Supreme Court of the United States

Shyne v Anderson

Petitioner

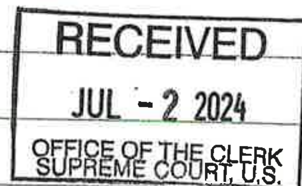
v

Chairmaine Bracy

Respondent

Motion for extension of time to file certiorari

Reasons to grant additional time to file is in memorandum as follows



Memorandum.

Anderson need more time to file certiorari because he do not have all prior judgments which these documents is required to go along with his certiorari. Anderson has contacted all lower court in this regard to pay for prior ruling in his case.

Lastly Anderson is looking for a lawyer that will get his discovery for him because his discovery will prove he is not guilty and will prove his trial lawyer and prosecution kept them from him and go hand and hand with his certiorari. the lower courts denied every motion for discovery stating counsel had one free one. Anderson informed the courts his counsel never gave or went over them with him. the discovery and prior judgments is needed for this certiorari. And as pro se i need more time to study. the dead line is the 28th of this month from the denial of his en banc rehearing that was denied on march, 28. 24.

Conclusion

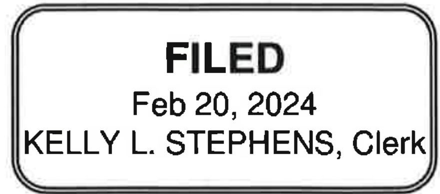
As stated above Anderson need more time to get documents and time to study for his certiorari. Also Anderson file a writ of Procedendo to this honorable court for a ruling on claim the lower court refused to rule on for 9 years.

Certificate of Service

On this 14 day of June 2023 this motion was sent to the U.S Supreme Court 1 first NE, Washington DC 20543. I ask this honorable court to send a copy through the E-filing system to whome it may concern.

After return of this motion to enclude prior judgment and to send copy to ohio Attorney General Dave Yost Criminal Justice Section, Section Code (4300 30 E Brod St. 23rd fl. Columbus, oh 43215. Prior judgment have been enclosed in this motion. This motion was filed timely it took 2 weeks for the court to get this motion Anderson resent with the needed document today on July 6. 2024

No. 23-3643



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SHYNE V. ANDERSON,)
)
Petitioner-Appellant,)
)
v.) ORDER
)
CHARMAINE BRACY,)
)
Respondent-Appellee.)

Before: LARSEN, Circuit Judge.

Shyne V. Anderson, a pro se Ohio prisoner, appeals the district court's judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Anderson has filed an application for a certificate of appealability ("COA"), *see* Fed. R. App. P. 22(b)(1), and a motion to proceed in forma pauperis, *see* Fed. R. App. P. 24(a)(5). For the reasons set forth below, the court denies Anderson's COA application and denies his motion for pauper status as moot.

I. Facts & Procedural Background

Between December 2015 and February 2016, an Ohio grand jury indicted Anderson in four separate cases—Case Nos. CR-15-599104-A, 599105-A, 602138-A, and 602139-A. Those cases involved offenses that Anderson committed between July 2014 and December 2015 against two women, S.S. and A.W. Anderson pleaded not guilty in all four cases and waived his right to a jury trial. On the State's motion, and over Anderson's objection, the trial court joined all four cases for trial.

At the ensuing bench trial, the State presented testimony from the two victims and five police officers. Anderson did not call any witnesses. The relevant facts, as summarized by the Ohio Court of Appeals, are as follows: as relates to Case No. CR-15-602138-A, the trial testimony established that Anderson and S.S. went out drinking on the night of July 23, 2014. *State v. Anderson*, 86 N.E.3d 870, 873 (Ohio Ct. App. 2017). Around midnight, S.S. told Anderson that

she wanted to go home. *Id.* Thinking that she was going to see another man, Anderson took S.S.'s keys and drove off in her car. *Id.* When Anderson returned about an hour later, S.S. entered the car, carrying a brick that she had picked up in the street. *Id.* Anderson and S.S. began to argue, and S.S. tossed the brick into Anderson's lap. *Id.* Anderson then threw the brick at S.S.'s face, striking her above her eye and causing a gash. *Id.* S.S. asked Anderson to take her to the hospital, but Anderson refused. *Id.* He instead drove S.S. to her apartment, where they continued to argue. *Id.* On these facts, the trial court convicted Anderson of felonious assault and kidnapping.

With respect to Case No. CR-15-599104-A, the trial testimony established that Anderson and S.S. went out drinking again on January 11, 2015. *Id.* After midnight, Anderson returned S.S. to her apartment. *Id.* Shortly after S.S. entered her second-story unit, she saw Anderson climbing into her apartment through the window. *Id.* S.S. immediately fled the apartment and ran downstairs, but Anderson caught her and started hitting her in the face, injuring her eye, jaw, and forehead. *Id.* at 873-74. The downstairs neighbors heard the commotion and opened their door, and S.S. fell inside their unit. *Id.* at 874. The neighbors eventually pushed Anderson out of the apartment and locked the door. *Id.* While S.S. called the police, the neighbors' apartment windows were shattered. *Id.* The windshield of a vehicle parked in the driveway was also shattered. *Id.* On these facts, the trial court convicted Anderson of aggravated burglary, domestic violence, and two counts of criminal damaging.

As for Case No. 15-CR-599105-A, the trial testimony established that A.W. and Anderson argued on the night of July 18, 2015, after which A.W. went out with a friend. *Id.* When A.W. returned home a few hours later, she found Anderson inside her house. *Id.* He had apparently entered the house through a faulty, unlocked door. *Id.* Anderson immediately began beating A.W. He then ripped off her shorts and digitally penetrated her vagina, accusing her of cheating on him. *Id.* A.W. retreated to the bathroom, but Anderson followed her, tore down the shower curtain, and hit her with the curtain rod. *Id.* He then took A.W.'s cell phone and car keys and drove off in her car. *Id.* After the police arrested Anderson, he frequently called A.W. from jail and asked her not to appear at his court proceedings. *Id.* On these facts, the trial court convicted Anderson of rape, kidnapping, aggravated burglary, grand theft, assault, and intimidation of a crime victim.

Finally, as relates to Case No. 15-CR-602139-A, the trial testimony established that, in December 2015, Anderson and A.W. were driving in A.W.'s rental car. *Id.* at 875. At some point, Anderson asked A.W. if he could borrow the car. When A.W. refused, they fought, and Anderson unsuccessfully tried to drag A.W. out of the car. *Id.* Later, Anderson showed up in A.W.'s driveway and "messed up" the car. *Id.* During a separate incident in December 2015, Anderson arrived at A.W.'s house, acting belligerently. *Id.* Suspecting that another man was in the house, Anderson "bum-rushed" A.W. at the door and pushed her inside the house. *Id.* He then punched A.W. and poured juice and cooking oil over her before driving off in her car without her permission. *Id.* On these facts, the trial court convicted Anderson of burglary, robbery, assault, abduction, and grand theft.

Altogether, the trial court sentenced Anderson to a total term of 22 years' imprisonment.

On direct appeal, Anderson claimed that his convictions were against the manifest weight of the evidence, that the two victims' trial testimony constituted inadmissible "other acts" evidence, and that trial counsel was ineffective for failing to successfully challenge the joinder of his four cases. The Ohio Court of Appeals affirmed, *see id.* at 878, and the Ohio Supreme Court declined review, *State v. Anderson*, 87 N.E.3d 1272 (Ohio 2017).

Thereafter, Anderson filed an application to reopen his direct appeal under Ohio Rule of Appellate Procedure 26(B), claiming that his appellate counsel was ineffective for failing to argue that (1) the prosecutor committed misconduct by not playing the entire recording of his jailhouse phone calls with A.W. at trial, (2) trial counsel rendered ineffective assistance with regard to the recording, by not adequately preparing for trial, and by not arguing self-defense, (3) several of his convictions were against the manifest weight of the evidence or supported by insufficient evidence, and (4) the trial judge improperly considered his athleticism when adjudicating him guilty of aggravated burglary in Case No. CR-15-599104-A. The Ohio Court of Appeals denied Anderson's application. *State v. Anderson*, No. 104460, 2018 WL 386592, at *4 (Ohio Ct. App. Jan. 10), *perm. app. denied*, 96 N.E.3d 302 (Ohio 2018).

Anderson then filed a petition for post-conviction relief, claiming that the prosecutor violated his due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963), by not disclosing the

recording of his jailhouse phone calls with A.W. prior to trial. The trial court summarily denied the petition, and Anderson did not appeal.

Having no avenues left for challenging his convictions in state court, Anderson filed this § 2254 petition, raising the following claims: (1) the trial judge improperly considered his athleticism when adjudicating him guilty of aggravated burglary in Case No. CR-15-599104-A, (2) the prosecutor committed misconduct by belatedly disclosing the recording of his jailhouse phone calls with A.W. and by not playing that recording in its entirety at trial, (3, 5, & 9) several of his convictions are against the manifest weight of the evidence and supported by insufficient evidence, (4) trial counsel was ineffective, (6) the police conducted an inadequate investigation in Case No. CR-15-599105-A, (7) the victims' trial testimony constituted improper "other acts" evidence, and (8) appellate counsel was ineffective. On a magistrate judge's recommendation, and over Anderson's objections, the district court denied Anderson's habeas petition, concluding that his claims were either meritless or not cognizable, and declined to issue a COA. The district court also denied Anderson's motion to alter or amend the judgment. *See* Fed. R. Civ. P. 59(e).

II. Law & Analysis

Anderson now seeks a COA from this court as to each of his claims, except for Claims 6 and 7 and aspects of Claims 4 and 8. He has forfeited review of those claims by failing to address them in his COA application. *See Elzy v. United States*, 205 F.3d 882, 896 (6th Cir. 2000).

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); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). 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 [that] the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327. Under the Antiterrorism and Effective Death Penalty Act of 1996 ("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 was (1) "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). Where the state courts

adjudicated the petitioner's claims on the merits, the relevant question is whether the district court's application of § 2254(d) to those claims is debatable by jurists of reason. *Miller-El*, 537 U.S. at 336.

In Claims 1, 3, 5, & 9, Anderson challenged the weight and sufficiency of the evidence supporting several of his convictions. With respect to his manifest-weight claims, Anderson argued that beyond the victims' testimony, no credible or corroborating evidence was presented showing that he either assaulted and kidnapped S.S. (Case No. CR-15-602138-A), climbed through a second-story window that was approximately 20 feet off the ground (Case No. CR-15-599104-A), raped A.W. (Case No. 15-CR-599105-A), or forcibly entered A.W.'s house and assaulted her (Case No. 15-CR-602139-A). Reasonable jurists could not debate the district court's conclusion that a manifest-weight claim presents a state-law issue that is not cognizable in federal habeas proceedings. *See State v. Thompkins*, 678 N.E.2d 541, 546 (Ohio 1997) (explaining that, under Ohio law, "[t]he legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different."); *cf. Nash v. Eberlin*, 258 F. App'x 761, 764 n.4 (6th Cir. 2007).

Anderson rehashed the same manifest-weight arguments to claim that his convictions are supported by insufficient evidence. He also seemingly claimed that the trial judge's consideration of facts not in evidence (i.e., his athleticism) proves that his conviction of aggravated burglary in Case No. CR-15-599104-A was based on insufficient evidence. These sufficiency claims do not deserve encouragement to proceed further because they are procedurally defaulted. A procedural default results when a petitioner fails to exhaust a claim by raising it "in state court, and pursu[ing] that claim through the state's 'ordinary appellate review procedures,'" *Williams v. Anderson*, 460 F.3d 789, 806 (6th Cir. 2006) (quoting *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999)), and, at the time of filing his federal habeas petition, no longer has the ability to raise that claim in state court, *see Pudelski v. Wilson*, 576 F.3d 595, 605 (6th Cir. 2009). Because Anderson could have challenged the sufficiency of the evidence on direct appeal but failed to do so, review of these claims in the Ohio courts is now barred under the doctrine of res judicata. *See State v. Perry*, 226 N.E.2d 104, 108 (Ohio 1967). His sufficiency claims are therefore procedurally defaulted.

A federal court will not review a procedurally defaulted claim unless the petitioner can show either cause for the default and actual prejudice arising therefrom, or that failing to review the defaulted claims would result in a "fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). A fundamental miscarriage of justice requires a showing of actual innocence. *See Dretke v. Haley*, 541 U.S. 386, 393 (2004). Broadly construed, Anderson's filing cited appellate counsel's ineffectiveness as cause for his defaults. Although ineffective assistance of appellate counsel may serve as cause to excuse a procedural default, *see Murray v. Carrier*, 477 U.S. 478, 488-89 (1986), Anderson did not show that appellate counsel's decision to omit the sufficiency claims on direct appeal constituted deficient performance or that it prejudiced him. Anderson did not dispute that the State satisfied its burden of production as to every element of the charged offenses; he instead argued that the evidence is insufficient because the victims' testimony was unbelievable and uncorroborated. Appellate counsel raised the same or similar arguments in challenging the manifest weight of the evidence on direct appeal, including that there was no credible evidence that Anderson climbed through S.S.'s window, restrained or assaulted S.S., or digitally penetrated A.W.'s vagina. *See Anderson*, 86 N.E.3d at 876. Anderson thus cannot show that a sufficiency challenge—which, unlike a state-law manifest-weight challenge, does not allow the reviewing court to reweigh the evidence or revaluate the credibility of witnesses—would have been successful. *See Anderson*, 2018 WL 386592, at *4; *see United States v. Martinez*, 430 F.3d 317, 330 (6th Cir. 2005) (noting that, in reviewing a challenge to the sufficiency of the evidence, the reviewing court "may not reweigh the evidence, reevaluate the credibility of witnesses, or substitute [its] judgment for that of the jury"). And a victim's testimony alone, without corroborating witnesses or physical evidence, can be constitutionally sufficient to sustain a conviction. *See Tucker v. Palmer*, 541 F.3d 652, 658-59 (6th Cir. 2008); *O'Hara v. Brigano*, 499 F.3d 492, 500 (6th Cir. 2007). Lastly, Anderson's attacks on the victims' credibility, standing alone, do not satisfy the actual-innocence standard that would permit judicial review of his procedurally defaulted sufficiency claims. *See Schulp v. Delo*, 513 U.S. 298, 324 (1995) (holding that a claim of actual innocence must be supported by new and reliable evidence, such as "exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence").

Reasonable jurists would not debate the district court's resolution of Anderson's sufficiency claims.

In Claim 2, Anderson argued that the prosecutor committed misconduct by belatedly disclosing the recording of his jailhouse phone calls with A.W. and by not playing that recording in its entirety at trial. Relatedly, in Claim 4, Anderson faulted his trial counsel for not objecting to the prosecutor's alleged misconduct. But as with his sufficiency claims, these claims are procedurally defaulted. Anderson could have raised them on direct appeal but failed to do so,[1] *see Williams*, 460 F.3d at 806, and res judicata would now bar him from raising them in a state petition for post-conviction relief, *see Perry*, 226 N.E.2d at 108. And to the extent that Anderson's prosecutorial-misconduct claim can be construed as reasserting the *Brady* claim that he raised in his post-conviction petition, it is still procedurally defaulted because Anderson did not exhaust that claim by appealing the trial court's denial of his post-conviction petition, *see Wagner v. Smith*, 581 F.3d 410, 414 (6th Cir. 2009), and he is now precluded from doing so, *see Nesser v. Wolfe*, 370 F. App'x 665, 670 (6th Cir. 2010) (citing *State v. Nichols*, 463 N.E.2d 375, 378 (Ohio 1984)); Ohio S. Ct. Prac. R. 7.01(A)(4)(c).

As before, Anderson sought to excuse his procedural defaults by alleging ineffective assistance of appellate counsel. To that end, Anderson argued that, had the prosecutor played the entire recording of his jailhouse phone calls with A.W., it would have exonerated him of the rape charge in Case No. CR-15-599105-A, and thus there was no reasonable justification for appellate counsel to omit this issue on direct appeal. But the trial transcript reflects that the recordings of Anderson's jailhouse phone calls were turned over to the defense prior to trial, thereby undermining any assertion that the prosecutor delayed disclosing that evidence. Furthermore, because Anderson himself could have introduced the allegedly exculpatory information that he accuses the prosecutor of suppressing, he cannot show that he was prejudiced by how the prosecutor presented that evidence to the jury. *See United States v. Corker*, 514 F.3d 562, 568

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[1] This ineffective-assistance-of-trial-counsel claim is apparent from the trial record. Under Ohio law, a criminal defendant's appellate counsel must raise all claims for ineffective assistance of trial counsel that are apparent from the record on direct appeal, at least as long as counsel has no conflict of interest in bringing the claim. *See State v. Lentz*, 639 N.E.2d 784, 786 (Ohio 1994). If, as here, appellate counsel fails to do so, the defendant is barred from raising such claims later. *See Moore v. Mitchell*, 708 F.3d 760, 778 (6th Cir. 2013).

(6th Cir. 2008) (noting that a claim of prosecutorial misconduct requires a showing of prejudice). Accordingly, Anderson failed to make a substantial showing of prosecutorial misconduct. It follows that he cannot establish that he was prejudiced by appellate counsel's failure to raise this prosecutorial-misconduct claim (and corresponding ineffective-assistance claim) on direct appeal. *See Shaneberger v. Jones*, 615 F.3d 448, 452 (6th Cir. 2010). Reasonable jurists would not debate the district court's resolution of Claims 2 and 4.

Lastly, in Claim 8, Anderson argued that appellate counsel was ineffective for failing to raise the foregoing claims on direct appeal. To establish ineffective assistance of counsel, a defendant "must show that his counsel's performance was deficient" and that he was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also Shaneberger*, 615 F.3d at 452 ("[I]neffective assistance of appellate counsel claims are governed by the same *Strickland* standard as claims of ineffective assistance of trial counsel.").

Anderson is not entitled to a COA on this claim. Although Anderson faulted appellate counsel for not claiming that his aggravated-burglary and rape convictions in Case Nos. CR-15-599104-A and CR-15-599105-A, respectively, were against the manifest weight of the evidence, counsel did in fact do so. *See Anderson*, 86 N.E.3d at 876. Reasonable jurists therefore could not debate the district court's denial of this claim. Anderson's remaining appellate-counsel claims do not deserve encouragement to proceed further because, as previously discussed, he failed to show that he was prejudiced by appellate counsel's failure to raise those claims on direct appeal. *See Hall v. Vasbinder*, 563 F.3d 222, 239 (6th Cir. 2009) (observing that, when an ineffectiveness claim fails to overcome a procedural default, it necessarily fails as an independent claim under 28 U.S.C. § 2254(d)'s more deferential standard).

III. Conclusion

For these reasons, Anderson's COA application is **DENIED** and his motion for pauper status 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 02/20/2024.

Case Name: Shyne Anderson v. Charmaine Bracy
Case Number: 23-3643

Docket Text:
ORDER filed: Anderson's COA application is DENIED and his motion for pauper status is DENIED as moot. Joan L. Larsen, Circuit Judge.

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

Notice will be sent to:

Mr. Shyne V. Anderson
Southern Ohio Correctional Facility
P.O. Box 45699
Lucasville, OH 45699

A copy of this notice will be issued to:

Ms. Maura O'Neill Jaite
Ms. Sandy Opacich

No. 23-3643

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 28, 2024
KELLY L. STEPHENS, Clerk

SHYNE V. ANDERSON, Petitioner-Appellant, v. CHARMAINE BRACY, Respondent-Appellee.	)	ORDER

Before: GIBBONS, GRIFFIN, and DAVIS, Circuit Judges.

Shyne V. Anderson, a pro se Ohio prisoner, petitions for rehearing en banc of this court's order entered on February 20, 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

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*Judge Murphy recused himself from participation in this ruling.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Kelly L. Stephens
Clerk

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Filed: March 28, 2024

Mr. Shyne V. Anderson
Southern Ohio Correctional Facility
P.O. Box 45699
Lucasville, OH 45699

Re: Case No. 23-3643, *Shyne Anderson v. Charmaine Bracy*
Originating Case No.: 1:18-cv-01996

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: Ms. Maura O'Neill Jaite

Enclosure