

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER THOMAS

VS.

CASE No.: _____

L.F. CASE No.: 22-12178

SECRETARY, FLORIDA DEP'T.
OF CORRECTIONS, et al.

AMENDED
MOTION FOR EXTENSION OF TIME TO
FILE WRIT OF CERTIORARI

COMES NOW, the Petitioner, Christopher Thomas, by and through the undersigned and pursuant to Fed. R. App. P. Rule. 26(b), and moves this Honorable Court for an extension of the time necessary to seek certiorari review in the above-styled case. In support thereof the Petitioner does state:

1) On July 21, 2022, Petitioner moved for a certificate of appealability ("COA"), and leave to proceed in forma pauperis (IFP) in order to appeal the denial of his pro se 28 U.S.C. § 2254 petition. He raised two ineffective assistance claims in the instant petition, and the trial court's purported violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000); in imposing a life sentence, based on robbery.

2) On July 10, 2023, this Honorable Court appointed counsel to represent the Petitioner. All briefs were filed and on May 22, 2024 this Honorable Court issued its opinion affirming the District Court's denial of relief. Counsel didn't move for certiorari relief.

3) No motion for rehearing was filed by counsel and no motion to withdraw as counsel of record has been filed by counsel and no order has been issued allowing counsel to withdraw.

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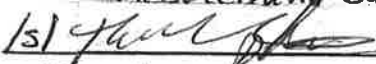
has refused to file a motion for rehearing or a Petitioner for Writ of Certiorari in this court on the Petitioner's behalf. Until such time as counsel has been relieved of her duty to represent the Petitioner, Petitioner can't file any pro se pleadings, in order to file a petition for Writ of Certiorari, which hinders access to court.

4) An extension is needed to afford petitioner time to have counsel removed from the case and to research, compile and perfect his petition for Writ of Certiorari pro se. The situation is beyond the Petitioner's control, in that until such time as the District Court issues an order granting counsel leave to withdraw, the Petitioner can't move forward pro se.

This Honorable Court has the legal authority to extend the time if the request is made before the time period for moving for Writ of Certiorari has expired. This is not an attempt to abuse the process.

An extension of (90) days will be sufficient time for Petitioner to research, compile, and perfect the pleading necessary to petition this court. Respondant will not be prejudiced by the extension of time.

Wherefore, the Petitioner request that this Honorable Court grant this motion and afford him (90) days for perfecting his pleading. As Petitioner has moved to discharge counsel!

Respectfully Submitted,

Christopher Thomas #186326

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the office of the Attorney General at The Capital PL-01, Tallahassee, Fla. 32399-1050, by regular U.S. Mail on this 9 day of Dec. (2024).

131 Thomas
Christopher Thomas #186326
Okeechobee Correctional Inst.
3420 N.E. 168th St.
Okeechobee, Fla. 34972-4824

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12178

Non-Argument Calendar

CHRISTOPHER THOMAS,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

D.C. Docket No. 3:19-cv-01032-BJD-JBT

Before NEWSOM, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

Christopher Thomas, a Florida prisoner serving a life sentence for four counts of armed robbery, appeals through counsel the district court's denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition. We granted a certificate of appealability on the following issue:

Whether trial counsel provided ineffective assistance by failing to object to: (1) the verdict form, as inconsistent with the jury instructions; or (2) the trial court's classification of the offenses as armed robbery, based on the jury's special finding that Thomas "actually possessed" a firearm?

Thomas asserts the state post-conviction courts both unreasonably determined the facts of his case and unreasonably applied the law to those facts. Specifically, he asserts the verdict form omitted findings required to convict him of armed robbery with a firearm, and the district court's finding to the contrary was an unreasonable determination of the facts. In so arguing, Thomas contends counsel was deficient under *Strickland v. Washington*, 466 U.S. 668 (1984)¹ for failing to object to the verdict form, which only

¹ The Sixth Amendment provides criminal defendants the right to effective assistance of counsel. U.S. Const., amend. VI; *Strickland*, 466 U.S. at 684–86. To succeed on an ineffective-assistance-of-counsel claim, a petitioner must

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allowed the jury to find him guilty of simple robbery, and the reclassification of his conviction as armed robbery violated *Alleyne v. United States*, 570 U.S. 99 (2013). After review, we affirm.

The Antiterrorism and Effective Death Penalty Act of 1996 imposes a “highly deferential standard for evaluating state-court rulings, and demands that state-court decisions be given the benefit of the doubt.” *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotation marks and citation omitted). A state prisoner seeking federal habeas relief “must show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011). In other words, “[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.” *Id.* at 101 (quotation marks omitted).

The state court’s decision was neither “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” nor “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) (providing a federal court cannot grant habeas relief on a claim that was “adjudicated on the merits in State court

show (1) his counsel’s performance was deficient, and (2) the deficient performance prejudiced his defense. *Id.* at 687.

proceedings” unless the state court’s decision was (1) “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States” or (2) “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding”). First, it was a reasonable determination of the facts for the state court to find the jury’s special finding—that Thomas “actually possessed” a firearm during the robbery—served the dual purposes of establishing his guilt as to armed robbery, while also establishing the necessary finding for the imposition of life sentences. Under Florida law, a court must impose a life sentence where a “prison releasee reoffender” commits a felony “punishable by life.” Fla. Stat. § 775.082(9)(a)3.a. A Florida robbery offense is only punishable by life if the offender “*carried* a firearm or other deadly weapon” in the course of committing the robbery. *Id.* § 812.13(2)(a) (emphasis added). Importantly, “[a] finding that the defendant ‘carried’ a firearm under section 812.13(2)(a) reclassifies robbery into a higher degree of felony, increasing the potential maximum of punishment.” *Grant v. State*, 138 So. 3d 1079, 1085 (Fla. 4th DCA 2014).

In *Grant*, Florida’s Fourth District Court of Appeal determined the trial court had improperly sentenced the defendant under Florida’s felony reclassification statute because the jury’s special finding the defendant “carried” a firearm during a robbery did not amount to a finding that he “possessed” a firearm, as would have been necessary to trigger the sentencing enhancement. *Id.* at 1085–87. It explained the sentencing enhancement in the felony reclassification statute “is predicated on the defendant being ‘found

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to have been in actual possession of the firearm,” and that statute defined possession of a firearm as “carrying it on the person [or] . . . ha[ving] the firearm within immediate physical reach with ready access with the intent to use the firearm.” *Id.* (emphasis supplied). It concluded Florida’s felony reclassification statute “explicitly defines ‘possession’ in a way that” is narrower than the term carried, and, thus, the jury’s special finding the defendant “carried” a firearm during the robbery did not support the enhancement under the possession statute. *Id.* at 1086.

✱ The state court reasonably determined there would have been no basis to object to the verdict form after deliberations, on the ground the jury had not found that Thomas “carried” a firearm as would be necessary to support an armed robbery conviction. Indeed, according to the state court’s interpretation of Florida’s robbery statute, Thomas necessarily “carried” a firearm, and, thus, committed armed robbery, if he “actually possessed” a firearm during the offenses. *See id.*

Considering the deference afforded to the state court’s interpretation of its own robbery statute, the jury’s special finding that Thomas “actually possessed” a firearm amounted to a determination of guilt as to armed robbery, and there would have been no basis to object to the verdict form after deliberations on the ground the jury had not found him guilty of that offense. *See Pinkney v. Sec’y, Dep’t of Corr.*, 876 F.3d 1290, 1295 (11th Cir. 2017) (stating although an ineffective-assistance-of-counsel claim is a federal constitutional claim, when the validity of the claim that counsel failed to

raise turns on state law, we will defer to the state court's interpretation of its own law).

The state court also reasonably determined there would have been no basis for trial counsel to object on the grounds that the trial court improperly reclassified the offenses from simple robbery to armed robbery or imposed illegal sentences. Given the state court's determination the jury had found Thomas guilty of armed robbery, by implication of the special finding that he "actually possessed" a firearm during the crimes, there would have been no merit to an objection that the trial court improperly reclassified the offenses to armed robbery. *See Fla. Stat. § 812.13(2)(a).*

Similarly, there would have been no basis to object to the legality of the sentence, on *Apprendi* or *Alleyne* grounds, because, by finding Thomas guilty of armed robbery, the jury found him guilty of a robbery offense punishable by life, which triggered the mandatory life sentences. *See Fla. Stat. §§ 775.082(9)(a)3.a; 812.13(2)(a).* Thus, because the jury's verdict reflected all of the factual findings necessary to trigger the mandatory life sentences, any objection that the trial court violated *Apprendi* or *Alleyne* would have been meritless. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (holding "[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"); *Alleyne*, 570 U.S. at 108 (relying on *Apprendi* to determine "[f]acts that increase the mandatory minimum sentence

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are . . . elements and must be submitted to the jury and found beyond a reasonable doubt”).

Finally, as to Thomas’s claim his counsel should have objected to the verdict form as inconsistent with the trial court’s instructions, the state court reasonably determined such an objection would have lacked merit. Although Thomas correctly pointed out the verdict form did not contain the terms “armed robbery” or “robbery with a firearm,” the absence of those terms did not make the verdict form inconsistent with the trial court’s instructions because, based on the state court’s interpretation of Florida law, the verdict form permitted the jury to find Thomas guilty of those offenses. *See Pinkney*, 876 F.3d at 1295; *Grant*, 138 So. 3d at 1085-87.

→ Importantly, this Court must defer to the state post-conviction court’s determination that the phrase “actually possessed” is narrower than the term “carried,” as used in Florida’s robbery statute. *See Pinkney*, 876 F.3d at 1295; *Grant*, 138 So. 3d at 1085-87. In light of that determination, by permitting a finding Thomas “actually possessed” a firearm during the robberies, the verdict form allowed the jury to find him guilty of all of the offenses for which the trial court had given instructions, and thus, there would have been no basis to object to the verdict form as inconsistent with the jury instructions. *See Grant*, 138 S. 3d at 1085-87.

Considering the state court’s determination concerning the absence of any bases to object to the verdict form or sentences, the decision denying Thomas’s Rule 3.850 motion was not contrary to, nor an unreasonable application of, *Strickland*, as “it is axiomatic

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that the failure to raise nonmeritorious [objections] does not constitute ineffective assistance. See *Bolender v. Singletary*, 16 F.3d 1547, 1573 (11th Cir. 1994).

AFFIRMED.