No.

IN THE
SUPREME COURT OF THE UNITED STATES

COREY DEQUAN BROOME - PETITIONER

VS.

JAMES R. SCHIEBNER, WARDEN - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT

APPLICATION TO EXTEND TIME TO FILE CERTIORARI

The petitioner asks to extend the time to file petition for writ of certiorari.

1. The bases of the Court's jurisdiction is invoked under 28 U.S.C. §1257(a). The United States Court of Appeals decided and denied requested relief on August 08, 2024.

2. The United States Court of Appeals for the Sixth Circuit denied petitioner's application for certificate of appealability on August 08, 2024. A copy of the opinion is appended.

3. For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. Rule 13.5

4. Petitioner is incarcerated at a Michigan State Correctional Facility. Petitioner will moving pro se and is ineligible to receive any assistance from the facilities legal writer porogram.

5. Petitioner is serving a significant sentence that derives from a violation of his United States Constitutional right to effective assistance of counsel under the Sixth Amendment, and the petition of writ of certiorari will involve an important federal question surrounding the constructive denial of counsel that is in conflict within the Circuit Courts. Therefore, Petitioner asks to extend the time to file certiorari an additional 40 days.

Respectfully submitted,

Corey Broome

Corey Broome, #738532
Muskegon Correctional Facility
2400 S. Sheridan Drive
Muskegon, Michigan 49442

Date: October 25, 2024

APPENDIX

No. 24-1143

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

COREY DEQUAN BROOME,

Petitioner-Appellant,

v.

JAMES R. SCHIEBNER, Warden,

Respondent-Appellee.

ORDER

Before: BOGGS, Circuit Judge.

Corey Dequan Broome, a pro se Michigan prisoner, appeals a district-court judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Broome moves this court for a certificate of appealability (COA) and for leave to proceed in forma pauperis. The court denies both motions.

In 2015, a jury found Broome guilty of assault with intent to do great bodily harm, being a felon in possession of a firearm, carrying a concealed weapon, and two counts of possessing a firearm during the commission of a felony. The convictions stem from an encounter between Broome and Herbert Pippen; after their vehicles collided, a verbal exchange ensued, and Broome shot Pippen, who was also armed. Broome maintains that he shot Pippen in self-defense. The trial court sentenced Broome as a fourth-offense habitual offender to 25 to 50 years in prison for the assault conviction, five to 25 years in prison for the felon-in-possession and carrying-a-concealed-weapon convictions, and consecutive two-year prison terms for the felony-firearm convictions. The Michigan Court of Appeals affirmed, *People v. Broome*, No. 328310, 2017 WL 461260 (Mich. Ct. App. Feb. 2, 2017) (per curiam), and the Michigan Supreme Court denied leave to appeal, *People v. Broome*, 901 N.W.2d 103 (Mich. 2017) (mem.).

Broome then moved for relief from judgment. The trial court denied the motion. The Michigan Court of Appeals and Michigan Supreme Court each denied leave to appeal. *People v. Broome*, 951 N.W.2d 892 (Mich. 2020) (mem.).

Broome brings seven claims in his § 2254 petition; he raised the first two on direct appeal and the remaining five in his motion for relief from judgment. The district court denied the petition and declined to issue a COA, reasoning that Broome's claims were reasonably adjudicated on the merits by the state courts.

A COA may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). To be entitled to a COA, the applicant must demonstrate that reasonable jurists could debate whether "the petition should have been resolved in a different manner or that the issues presented were '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 (1983)). And pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), when a state court adjudicates a claim on the merits, the district court may not grant habeas relief unless the state court's adjudication resulted in "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "a decision that 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); *see Harrington v. Richter*, 562 U.S. 86, 100 (2011). When the state appellate court applies plain-error review, which is what the Michigan Court of Appeals did here with respect to Broome's first claim, *see Broome*, 2017 WL 461260, at *1, those rulings are also entitled to AEDPA deference, *see Stewart v. Trierweiler*, 867 F.3d 633, 638 (6th Cir. 2017). And when AEDPA deference applies, a reviewing court, in the COA context, must evaluate the district court's application of § 2254(d) and determine "whether that resolution was debatable amongst jurists of reason." *Miller-El*, 537 U.S. at 336.

Claim One – Eighth Amendment

Broome first claims that his 25-year mandatory-minimum sentence for being a fourth-offense habitual offender, as required by Michigan Compiled Laws § 769.12(1)(a), amounts to cruel and unusual punishment because the statute prevented the trial court from considering individualized factors (e.g., his youth at the time of the offenses) and mitigating circumstances.

On plain-error review, the Michigan Court of Appeals found no merit to this claim. *Broome*, 2017 WL 461260, at *2-3. It first rejected Broome's argument that § 769.12(1)(a) unconstitutionally limits a sentencing judge's discretion and ability to consider a defendant's circumstances or probability of rehabilitation, reasoning that the Michigan legislature is vested with "the ultimate authority to provide penalties for criminal offenses" and appropriately exercised that authority when enacting the habitual-offender statute. *Id.* at *2 (quoting *People v. Hegwood*, 636 N.W.2d 127, 130 (Mich. 2001)). The court then rejected Broome's argument that § 769.12(1)(a) mandated a sentence that amounts to cruel and unusual punishment in his case. *Id.* at *2-3. Broome's sentence was appropriate, the court reasoned, because he was convicted of "serious and violent" crimes after "severe" evidence was presented against him, has a lengthy criminal record despite his youth, committed the current crimes against a stranger who was walking away from him, and will be eligible for release when he is approximately 50 years old. *Id.* at *3.

The district court agreed that Broome's sentence was lawful, particularly because it fell within the penalty range authorized by statute. A sentence that does not exceed the maximum penalty authorized by statute "generally does not constitute 'cruel and unusual punishment.'" *Austin v. Jackson*, 213 F.3d 298, 302 (6th Cir. 2000) (quoting *United States v. Organek*, 65 F.3d 60, 62 (6th Cir. 1995)). Michigan's sentencing enhancement law for offenders who, like Broome, have been convicted of at least three prior felonies authorizes a maximum sentence of life for a subsequent conviction which is otherwise punishable by a maximum term of five years or more. Mich. Comp. Laws § 769.12. The statute for assault with intent to do great bodily harm authorizes a 10-year maximum sentence. Mich. Comp. Laws § 750.84. Thus, as Broome's sentence of 25 to

50 years in prison is less than life, it is authorized by Michigan law. No reasonable jurist therefore could debate the district court's conclusion that the Michigan Court of Appeals reasonably rejected Broome's Eighth Amendment claim.

Claim Two – Sixth Amendment and Sentencing

Broome claims that the trial court engaged in impermissible fact-finding when imposing his 25-year mandatory minimum sentence for being a fourth-offense habitual offender.

The Michigan Court of Appeals determined that this claim was foreclosed by *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny. *Broome*, 2017 WL 461260, at *4. In *Apprendi*, the Supreme Court held that, "*[o]ther than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490 (emphasis added). Here, the "fact" that the trial court found was Broome's prior convictions, and it was permitted to do so under *Apprendi*. *See Broome*, 2017 WL 461260, at *4. Contrary to Broome's insistence, *Apprendi* is still good law, so there was no sentencing error. *See id.* In light of *Apprendi*, no reasonable jurist could debate the district court's conclusion that the state appellate court's rejection of this claim was not contrary to or an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts.

Claim Three – Ineffective Assistance of Trial Counsel – Self-Defense Jury Instructions

Broome claims that trial counsel was ineffective for failing to secure a proper self-defense jury instruction. According to Broome, although the trial court appropriately instructed the jury that self-defense applied to the charge of assault with intent to commit murder, trial counsel should have ensured that the trial court also instructed the jury that self-defense applied to the lesser-included offense of assault with intent to commit great bodily harm.

To establish ineffective assistance of counsel, a defendant must show deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "The standards created by *Strickland* and § 2254(d) are both 'highly deferential,' and when the two apply in tandem, review is 'doubly' so." *Richter*, 562 U.S. at 105 (first quoting *Strickland*, 466

U.S. at 689; and then quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)). Thus, on habeas review, "[w]hen § 2254(d) applies, the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id.*

In rejecting this claim, the trial court explained that the self-defense instruction was not erroneous—a ruling to which this federal habeas court must defer, *see McMullan v. Booker*, 761 F.3d 662, 668 (6th Cir. 2014)—and reasoned that the jury could logically infer that self-defense applied both to the greater charged offense and lesser-included offense. And trial counsel did not perform deficiently, the trial court continued, as he "vigorously argued that [Broome] was not guilty of either the principal or the lesser included offense based on his right to act in lawful self-defense." The district court agreed, adding that there was no suggestion that self-defense applied only to the greater offense, given that the prosecutor broadly argued that Broome did not act in self-defense and the trial court properly instructed the jury on self-defense without differentiating between the greater and lesser offenses. "Thus, if anything," the district court concluded, "the jury was more likely to assume that the defense of self-defense applied to both the greater and lesser offenses, not merely one of them." On this record and in light of the double deference due under *Strickland* and § 2254(d), no reasonable jurist could debate the district court's conclusion that the state court's rejection of this ineffective-assistance claim was not contrary to or an unreasonable application of *Strickland* or based on an unreasonable determination of the facts.

Claim Four – Constructive Denial of Counsel

Broome claims that he was constructively denied counsel because trial counsel admittedly failed to conduct pretrial investigative interviews of any prosecution witnesses. By framing trial counsel's failure to interview these witnesses as the constructive denial of counsel through lack of meaningful adversarial testing, Broome seeks to take advantage of the presumption-of-prejudice analysis provided by *United States v. Cronic*, 466 U.S. 648, 658 (1984). A *Cronic* violation occurs if trial counsel fails to subject the prosecution's case to meaningful adversarial testing. 466 U.S.

at 658-59. In such a case, there is a structural error in the proceedings, and the petitioner is not required to demonstrate prejudice in order to receive a new trial. *Id.* at 659.

The trial court rejected this claim, reasoning that Broome neither provided any factual predicate for it nor showed that trial counsel's failure to interview the witnesses deprived him of a substantial defense. The district court agreed, adding that that the failure to interview witnesses—without more—is insufficient to establish a *Cronic* violation. *See Bell v. Cone*, 535 U.S. 685, 697 (2002) (providing that counsel must "entirely fail[]," which means that "the attorney's failure must be [a] complete" and not a mere partial failure to subject the prosecution's case to meaningful adversarial testing). And trial counsel *did* subject the prosecution's case to meaningful adversarial testing, the district court continued, by cross-examining the witnesses at trial and by otherwise adequately presenting Broome's theory of defense throughout the trial. Under these circumstances, reasonable jurists could not debate the district court's conclusion that Broome failed to demonstrate a *Cronic* violation and that the state trial court reasonably rejected this claim. *See Moss v. Hofbauer*, 286 F.3d 851, 860-62 (6th Cir. 2002).

Claim Five – Impartial Judge

Broome claims that his right to an impartial judge was violated when the trial court judge referred to Pippen as the "victim." The trial court judge used the term "victim" when relaying a question from the jury; specifically, the trial court judge asked a witness, a police officer, to clarify his testimony about photo identification procedures with the following: "Did you say [that Broome] was [identified] by one of the victim's family members, and used to make the photo lineup?"

In rejecting this claim, the trial court (a different judge) explained that the isolated remark in response to a jury question did not show that the trial court judge was biased against Broome. The district court agreed, adding that the trial court judge's one-time use of the term "victim" did not prevent the jury from determining whether Broome's conduct was unlawful and did not show that the judge was prejudiced. Inasmuch as Broome offers no other factual basis for or persuasive

argument in support of his impartiality claim, reasonable jurists could not debate the district court's conclusion that the trial court reasonably rejected it.

Claim Six – Ineffective Assistance of Trial Counsel – Limiting Instruction

Broome claims that trial counsel failed to ensure that the jury received a limiting instruction concerning evidence of his prior bad acts (namely, his felony convictions).

In rejecting this claim, the trial court explained that admission of Broome's prior felony convictions was necessary to prove an element of being a felon in possession of a firearm, so trial counsel had no basis on which to object to the jury instructions regarding Broome's criminal record. Although Broome faults trial counsel for failing to request a limiting instruction stating that the jury can consider his prior felonies only as it relates to his status as a convicted felon and not as substantive evidence of his guilt, he cannot overcome the trial court's ruling that the jury instructions with respect to his prior felony convictions were proper under state law. *See McMullan*, 761 F.3d at 668. Reasonable jurists would thus agree that trial counsel could not have been ineffective for failing to lodge a meritless objection, *see Tackett v. Trierweiler*, 956 F.3d 358, 375 (6th Cir. 2020), and that the trial court reasonably rejected this claim.

Claim Seven – Ineffective Assistance of Appellate Counsel

Broome claims that appellate counsel was ineffective for failing to raise Claims Three through Six on direct appeal. But appellate counsel is not required "to raise every non-frivolous issue on appeal." *Caver v. Straub*, 349 F.3d 340, 348 (6th Cir. 2003). And when, as here, appellate counsel "presents one argument on appeal rather than another . . . the petitioner must demonstrate that the issue not presented 'was clearly stronger than issues that counsel did present'" to establish ineffective assistance of counsel. *Id.* (quoting *Smith v. Robbins*, 528 U.S. 259, 289 (2000)). Because, as set forth above, reasonable jurists would agree that these four claims were reasonably adjudicated as meritless by the state trial court on post-conviction review, appellate counsel cannot be faulted for declining to raise them on direct appeal. *See Shaneberger v. Jones*, 615 F.3d 448, 452 (6th Cir. 2010). Reasonable jurists therefore could not debate the district court's rejection of Broome's ineffective-assistance-of-appellate-counsel claim.

The court therefore **DENIES** the motion for a COA and **DENIES** as moot the motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1143

COREY DEQUAN BROOME,

Petitioner-Appellant,

v.

JAMES R. SCHIEBNER, Warden,

Respondent-Appellee.

Before: BOGGS, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Corey Dequan Broome 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

Kelly L. Stephens, Clerk

No.

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VS.

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PROOF OF SERVICE

I, Corey Dequan Broome, do swear or declare that on this date, October 25, 2024, as required by Supreme Court Rule 29 I have served the enclosed APPLICATION TO EXTEND TIME TO FILE CERTIORARI on each party to the above proceeding or that party s counsel, and on every other person to be served, by handing an envelope containing the above documents through the facilities 'Expedited Legal Mail' system to be placed in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addressed of those served are as follows:

Michigan Attorney General
Appellate Division
P.O. Box 30217
Lansing, Michigan 48909

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 25, 2024

/s/: Corey Broome

Corey Broome, #738532
Muskegon Correctional Facility
2400 S. Sheridan Drive
Muskegon, Michigan 49442

Date: October 25, 2024