" and that the defective performance "prejudiced" the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 698–99 (1984). This review becomes doubly deferential when AEDPA is added to the mix. *Stermer v. Warren*, 959 F.3d 704, 746 (6th Cir. 2020) (citing See 28 U.S.C. § 2254(d)(1)). The "question is no longer whether [a] counsel's actions were reasonable," but instead whether there could exist any "fairminded" argument that trial counsel "satisfied *Strickland's* deferential standard." *Harrington*, 562 U.S. at 105–06; *see also Cullen*, 563 U.S. at 188 (explaining that the "unreasonable application prong" can be satisfied only if a petitioner shows "there was no reasonable basis" for the state court's decision).

A.

In his first claim, Hare argues that his trial counsel was ineffective for failing to move for a separate trial from his co-defendant. (ECF No. 15, PageID.99–101.) The Michigan Court of Appeals rejected Hare's claim on the merits, finding that "jointly trying codefendants is the norm." *People v. Blond*, 2019 WL 6799700, at *4. Indeed, as the court highlighted, "[in] criminal cases with multiple defendants, public policy strongly favors joint trials." *Id.* at * 3 (citing *People v. Carroll*, 240 N.W.2d 722, 725 (Mich 1976)). The appellate court reasoned that "Hare identifie[d] no testimony in the trial-court proceedings that would have been barred from his jury's consideration had there been separate trials" and that this case did not "present the hazard where 'a single jury may convict one defendant, despite the absence of proof beyond a reasonable doubt, in order to rationalize the acquittal of another.'" *Id.* (quoting *People v. Janna*, 524 N.W.2d 682, 696 (Mich. 1994)).

There is certainly a reasonable basis for the ruling of the Michigan Court of Appeals. The law is clear that a criminal defendant is not entitled to a separate trial merely because he may have had a better chance for acquittal in a separate trial, *Zafiro v. United States*, 506 U.S. 534, 540 (1993), nor does a criminal defendant have a right to a separate trial merely because the defendant and the co-defendant present antagonistic defenses. *Stanford v. Parker*, 266 F. 3d 442, 458 (6th Cir. 2001).[2] Indeed, "[m]utually antagonistic defenses are not prejudicial *per se*." *Zafiro*, 506 U.S. at 538.

[2] Antagonistic defenses are "when one person's claim of innocence is predicated solely on the guilt of a co-defendant." *United States v. Harris*, 9 F.3d 493, 501 (6th Cir. 1993).

A court should grant a severance "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Id.* at 539; *see also Simmons v. Balcarcel*, No. 18-2345, 2019 U.S. App. LEXIS 39382, at *6–7 (6th Cir. Apr. 2, 2019) ("A state court's failure to grant a severance warrants habeas relief only if (1) the joint trial resulted in the denial of a specific constitutional guarantee, or (2) the joint trial was fundamentally unfair") (citing *Turpin v. Kassulke*, 26 F.3d 1392, 1404 (6th Cir. 1994)). Further, a petitioner who seeks habeas relief based on a state trial court's refusal to "sever his trial from his co-defendant's trial bears a very heavy burden." *Stanford*, 266 F.3d at 459. Because joinder of defendants for trial is preferred, there is a presumption in favor of joinder which must be overcome by the party seeking severance. *See Foster v. Withrow,* 159 F. Supp. 2d 629, 641 (E.D. Mich. 2001).

Here, Hare failed to show that severance was warranted. He did not identify a specific constitutional violation that could have been avoided through separate trials and he and Blond did not have antagonistic defenses. Blond did not claim that Hare was guilty of murder. During his testimony, Blond said that Hare fired the gun only once, not at any person, and with the intent of breaking up a fight. Blond also offered his own explanation for obtaining and shooting the gun that killed Wells, but did not accuse Hare of any aggressive actions. Nor did Blond's lack of credibility as a witness entitle Hare to a separate trial. *See, e.g., United States v. Ambrose*, 740 F.2d 505, 512 (7th Cir. 1984) (finding that the fact that one co-defendant may be less credible than another is not grounds for severance of trials).

The preference under Michigan law for joint trials, combined with the fact that no reasonable argument could be made that Hare and his co-defendant had antagonistic defenses, suggests that any motion to sever by Hare's lawyer would have been futile. *See, e.g., Van v. Jones,* 475 F.3d 292, 314 (6th Cir. 2007). Accordingly, Hare is unable to demonstrate that his lawyer's failure to move for a separate trial was either deficient or resulted in any prejudice. Thus, his first habeas claim fails.

B.

As for his second claim, Hare alleges that trial counsel was ineffective for failing to prepare a defense and for failing to request a mistrial upon learning that Blond made statements to the police prior to trial. (ECF No. 15, PageID.101–104.) Respondent argues that this claim is procedurally defaulted for several reasons, including that Hare only raised it in his motion for relief from judgment and not on direct appeal. (ECF No. 20, PageID.197–198.)

"The United States Supreme Court has explained that a petitioner's procedural default in the state courts will preclude federal habeas review if the last state court rendering a judgment in the case rested its judgment on the procedural default." *Curtis v. Horton,* No. 18-13438, 2022 WL 821670, at *3 (E.D. Mich. Mar. 17, 2022) (citing *Wainwright v. Sykes,* 433 U.S. 72, 85–87 (1977).); *see also Maslonka v. Hoffner,* 900 F.3d 269, 276 (6th Cir. 2018) ("[A] federal court may not review federal claims that were procedurally defaulted in state courts.") (citations omitted).

Procedural default occurs where "(1) the petitioner fail[ed] to comply with a state procedural rule; (2) the state courts enforce[d] the rule; (3) the state procedural

rule is an adequate and independent state ground for denying review of a federal constitutional claim; and (4) the petitioner cannot show cause and prejudice excusing the default." *Guilmette v. Howes*, 624 F.3d 286, 290 (6th Cir. 2010) (en banc).

Applying those factors to the last reasoned opinion here, the Genesee County Circuit Court found that Hare "ma[de] no attempt to address the procedural and gatekeeping requirements of [Michigan Court Rule] 6.500 *et seq.*" and thus "failed to persuade" the court that "the gatekeeping requirements of MCR 6.500 *et seq.* ha[d] been satisfied." *People v. Hare*, No. 17-040842 (Mich. Cir. Ct. Nov. 22, 2021), *available at* (ECF No. 21-24). In other words, Hare failed to show good cause for not raising this ineffective assistance claim on his direct appeal or prejudice as a result. *Id.* This finding was sufficient to invoke the procedural bar of MCR 6.508(D)(3). *See Friday v. Pitcher*, 99 F. App'x 568, 574 (6th Cir. 2004); *Guilmette*, 624 F.3d at 291 (describing MCR 6.508(D)(3) as the "procedural default rule"). In short, the state court expressly relied on a state procedural bar in dismissing Hare's claim.

As a result, to avoid this procedural default, Hare must show there was cause for the default and prejudice resulting from the default, or that a miscarriage of justice will result from enforcing the procedural default. *See Kissner v. Palmer*, 826 F.3d 898, 904 (6th Cir. 2016). "Cause" means that some external impediment frustrated the petitioner's ability to comply with the state's procedural rules. *See Murray v. Carrier*, 477 U.S. 478, 488 (1986). Such impediments include interference by state officials, "constitutionally ineffective assistance of counsel," or a showing that

the factual or legal basis for a claim was not reasonably available. *See McCleskey v. Zant*, 499 U.S. 467, 493–94 (1991).

In his reply brief, Hare suggests that the reason his claim was not properly exhausted with the Michigan Supreme Court was due to the "incompetent assistance of postconviction counsel Kimberly Stout." (ECF No. 22, PageID.1978.) But Hare cannot rely on ineffective assistance of post-conviction counsel as cause because there is no constitutional right to an attorney in post-conviction proceedings. *See Coleman v. Thompson*, 501 U.S. 722, 752–53 (1991); *see also Landrum v. Mitchell*, 625 F.3d 905, 919 (6th Cir. 2010). "Further, [Hare] cannot excuse his procedural default by showing a fundamental miscarriage of justice because he has not submitted new evidence showing that a constitutional violation has probably resulted in a conviction of one who is actually innocent." *Id.* at 919.

Accordingly, Hare's second habeas claim fails.[3]

IV.

Thus, for the reasons above, the Court DENIES Hare's petition for a writ of habeas corpus.

SO ORDERED.

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[3] Respondents also argue that Hare's entire petition should be dismissed because Hare was untimely in moving to reopen this case. (ECF No. 20, PageID.191–194.) But this Court already ruled on that issue and found that "although Hare's motion to reopen was delayed and thus did not comply with the conditions of the stay . . . equitable tolling of the deadlines [was] appropriate considering Hare's allegations of ineffective assistance of counsel in his post-conviction proceedings." (ECF No. 17, PageID.125.) Respondent recognizes as much. (ECF No. 20, PageID.191 ("The State recognizes that this Court has already ruled on [Hare's] motion to reopen [his] case . . . .").) So the Court will not revisit this argument.

Dated: May 1, 2025

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Proof of Service

On __1__1__, Petitioner, Sergio Sharrod Hare filed __ Copies of a Petition for writ of Certiorari; a motion to Proceed in forma Pauperis with an attatched affidavit to: Office of The Clerk, Supreme Court of the United States, Washington, D.C. 20543, by first class expedited Legal mail servile from the below address in the Michigan Department of Corrections.

The undersigned declares under the Penalty of Perjury, that the facts mentioned herein are accurate, true and Correct to the best of his knowledge and belief. Title 28 U.S.C. Sec. 1746

Filed: __1__1__

Respectfully Submitted,

_____

Sergio Sharrod Hare #_____
Baraga Correctional Facility
13924 Wadaga Rd.
Baraga, MI 49908

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SERGIO HARE, Petitioner, v. TERRY WILKINS, *Warden*,[1] Respondent.	Case No. 21-11744 Honorable Laurie J. Michelson

OPINION AND ORDER DENYING HABEAS PETITION [1]

Following a jury trial in state court, Sergio Hare was convicted of first-degree premeditated murder, Mich. Comp. Laws § 750.316(A), two counts of assault with intent to commit murder, Mich. Comp. Laws § 750.83, and several firearm related offenses. Now, he has filed a petition for a writ of habeas corpus challenging his convictions pursuant to 28 U.S.C. § 2254. (ECF No. 15.) He argues that his trial counsel was ineffective for failing to move for a separate trial from his co-defendant and for failing to prepare a defense or request a mistrial. Having reviewed the petition, the Court finds that Hare's claims are without merit. Accordingly, the petition is DENIED.

[1] The Court substitutes Terry Wilkins, the current warden of Baraga Maximum Correctional Facility, as the respondent here. In a habeas case brought by an incarcerated petitioner, the proper respondent is the warden of the facility where the petitioner is incarcerated. *See* Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. § 2254, Rule 2(a) (amended 2019); *Rumsfeld v. Padilla*, 542 U.S. 426, 434–36 (2004).

I.

Hare and his co-defendant, Jarod Blond, were tried jointly, and their appeals were consolidated. As the facts detailed by the Michigan Court of Appeals are presumed correct on habeas review, *Wagner v. Smith*, 581 F.3d 410, 413 (6th Cir. 2009) (citing 28 U.S.C. § 2254(e)(1)), the Court recites them here:

> [This case] arise[s] from an incident resulting in the shooting death of Tavion Wells, and the nonfatal shooting assaults of Justice Thomas and Tamyra Thompson, early in the morning of November 19, 2016. Thomas testified that she was in her car parked outside Wells's house when she saw Blond and a taller man she could not identify. Blond aimed a gun at her and insisted that she not move, then the two men entered the house with Wells, after which a shot rang out. As [Thomas] drove away, Blond fired several shots at her.
>
> Thompson, who was also with Wells on the night of the offense, identified both defendants as having appeared at Wells's house on the night in question. Thompson stated that Blond had a gun in view; she admitted having previously been inconsistent about whether Hare also had a gun, but clarified that he had his hand in his pocket in a way that suggested to her that he was also armed. According to Thompson, Blond initially pointed his gun at Wells's housemate and herself, then ultimately shot at her as she attempted to flee from the scene.
>
> Jerry Carter, who was Wells's housemate, also identified both defendants as having been involved in the incident in question, and testified that they both displayed guns at the time. According to Carter, Blond put his gun to Carter's head, and Hare pointed his gun at Wells. Carter testified that Wells "just shook his head and he want to shut the door," and "when he shut it, [Blond] had ... got to shooting," adding that Blond "shot in the door" and Wells made a sound suggesting that he had been struck, after which defendants "pushed the door open and then they both just got to shooting in the house." Carter added that he "took off," and that as he did so, defendants "got to shooting at the car and shooting at me."
>
> The forensic pathologist who performed an autopsy on Wells's body described three bullet wounds, and recovered two bullets. He opined that two of the wounds were not immediately life threatening, but that "the wound to the back was the most immediately fatal." A search of

> Blond's place of residence turned up a Glock handgun and two magazines for it. A firearms expert testified that several spent cartridges recovered from Wells's premises were discharged from that Glock.
>
> Hare did not testify. Blond, however, testified that he did not bring a gun to Wells's home, but that Wells produced a Glock and brandished it threateningly, causing Blond to struggle with Wells over that weapon, which went off in the melee. Blond added that Hare also had a gun at the time, and that Hare fired it once—not at any person but instead in apparent hopes of putting an end to the fighting that was taking place between Blond and Wells.

People v. Blond, No. 344434, 2019 WL 6799700, at *1 (Mich. Ct. App. Dec. 12, 2019) (per curiam), *lv. den. sub. nom.* 941 N.W.2d 656 (Mich. 2020) (mem.).

On July 28, 2021, Hare (through counsel) filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) The case has undergone a lengthy procedural history. Hare's petition raised two claims of ineffective assistance of trial counsel, but one of those claims was not previously raised before the state courts. So Hare filed a motion for a stay, requesting that the Court hold his petition in abeyance while he exhausted that claim in the state courts. (ECF No. 2.) The Court granted Hare's motion, directed him to file a motion for relief from judgment with the state court by October 31, 2021, and instructed him on the procedure for returning to this Court. (ECF No. 3, PageID.46–47.)

So Hare filed a motion for relief from judgment with the trial court, which was denied. *People v. Hare*, No. 17-040842 (Mich. Cir. Ct. Nov. 22, 2021), *available at* (ECF No. 21-24). Hare's application for leave to appeal was also rejected by the

Michigan Court of Appeals as untimely. *People v. Hare*, No. 365401 (Mich. Ct. App. Mar. 29, 2023), *available at* (ECF No. 21-26, PageID.1868).

On August 18, 2023, Hare's habeas counsel, Kimberly Stout, filed a motion to withdraw—citing a breakdown in the relationship and disputes over payment of legal fees. (*See* ECF Nos. 6, 7.) The Court held a hearing on September 8, 2023. (*See* ECF No. 8.) Stout explained that Hare hired her to represent him in his state and federal post-conviction proceedings, which included exhausting the one additional claim in state court. During the hearing, the Court discussed with counsel the current posture of the state proceedings. Stout stated that she filed a motion for relief from judgment which was denied by the trial court. She had also filed a delayed application for leave to appeal with the Michigan Court of Appeals, which was denied. At the time of the hearing, however, Stout had not yet filed an application for leave to appeal to the Michigan Supreme Court because of issues she was having obtaining payment from Hare. After the Court raised concerns about the failure to exhaust Hare's state court remedies, Stout voluntarily withdrew her motion.

The Court then informed Stout that after she exhausted Hare's claim in state court, she would need to file an amended habeas petition and a motion to reopen the case—with an explanation as to why the Court should extend the time to do so. The Court further stated that once the case was reopened, she could re-file the motion to withdraw if the breakdown in her communication with Hare continued. The following month, on October 25, 2023, Stout filed a renewed motion to withdraw stating that a delayed application for leave to appeal had been filed in the Michigan Supreme Court

on September 12, 2023, and denied as untimely, such that all state remedies had been exhausted. (ECF No. 12.). The respondent, however, was not able to locate a record of this filing. (*See* ECF No. 21-27, PageID.1916.) On December 28, 2023, the Court issued an order indicating that it would "defer ruling on Stout's renewed motion for withdrawal (ECF No. 12) until she has filed an amended habeas petition and a motion to reopen the case." (ECF No. 13, PageID.67.)

Stout complied and moved to reopen this case on January 16, 2024 (ECF No. 14) and to proceed on an amended habeas petition (ECF No. 15). The Court re-opened the case and granted Stout's motion to withdraw as counsel. (ECF No. 17.) Respondent filed an answer on July 20, 2024 (ECF No. 20) and Hare filed a *pro se* reply brief (ECF No. 22). Hare's amended petition alleges ineffective assistance of trial counsel for failing to move to severe Hare's trial from his co-defendant Blond, and for failing to move for a mistrial and present a defense.

II.

The Antiterrorism and Effective Death Penalty Act ("AEDPA") "confirm[s] that state courts are the principal forum for asserting constitutional challenges to state convictions." *Harrington v. Richter*, 562 U.S. 86, 103 (2011); *see also Cullen v. Pinholster*, 563 U.S. 170, 182 (2011). To obtain relief in federal court, habeas petitioners who challenge "a matter 'adjudicated on the merits in State court' [must] show that the relevant state court 'decision' (1) 'was contrary to, or involved an unreasonable application of, clearly established Federal law,' or (2) 'was based on an unreasonable determination of the facts in light of the evidence presented in the State

court proceedings.'" *Wilson v. Sellers*, 138 S. Ct. 1188, 1191 (2018) (quoting 28 U.S.C. § 2254(d)).

"A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington*, 562 U.S. at 101. And a state court's factual determinations are presumed correct on federal habeas review, 28 U.S.C. § 2254(e)(1), with review being "limited to the record that was before the state court," *Cullen*, 563 U.S. at 181. But if a state court does not adjudicate a claim "on the merits," "AEDPA deference does not apply and [this Court] will review the claim de novo." *Bies v. Sheldon*, 775 F.3d 386, 395 (6th Cir. 2014) (internal quotations omitted).

III.

The Court begins with the familiar standard for addressing claims of ineffective assistance of counsel. To prevail, Hare must show that counsel performed "unreasonabl[y]" and that the defective performance "prejudiced" the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 698–99 (1984). This review becomes doubly deferential when AEDPA is added to the mix. *Stermer v. Warren*, 959 F.3d 704, 746 (6th Cir. 2020) (citing See 28 U.S.C. § 2254(d)(1)). The "question is no longer whether [a] counsel's actions were reasonable," but instead whether there could exist any "fairminded" argument that trial counsel "satisfied *Strickland's* deferential standard." *Harrington,* 562 U.S. at 105–06; *see also Cullen*, 563 U.S. at 188 (explaining that the "unreasonable application prong" can be satisfied only if a petitioner shows "there was no reasonable basis" for the state court's decision).

A.

In his first claim, Hare argues that his trial counsel was ineffective for failing to move for a separate trial from his co-defendant. (ECF No. 15, PageID.99–101.) The Michigan Court of Appeals rejected Hare's claim on the merits, finding that "jointly trying codefendants is the norm." *People v. Blond*, 2019 WL 6799700, at *4. Indeed, as the court highlighted, "[in] criminal cases with multiple defendants, public policy strongly favors joint trials." *Id.* at * 3 (citing *People v. Carroll*, 240 N.W.2d 722, 725 (Mich 1976)). The appellate court reasoned that "Hare identifie[d] no testimony in the trial-court proceedings that would have been barred from his jury's consideration had there been separate trials" and that this case did not "present the hazard where 'a single jury may convict one defendant, despite the absence of proof beyond a reasonable doubt, in order to rationalize the acquittal of another.'" *Id.* (quoting *People v. Janna*, 524 N.W.2d 682, 696 (Mich. 1994)).

There is certainly a reasonable basis for the ruling of the Michigan Court of Appeals. The law is clear that a criminal defendant is not entitled to a separate trial merely because he may have had a better chance for acquittal in a separate trial, *Zafiro v. United States*, 506 U.S. 534, 540 (1993), nor does a criminal defendant have a right to a separate trial merely because the defendant and the co-defendant present antagonistic defenses. *Stanford v. Parker,* 266 F. 3d 442, 458 (6th Cir. 2001).[2] Indeed, "[m]utually antagonistic defenses are not prejudicial *per se*." *Zafiro*, 506 U.S. at 538.

[2] Antagonistic defenses are "when one person's claim of innocence is predicated solely on the guilt of a co-defendant." *United States v. Harris*, 9 F.3d 493, 501 (6th Cir. 1993).

A court should grant a severance "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Id.* at 539; *see also Simmons v. Balcarcel*, No. 18-2345, 2019 U.S. App. LEXIS 39382, at *6–7 (6th Cir. Apr. 2, 2019) ("A state court's failure to grant a severance warrants habeas relief only if (1) the joint trial resulted in the denial of a specific constitutional guarantee, or (2) the joint trial was fundamentally unfair") (citing *Turpin v. Kassulke*, 26 F.3d 1392, 1404 (6th Cir. 1994)). Further, a petitioner who seeks habeas relief based on a state trial court's refusal to "sever his trial from his co-defendant's trial bears a very heavy burden." *Stanford*, 266 F.3d at 459. Because joinder of defendants for trial is preferred, there is a presumption in favor of joinder which must be overcome by the party seeking severance. *See Foster v. Withrow*, 159 F. Supp. 2d 629, 641 (E.D. Mich. 2001).

Here, Hare failed to show that severance was warranted. He did not identify a specific constitutional violation that could have been avoided through separate trials and he and Blond did not have antagonistic defenses. Blond did not claim that Hare was guilty of murder. During his testimony, Blond said that Hare fired the gun only once, not at any person, and with the intent of breaking up a fight. Blond also offered his own explanation for obtaining and shooting the gun that killed Wells, but did not accuse Hare of any aggressive actions. Nor did Blond's lack of credibility as a witness entitle Hare to a separate trial. *See, e.g., United States v. Ambrose*, 740 F.2d 505, 512 (7th Cir. 1984) (finding that the fact that one co-defendant may be less credible than another is not grounds for severance of trials).

The preference under Michigan law for joint trials, combined with the fact that no reasonable argument could be made that Hare and his co-defendant had antagonistic defenses, suggests that any motion to sever by Hare's lawyer would have been futile. *See, e.g., Van v. Jones,* 475 F.3d 292, 314 (6th Cir. 2007). Accordingly, Hare is unable to demonstrate that his lawyer's failure to move for a separate trial was either deficient or resulted in any prejudice. Thus, his first habeas claim fails.

B.

As for his second claim, Hare alleges that trial counsel was ineffective for failing to prepare a defense and for failing to request a mistrial upon learning that Blond made statements to the police prior to trial. (ECF No. 15, PageID.101–104.) Respondent argues that this claim is procedurally defaulted for several reasons, including that Hare only raised it in his motion for relief from judgment and not on direct appeal. (ECF No. 20, PageID.197–198.)

"The United States Supreme Court has explained that a petitioner's procedural default in the state courts will preclude federal habeas review if the last state court rendering a judgment in the case rested its judgment on the procedural default." *Curtis v. Horton*, No. 18-13438, 2022 WL 821670, at *3 (E.D. Mich. Mar. 17, 2022) (citing *Wainwright v. Sykes*, 433 U.S. 72, 85–87 (1977).); *see also Maslonka v. Hoffner*, 900 F.3d 269, 276 (6th Cir. 2018) ("[A] federal court may not review federal claims that were procedurally defaulted in state courts.") (citations omitted).

Procedural default occurs where "(1) the petitioner fail[ed] to comply with a state procedural rule; (2) the state courts enforce[d] the rule; (3) the state procedural

rule is an adequate and independent state ground for denying review of a federal constitutional claim; and (4) the petitioner cannot show cause and prejudice excusing the default." *Guilmette v. Howes*, 624 F.3d 286, 290 (6th Cir. 2010) (en banc).

Applying those factors to the last reasoned opinion here, the Genesee County Circuit Court found that Hare "ma[de] no attempt to address the procedural and gatekeeping requirements of [Michigan Court Rule] 6.500 *et seq.*" and thus "failed to persuade" the court that "the gatekeeping requirements of MCR 6.500 *et seq.* ha[d] been satisfied." *People v. Hare*, No. 17-040842 (Mich. Cir. Ct. Nov. 22, 2021), *available at* (ECF No. 21-24). In other words, Hare failed to show good cause for not raising this ineffective assistance claim on his direct appeal or prejudice as a result. *Id.* This finding was sufficient to invoke the procedural bar of MCR 6.508(D)(3). *See Friday v. Pitcher*, 99 F. App'x 568, 574 (6th Cir. 2004); *Guilmette*, 624 F.3d at 291 (describing MCR 6.508(D)(3) as the "procedural default rule"). In short, the state court expressly relied on a state procedural bar in dismissing Hare's claim.

As a result, to avoid this procedural default, Hare must show there was cause for the default and prejudice resulting from the default, or that a miscarriage of justice will result from enforcing the procedural default. *See Kissner v. Palmer*, 826 F.3d 898, 904 (6th Cir. 2016). "Cause" means that some external impediment frustrated the petitioner's ability to comply with the state's procedural rules. *See Murray v. Carrier*, 477 U.S. 478, 488 (1986). Such impediments include interference by state officials, "constitutionally ineffective assistance of counsel," or a showing that

the factual or legal basis for a claim was not reasonably available. *See McCleskey v. Zant*, 499 U.S. 467, 493–94 (1991).

In his reply brief, Hare suggests that the reason his claim was not properly exhausted with the Michigan Supreme Court was due to the "incompetent assistance of postconviction counsel Kimberly Stout." (ECF No. 22, PageID.1978.) But Hare cannot rely on ineffective assistance of post-conviction counsel as cause because there is no constitutional right to an attorney in post-conviction proceedings. *See Coleman v. Thompson*, 501 U.S. 722, 752–53 (1991); *see also Landrum v. Mitchell*, 625 F.3d 905, 919 (6th Cir. 2010). "Further, [Hare] cannot excuse his procedural default by showing a fundamental miscarriage of justice because he has not submitted new evidence showing that a constitutional violation has probably resulted in a conviction of one who is actually innocent." *Id.* at 919.

Accordingly, Hare's second habeas claim fails.[3]

IV.

Thus, for the reasons above, the Court DENIES Hare's petition for a writ of habeas corpus.

SO ORDERED.

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[3] Respondents also argue that Hare's entire petition should be dismissed because Hare was untimely in moving to reopen this case. (ECF No. 20, PageID.191–194.) But this Court already ruled on that issue and found that "although Hare's motion to reopen was delayed and thus did not comply with the conditions of the stay . . . equitable tolling of the deadlines [was] appropriate considering Hare's allegations of ineffective assistance of counsel in his post-conviction proceedings." (ECF No. 17, PageID.125.) Respondent recognizes as much. (ECF No. 20, PageID.191 ("The State recognizes that this Court has already ruled on [Hare's] motion to reopen [his] case . . . .").) So the Court will not revisit this argument.

Dated: May 1, 2025

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SERGIO HARE, Petitioner, v. TERRY WILKINS, *Warden*, Respondent.	Case No. 21-11744 Honorable Laurie J. Michelson

ORDER DENYING CERTIFICATE OF APPEALABILITY AND GRANTING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Sergio Hare filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Pursuant to an order docketed today, the Court denied Hare's petition. The Court now considers whether to issue a certificate of appealability.

Before Hare may appeal this Court's decision, "a circuit justice or judge" must issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Court denied one of Hare's claims on the merits. So he must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

Given the deferential standards of the Antiterrorism and Effective Death Penalty Act and *Strickland v. Washington*, 466 U.S. 668 (1984), as well as considering the facts in the record, the Court concludes that reasonable jurists would not debate the Court's conclusions.

The Court also denied Hare's second habeas claim as procedurally defaulted. When a court denies relief on procedural grounds, a certificate of appealability should issue only if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Hare makes no such showing.

Accordingly, the Court DENIES a certificate of appealability.

The standard for granting an application for leave to proceed *in forma pauperis*, however, is lower than the standard for granting a certificate of appealability. *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002). A court may grant *in forma pauperis* status if it finds that an appeal could be taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A). The Court finds that standard to be met, so it GRANTS Hare leave to proceed *in forma pauperis* on appeal.

SO ORDERED.

Dated: May 1, 2025

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE