SUPREME COURT
OF
THE UNITED STATES

Ty-Ron Steven Andersen,
Petitioner,

-VS-

Warden Eric King,
Respondent,

Hon. Elena Kagan
Appeals Court No:23-1692
S.Ct No: 164290

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PETITION FOR AN EXTENSION OF TIME

Ty-Ron Steven Andersen, a state prisoner acting in Pro Se, petitions Justice Elena Kagan in accordance with Rule 13, for an sixty day extension based on extraordinary circumstances beyond the petitoners control. On April 29 2024, The Sixth Circuit issued an order denying Petitoners Habeas Corpus Petition, In order for the Petitioner to properly file for a Writ of Certiorari, he must petition Justice Kagan and request an extension for the following reasons;

1. The Michigan Department of Corrections, namely the transferring staff at Kinross Correctional Facility, C.O. Lamms (KCF) lost/destroyed the Petitioners legal property instead of fowarding the property to the Earnest C. Brooks Correctional Facility (LRF). Please see EX A.

2. This loss/destruction was not the fault of the Petitioner based on the fact that Petitioner transfer was based on an emergency transfer, Wherefore the Petitioner was not allowed to pack his personal and/or legal property.

3. Petitioner has been diligent in pursuing any and all available remedies that would aid and assist him in the recovery of said legal property. Wherefore Petitioner's situation is different than that of Johnson, see Johnson v United States, 544 U.S. 295 (2005).

In Johnson, Petitioner was not diligent in his pursuit of the documents necessary to effectuate his appeal, Here the Petitioner must exhaust his available administrative remedies in order to get any type of resolution.

4. The available administrative remedies consists of a three step grievance process (EX A) and possible rembursement for the lost legal property. The Petitioner family is currently raising funds in an attempt to get copies of Petitioners transcripts and copies of the court's file.

5. The Petitioner has been actively trying to resolve this matter since April 16, 2024. Which is the date he was called to the LRF property room to pick up his personal/legal property that had arrived from KCF. See EX B

WHEREFORE, Petitioner Ty-Ron Steven Anderson, humbly petitions Justice Kagan to grant his request for a sixty day extension so that he may file his Writ of Certiorari in a timely manner.

Date: July 19, 2024

Submitted By;

Ty-Ron Steven Andersen #405128
In Pro Se
Earnest C. Brooks Corr. Fac.
2500 S. Sheridan Drive
Muskegon Heights, MI 49444

No. 23-1692

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 29, 2024
KELLY L. STEPHENS, Clerk

TY-RON STEVEN ANDERSON,

Petitioner-Appellant,

v.

BARBRA A. STOREY, Acting Warden,

Respondent-Appellee.

ORDER

Before: BLOOMEKATZ, Circuit Judge.

Ty-Ron Steven Anderson, a Michigan prisoner proceeding pro se, appeals the district court's judgment denying his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. He moves for a certificate of appealability ("COA") and for leave to proceed in forma pauperis ("IFP") on appeal. For the reasons that follow, a COA is not warranted, and Anderson's motion for leave to proceed IFP is moot.

A jury convicted Anderson of first-degree premeditated murder, being a felon in possession of a firearm, and possessing a firearm during the commission of a felony. *See People v. Anderson*, No. 327732, 2016 WL 6667951, at *1 (Mich. Ct. App. Nov. 10, 2016) (per curiam). The trial court sentenced him to life in prison without the possibility of parole. *Id.* The Michigan Court of Appeals affirmed Anderson's convictions and sentences, and the Michigan Supreme Court denied leave to appeal. *Id.*; *People v. Anderson*, 895 N.W.2d 525 (Mich. 2017).

After pursuing post-conviction relief in state court, Anderson filed an amended habeas petition claiming that he was deprived of the effective assistance of counsel when his trial attorney (1) "[f]ailed to investigate and/or interview Ronald Sutton, a critical exculpatory witness"; (2) agreed that the trial court should respond to a jury question in a manner that allowed the jury to

convict him without finding proof beyond a reasonable doubt of each element of the murder offense; and (3) provided advice and crafted a trial strategy that was based on a misinterpretation of the law. Anderson also argued that appellate counsel performed ineffectively by failing to argue that trial counsel performed ineffectively. The district court construed Anderson's amended petition as supplementing, rather than replacing, his initial habeas petition, and it denied relief on the merits of his claims. It also denied Anderson's request for an evidentiary hearing and declined to issue a COA.

Anderson now seeks a COA on his claims that trial counsel performed ineffectively by failing to investigate Sutton and by agreeing to the trial court's response to the jury's question. He also seeks a COA on his claim that appellate counsel performed ineffectively by failing to argue that trial counsel performed ineffectively in these two ways. Finally, he argues that the district court should not have denied relief on his claims without holding an evidentiary hearing.

A COA 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). Anderson may meet this standard by showing that reasonable jurists could debate whether his petition should have been determined in a different manner or that the issues presented are "adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

To succeed on an ineffective-assistance claim, a petitioner must show both that counsel's performance fell below an objective standard of reasonableness and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. "[I]neffective assistance of appellate counsel claims are governed by the same *Strickland* standard as claims of ineffective assistance of trial counsel." *Shaneberger v. Jones*, 615 F.3d 448, 452 (6th Cir. 2010).

I. *Counsel's Failure to Investigate Sutton*

The Wayne County Circuit Court found that trial counsel did not perform ineffectively by failing to investigate Sutton because Anderson did not show "a reasonable probability that had counsel presented the testimony of . . . Sutton . . . the outcome would have been different." And the Michigan Court of Appeals found that the trial court did not err in evaluating the merits of this claim.[1] Thus, the state court's decision turned on *Strickland*'s prejudice prong.

A. *Anderson's Challenge of the District Court's Legal Analysis*

Anderson now argues that the district court applied an incorrect legal standard in evaluating this claim, because it applied a "newly discovered evidence" standard to conclude that an affidavit that Sutton executed in 2018—"several years after [Anderson's] trial"—was entitled to little weight. But the district court's basis for denying relief was its finding that the state court's "determination that Anderson failed to demonstrate *Strickland* prejudice was not objectively unreasonable." Reasonable jurists could not debate the district court's conclusion that habeas relief was not warranted, for reasons discussed *infra*, I.B.

B. *District Court's Prejudice Analysis*

Anderson was convicted of murder under an aiding-and-abetting theory of liability. On direct appeal, the Michigan Court of Appeals described the events that gave rise to the conviction:

> This appeal involves the murder of eight-year-old Jakari Pearson, who lived at 682 East in an area known as the Brewster Projects. The prosecution's theory of the case was that [Calvin] Mosby became enraged after his ex-girlfriend, Samona Cochran, accused Mosby of breaking into her home. Mosby, accompanied by 16-year-old Devontae Starks, used a SKS rifle he received from Anderson to shoot at Cochran's home, killing Jakari as he slept in his bed in the early morning hours of July 30, 2014.

Anderson, 2016 WL 6667951, at *1. With respect to Anderson's involvement, the Michigan Court of Appeals explained,

> [w]hen Mosby and Starks returned to the [Brewster Projects in the evening of July 29, 2014], Mosby told Starks that the shooting of the house was about to go down. Anderson arrived in a black Jeep with a passenger. Anderson gave Mosby a dark

[1] The Wayne County Circuit Court alternatively found that this claim was barred by the doctrine of res judicata, but the Michigan Court of Appeals disagreed.

> hoodie and a semi-automatic rifle and agreed to meet Mosby and Starks after the shooting. Mosby and Starks went to the rear of Cochran's home where Jakari slept. Mosby aimed the gun at the building and Starks ran. Starks heard multiple gunshots.
>
> After the shooting, Starks and Mosby ran to their prearranged location, where Anderson was waiting in his Jeep. Eventually, Anderson dropped off Mosby and Starks. Starks gave the gun to Anderson's passenger before he left.

Id. at *2.

In his 2018 affidavit, Sutton states that Anderson's attorney never contacted him and that, if he had, Sutton would have testified that he was the unidentified passenger in Anderson's Jeep on July 30, 2014. He admits that he and Anderson met Starks and Mosby in those early morning hours, but he contends that Starks sold Anderson an assault-style rifle and that Anderson then drove Starks and Mosby "to a gas station to pick up ammunition." After Starks gave Anderson "various types of bullets," Sutton and Anderson left Starks and Mosby at the gas station. According to Sutton, Anderson never gave Mosby a gun or hoodie and did not transport Starks and Mosby away from the crime scene.

As the district court acknowledged, the Wayne County Circuit Court did not provide a rationale for its finding that Anderson failed to show prejudice on this ineffective-assistance claim. Thus, Anderson had to show that "there was no reasonable basis for the state court to deny relief." *Harrington v. Richter*, 562 U.S. 86, 98 (2011). Reasonable jurists could not debate the district court's conclusion that Anderson did not meet this standard.

First, Sutton's testimony would have corroborated many details provided by Starks, who testified against Anderson: it would have placed Anderson in a car around the time of the murders, confirmed that Anderson had contact with Starks and Mosby around the time of the murders, verified the presence of a second individual in the car, placed all four men in the car—with Anderson driving Starks and Mosby to a gas station, and placed a gun in the car. Second, the circumstantial evidence supporting Starks's account—and contradicting Sutton's—is substantial. The firearm that fired the shots that killed Jakari was found in Anderson's basement during a

search of his home. While Sutton's contention that Mosby sold Anderson a rifle could have explained that fact, Anderson's own statements contradict Sutton's account.

Sergeant Samuel Mackie and Agent Gregory Pruitt testified that Anderson initially denied being near the scene of the shooting in the early morning hours of July 30, 2014, later admitted that he went to the Brewster Projects in that timeframe, and admitted only after further questioning that he met up with Mosby that night. Anderson also initially denied knowing about the firearm found in his basement and later stated that "Cal" must have left it there, which is inconsistent with Sutton's contention that Mosby sold the rifle to Anderson. Cell phone records also showed that Anderson and Mosby contacted each other repeatedly both before and after the shooting, which lends credibility to Starks's contention that Anderson was involved in planning the offense. The jury also heard jailhouse conversations that were recorded while Mosby and Anderson were awaiting trial. In one call made by Anderson, a voice was heard saying, "[o]ne of them niggas is telling." And in a separate call, Anderson told his wife, "[y]ou already know what's going on, if they mention me, don't say nothing," and "[y]ou know the rules of marriage, what you can and can't do, right?" On September 4, 2014, the date of Mosby's preliminary examination and just over a month after Starks first made a statement to police, a woman told Mosby "[t]hat boy told on him." In light of this evidence, reasonable jurists would agree that it was not unreasonable for the state court to conclude that Sutton's testimony would not likely have changed the outcome of the trial.

C. *Anderson's Challenge of Specific Factual Findings*

Anderson nevertheless argues that the district court made specific factual findings that were not supported by the record. He contends that Sutton's affidavit did not state that "Mosby sold Anderson a rifle *at or near the scene of the shooting*" and did not support the district court's finding that Sutton's testimony would have "placed Anderson at the location and time of the murder." But even if the district court misstated Sutton's testimony, the misstatement is immaterial because cell phone records placed both Mosby and Anderson at or near the Brewster Projects shortly before, during, and shortly after the shooting. More importantly, § 2254 habeas relief is warranted only if

the *state* court's adjudication "resulted in a decision that was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(2). And, for reasons just discussed, *supra* Section I.B., reasonable jurists would agree that Anderson's habeas petition should not have been determined in a different manner and that this issue does not "deserve encouragement to proceed further." *Slack*, 529 U.S. at 484 (quoting *Barefoot*, 463 U.S. at 893 n.4).

II. Counsel's Failure to Object to Jury-Question Response

Before the jury began deliberating, the trial court instructed the jurors as follows:

> Mr. Anderson is charged with Count 1, first-degree premeditated murder. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt.
>
> First, that the defendant caused the death of Jakari Pearson.
>
> Second, that the defendant intended to kill Jakari.
>
> Third, that this intent to kill was premeditated, that is thought out before hand.
>
> Fourth, that the killing was deliberate, which means that the defendant considered the pros and cons of the killing and thought about it and chose his actions before he did it.

After instructing the jury on the elements of first- and second-degree murder, the trial court instructed the jury on aiding-and-abetting liability.

On the second day of the jury's deliberations, the trial court received a note from the jury stating, "are we basing our aiding and abetting decision on Anderson on what we believe Mosby is guilty of?" The court noted, and the parties verified, that they agreed that the trial court should respond with "a note that simply says, y-e-s, yes." Shortly after the trial court sent that response, the jury informed the court that it had reached a verdict.

The state court denied post-conviction relief on this claim because Anderson "failed to meet the burden to overcome the presumption that defense counsel's actions were based on sound trial strategy."[2] The district court found that the state court's decision was not unreasonable

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[2] Again, the Wayne County Circuit Court alternatively found that this claim was barred by res judicata, but the Michigan Court of Appeals rejected that finding.

because, "[b]y confirming the obvious point that the aiding and abetting charge related to Mosby's crime, [the] defense avoided—perhaps as a matter of strategy—another instruction that the mens rea for aiding and abetting is satisfied by a mere finding that murder was a natural and probable consequence of the aid Anderson provided to Mosby."

Reasonable jurists could not debate the district court's conclusion. Anderson contends that the jury's question could be interpreted as asking whether it could convict him of aiding and abetting first-degree murder simply because it found that Mosby was guilty of that crime. But the jury was instructed orally and in writing on aiding-and-abetting liability, and the jury's reference to its "aiding-and-abetting decision" suggests that it was aware of those instructions. And even if reasonable jurists could debate whether counsel performed deficiently by failing to advocate for a different response, reasonable jurists would agree that Anderson failed to show prejudice, because the jurors were instructed on aiding and abetting liability and the evidence was sufficient to convict Anderson of that crime.

III. *Ineffective Assistance of Appellate Counsel*

"[A]ppellate counsel cannot be considered ineffective for failing to raise a meritless claim." *Kelly v. Lazaroff*, 846 F.3d 819, 831 (6th Cir. 2017). For reasons just discussed, reasonable jurists would agree that Anderson's underlying ineffective-assistance-of-trial-counsel claims lacked merit. Therefore, Anderson's ineffective-assistance-of-appellate-counsel argument does not deserve encouragement to proceed further.

IV. *Denial of Motion for an Evidentiary Hearing*

Finally, reasonable jurists could not debate the district court's conclusion that Anderson was not entitled to an evidentiary hearing because review of claims that were "adjudicated . . . on the merits" in state court "is limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (expressly addressing § 2254(d)(1) claims); *Keeling v. Warden, Lebanon Corr. Inst.*, 673 F.3d 452, 464 (6th Cir. 2012) (applying *Pinholster* to § 2254(d)(2) claims).

For the foregoing reasons, Anderson's COA application is **DENIED**, and his motion for leave to proceed IFP is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 01/29/2024.

Case Name: Ty-Ron Anderson v. Barbra Storey
Case Number: 23-1692

Docket Text:
ORDER filed: For the foregoing reasons, Anderson's COA application is DENIED, and his motion for leave to proceed IFP is DENIED as moot. No mandate to issue. [7071029-2] [7072164-2] Rachel Bloomekatz, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Mr. Ty-Ron Steven Anderson
Kinross Correctional Facility
4533 W. Industrial Park Drive
Kincheloe, MI 49786

A copy of this notice will be issued to:

Ms. Kinikia D. Essix
Mr. John S. Pallas

No. 23-1692

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 29, 2024
KELLY L. STEPHENS, Clerk

TY-RON STEVEN ANDERSON, Petitioner-Appellant, v. BARBRA A. STOREY, ACTING WARDEN, Respondent-Appellee.	)))))))))	ORDER

Before: BOGGS, MOORE, and MURPHY, Circuit Judges.

Ty-Ron Steven Anderson petitions for rehearing en banc of this court's order entered on January 29, 2024, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court,* none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

*Judges Larsen and Davis recused themselves from participation in this ruling.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Kelly L. Stephens
Clerk

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Filed: April 29, 2024

Mr. Ty-Ron Steven Anderson
Earnest C. Brooks Correctional Facility
2500 S. Sheridan Drive
Muskegon Heights, MI 49444

Re: Case No. 23-1692, *Ty-Ron Anderson v. Barbra Storey*
Originating Case No.: 2:18-cv-11690

Dear Mr. Anderson,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. John S. Pallas

Enclosure

Additional material from this filing is available in the Clerk's Office.