FILED
United States Court of Appeals
Tenth Circuit

August 10, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RAHEEM LA'MONZE PLATER,

Petitioner - Appellant,

v.

STEVEN HARPE, Director,

Respondent - Appellee.

No. 23-6074
(D.C. No. 5:21-CV-01092-HE)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **TYMKOVICH**, **McHUGH**, and **CARSON**, Circuit Judges.

Raheem La'Monze Plater requests a Certificate of Appealability (COA) to appeal the denial of a writ of habeas corpus under 28 U.S.C. § 2254. Because Mr. Plater has not made the requisite showing, we deny a COA and dismiss the appeal.

I. Background

An Oklahoma state jury convicted Mr. Plater of second-degree rape and possession of juvenile pornography. The court sentenced Mr. Plater to life imprisonment on each count, with the sentences running consecutively. The Oklahoma Court of Criminal Appeals affirmed his convictions and sentences, and it denied his request for an

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

evidentiary hearing on his ineffective assistance of trial counsel claim. Mr. Plater unsuccessfully petitioned for state post-conviction relief.

Mr. Plater petitioned for a writ of habeas corpus under § 2254, raising several grounds for relief, including ineffective assistance of trial counsel and ineffective assistance of appellate counsel.[1] The magistrate judge recommended denying relief, rejecting each of his arguments—some on the merits (ineffective assistance of trial counsel) and others as procedurally barred (ineffective assistance of appellate counsel). Mr. Plater objected to the report and recommendation.

The district court first overruled his objection that the magistrate judge erroneously denied his request for an evidentiary hearing, because the denial "concluded that [Mr. Plater] had not identified any undeveloped or previously undiscovered factual bases for relief." R., Vol. II at 382. And, the court noted, Mr. Plater had "not pointed to any such new bases for relief in his objection." *Id.* Rather, "[h]e simply reiterate[d] his original conclusory argument that he is entitled to have an evidentiary hearing." *Id.* It then addressed Mr. Plater's ineffective assistance of counsel claims, concluding that he was not entitled to relief: "Neither trial nor appellate counsel's performance, as alleged by [Mr. Plater], was so deficient as to fall 'outside the wide range of professionally competent assistance.'" R., Vol. II at 384 (quoting *Strickland v. Washington*, 466 U.S. 668, 690 (1984)). Nor had he shown prejudice from their performance. Ultimately, the

[1] Other grounds included violations of the Confrontation Clause and Oklahoma law, insufficient evidence, improper sentencing enhancements, prosecutorial misconduct, and *Brady* violations.

court adopted the magistrate judge's report and recommendation and denied his petition. It later denied his motion to amend the judgment for his ineffective assistance of appellate counsel claim, observing that "after *de novo* review," it had "determined that [Mr. Plater] had failed to establish ineffective assistance of appellate counsel." R., Vol. II at 395.

Mr. Plater sought a COA on his ineffective assistance of appellate counsel claim. The district court denied his request because he did not make a substantial showing that he was denied a constitutional right. The court reiterated, "After *de novo* review of the record, [it had] agreed with the state courts that neither [Mr. Plater's] trial nor appellate counsel's performance was ineffective when evaluated under *Strickland*." R., Vol. II at 399.

Mr. Plater now seeks a COA from this court.

II. Analysis

Mr. Plater requests that we reverse the district court's denial of relief and remand for an evidentiary hearing on all his claims, or at least on his ineffective assistance claims.

To appeal the denial of habeas relief, Mr. Plater must obtain a COA, which we will only issue if he "has made a substantial showing of the denial of a constitutional right." § 2253(c). When the district court rejects a petitioner's claims on the merits, he can only obtain a COA by demonstrating "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). And when the court rejects his claims on procedural grounds,

he must show "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." *Id.*

Although the magistrate judge found the ineffective assistance of appellate counsel claim procedurally barred, the district court addressed the merits of both ineffective assistance claims, concluding Mr. Plater had not made the requisite showing.

We agree with the district court. Before us, Mr. Plater's most specific assertion about his ineffective assistance claims stems from his request for an evidentiary hearing:

> Appellant also requested an evidentiary hearing to develop the fact that evidence exists that proves the State solicited false testimony in order to corroborate Ex.2 and Ex.9 during trial and that Appellant's trial counsel knowingly refused to obtain or submit the evidence in order to help the State's case survive; a dereliction of his duty to Appellant by loyalty to the State's position.

Aplt. Combined Application for COA and Br. in Support at 3; *see also* Supp. Aplt. Combined Application for COA and Br. in Support at 3–4 (incorporating arguments from initial Combined Application for COA and Br. in Support). But beyond that assertion, he does not explain why a hearing on his ineffective assistance claims is necessary. Nor does he meaningfully convey why his counsel—either trial or appellate—was constitutionally deficient to his prejudice under *Strickland v. Washington* and its progeny. Rather, he focuses on his request for an evidentiary hearing. To be sure, a petitioner may obtain such a hearing by showing "he was diligent in developing the factual basis for his claim in state court" and "asserting a factual basis that, if true, would entitle him to habeas relief." *Sandoval v. Ulibarri*, 548 F.3d 902, 915 (10th Cir. 2008). But Mr. Plater

"has not shown that an evidentiary hearing would" aid his ineffective assistance claims. *Id.* His conclusory assertions are not enough.

Ultimately, Mr. Plater has not convinced us that reasonable jurists would find the district court's decision debatable.

III. Conclusion

For the foregoing reasons, we deny a COA and dismiss the appeal.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge