[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-11991

Non-Argument Calendar

EVAN C. WILHELM,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:19-cv-00572-WS-HTC

Before JILL PRYOR, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Evan Wilhelm, a Florida state prisoner proceeding *pro se*, appeals the district court's denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. After careful consideration of the parties' briefs and the record, we affirm.

I.

This case arises out of a shooting at the Florida State University fraternity house where Wilhelm lived. Wilhelm attended a party at the fraternity house along with his girlfriend, Amy Cowie, and her twin sister, Ashley. During the party, Wilhelm, who had been drinking alcohol and smoking marijuana, went to his bedroom where he kept a semi-automatic rifle.

Earlier that day, Wilhelm had mounted a flashlight on the top of the weapon. At the party, he decided to test the flashlight's brightness. He pointed the weapon at, and thus shined the flashlight in, the faces of others gathered in his room. When he pointed the weapon at Ashley, the weapon fired. A bullet struck Ashley in the chest, passed through her body, and hit another student, Keith Savino, in the arm. Ashley died from her injuries.

In this section, we discuss the proceedings in Wilhelm's criminal case that followed. We then describe Wilhelm's state and federal post-conviction proceedings.

A.

Shortly after the shooting, Wilhelm was arrested. He was charged in Florida state court with manslaughter, possession of a firearm on school property, negligently inflicting personal injury, possession of marijuana, and possession of drug paraphernalia. At the time of the shooting, Wilhelm was 20 years old. His criminal case was initially assigned to Judge Josefina Tamayo.

The day after the shooting, Wilhelm retained criminal attorneys Stephen Dobson and Richard Smith. He later added an additional attorney, Alan Ceballos.

Approximately four months after the shooting, Wilhelm turned 21. Just over a year later, when Wilhelm was 22, he entered a plea of no contest to the manslaughter, possession of firearms on school property, and negligently inflicting personal injury charges.[1] At the time Wilhelm entered the no-contest plea, the court prepared a sentencing scoresheet reflecting that his lowest permissible sentence under Florida law was 127.35 months' imprisonment. *See* Fla. Stat. § 921.0024(7) (requiring preparation of a sentencing scoresheet for every defendant who is sentenced for a felony offense). The court could impose a shorter sentence only if it granted a downward departure. *See* Fla. Stat. § 921.0026(1) (prohibiting a sentencing judge from departing downward from the "lowest permissible sentence[]" absent a finding of "[m]itigating factors"); *see*

[1] The State agreed to *nolle prosse* the charges for marijuana possession and possession of drug paraphernalia.

also Jackson v. State, 64 So. 3d 90, 92 (Fla. 2011) (describing Florida's sentencing scheme). Before the sentencing hearing, Wilhelm's case was reassigned to Judge Charles Dodson.

At sentencing, Wilhelm sought a downward departure. He argued that a downward departure was warranted given his remorse, youth, and immaturity. Wilhelm also pointed out that he cooperated with law enforcement after the shooting. And he emphasized the accidental, isolated, and unsophisticated nature of the shooting. At the sentencing hearing, he called several witnesses and also addressed the court.[2] Wilhelm told the court that he accepted responsibility for Ashley's death, stating that "what happened is my fault entirely," and that he never intended to harm anyone. Doc. 14-1 at 183.[3]

Wilhelm also asked the court to consider Florida's Youthful Offender Act. At the time, the Act gave a sentencing judge discretion to impose a six-year maximum sentence for a defendant who pled guilty or entered a no-contest plea to a felony if the defendant was under the age of 21 at the time of sentencing. *See* Fla. Stat. § 958.04 (2012).[4] Although Wilhelm was under 21 at the time of the shooting, he acknowledged that he was no longer eligible for

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[2] Wilhelm also submitted dozens of letters vouching for his character.

[3] "Doc." numbers refer to the district court's docket entries.

[4] In 2019, Florida amended the statute to make a defendant eligible for youthful offender status if he committed the relevant crime before turning 21, regardless of his age at sentencing. *See* 2019 Fla. Leg. Sess. Laws Serv. ch. 2019-167 § 67.

youthful offender status because he had turned 21 before sentencing. He nevertheless asked the court to consider the reduced sentence that would have been available under the Youthful Offender Act, arguing that "profound injustices can occur" when a defendant turns 21 soon after committing a crime. Doc. 14-1 at 47. The Youthful Offender Act left these defendants "in the impossible position of having to elect between a thorough and competent defense or alternatively to rush to a sentencing hearing." *Id.*

The State urged the court not to award a downward departure and instead sought a sentence of 20 years. The State emphasized the dangerousness of Wilhelm's conduct. It introduced evidence that Wilhelm kept multiple firearms in his bedroom at the fraternity house and pointed his semiautomatic rifle at several people on the day of the shooting. To refute any suggestion that the weapon discharged on its own, the State elicited testimony from a firearms expert who had tested Wilhelm's weapon and concluded that it functioned properly and that the trigger had to be pressed for the weapon to fire. Ashley's family also addressed the court at sentencing and asked that it not grant a downward departure. And Savino testified about being shot and seeing Ashley die.

The State also argued that the Youthful Offender Act was inapplicable because Wilhelm had already turned 21. According to the State, if Wilhelm wanted the benefit of youthful offender status, he should have "made the decision to come in and enter a plea" earlier so that he would have been sentenced before turning 21. Doc. 14-2 at 76.

The court imposed a sentence of 20 years' imprisonment followed by 10 years' probation. Despite finding that Wilhelm had "true remorse" for the shooting, the court denied his request for a downward departure. *Id.* at 89. The court concluded that a longer sentence was warranted given that Wilhelm had kept a "small arsenal" of weapons in his bedroom at the fraternity house. *Id.* It stated that keeping these weapons on a college campus was a "tragedy waiting to happen," especially when "you start mixing guns and alcohol and drugs." *Id.*

B.

Wilhelm later filed a Rule 3.850 motion in the state court seeking post-conviction relief. In his motion, he argued that he was denied effective assistance of counsel because his attorneys' mistake about his age caused him to "miss[] the Youthful Offender sentencing deadline." Doc. 14-2 at 120. Wilhelm also alleged that his attorneys provided ineffective assistance by failing at sentencing to raise any argument for leniency based on their mistake about Wilhelm's age and its impact on his eligibility for youthful offender status. Wilhelm argued that his attorneys had decided to protect their "own interests rather than provide diligent and competent representation." Doc. 14-6 at 93.

The state habeas court held an evidentiary hearing on Wilhelm's claims. The witnesses at the evidentiary hearing included

Wilhelm; his father, Robert Wilhelm;[5] and the attorneys who represented Wilhelm at trial.

Dobson and Smith, two of the attorneys who represented Wilhelm in the criminal case, admitted that they had been mistaken about his age and thus failed to advise him that to be eligible for youthful offender status he needed to plead guilty and be sentenced before turning 21. But even if they had been aware of Wilhelm's actual age, they said, they still would not have advised him to change his plea so that he could be sentenced before he turned 21.

The shooting occurred about four months before Wilhelm's twenty-first birthday. By the time the State turned over its discovery, his birthday was six weeks away. Given this short time frame, Dobson and Smith explained, they would not have advised Wilhelm to plead guilty so that he could be sentenced before his birthday because they needed more time to investigate the facts of the case. Although Wilhelm confessed shortly after the shooting, he also told his attorneys that he could not remember whether he pulled the trigger of the weapon. Based on this report, Dobson and Smith retained an expert to investigate whether the weapon fired without Wilhelm pulling the trigger.

Wilhelm also denied reports that he had been pointing the gun at other people. As a result, his attorneys interviewed other witnesses—members of Wilhelm's fraternity—to investigate

[5] To avoid confusion, we refer to Robert Wilhelm as "Robert."

whether he had been pointing the weapon at others. In these interviews, the witnesses stated that Wilhelm had been pointing the weapon at others on the day of the shooting.[6]

The attorneys identified other reasons why they would not have advised Wilhelm to plead guilty so that he could be sentenced before he reached 21. A key part of their strategy was to allow as much time as possible to elapse before Wilhelm's sentencing to allow the Cowie family an opportunity to heal—in the hope that they would support a shorter sentence. In addition, the attorneys wanted to delay the sentencing to wait for the case to be assigned to a new judge. Judge Tamayo, who was assigned to the case when Wilhelm turned 21, had a reputation for being "very pro-state" and "giving longer sentences than the defense would like in most cases." Doc. 14-4 at 198. Dobson and Smith believed that if they delayed the sentencing, Judge Tamayo would rotate off the case, and a new judge, who might be more lenient at sentencing, would sentence Wilhelm.

Wilhelm testified at the evidentiary hearing about the Youthful Offender Act. Shortly after his arrest, Dobson and Smith advised him that he was eligible for a reduced sentence under the Youthful Offender Act. Several months later, after he turned 21, his father Robert, who was an attorney, read the Act for the first time

[6] After these interviews, Dobson and Smith decided not to proceed with the expert's examination of the weapon to determine whether the trigger had been pulled.

and realized that Wilhelm was ineligible for youthful offender status because he had already turned 21.

Robert confronted Dobson. Dobson admitted that he had mistakenly believed that Wilhelm was only 19 at the time of the crime and acknowledged that Wilhelm was no longer eligible for a reduced sentence under the Act. Dobson agreed to tell the court at Wilhelm's sentencing that he was responsible for missing the youthful offender deadline and to ask the court to "craft a lawful sentence that resembles youthful offender." *Id.* at 122. At the sentencing hearing, Dobson asked the court to award a downward departure and impose a sentence that resembled what Dobson's sentence would have been if he had been eligible for youthful offender status. Despite Dobson's promise, at the sentencing hearing he never mentioned his mistake about Wilhelm's age. At the state post-conviction evidentiary hearing, Dobson testified that even if Wilhelm had pled guilty and been sentenced before turning 21, he did not believe that Judge Tamayo would have exercised her discretion to grant Wilhelm youthful offender status.

The state habeas court denied Wilhelm's Rule 3.850 motion. It found that Dobson and Smith had mistakenly believed that Wilhelm was 19 at the time of the offense and failed to meaningfully pursue youthful offender status before he turned 21. But the court concluded that Wilhelm was not prejudiced by this mistake.

The court gave several justifications why, even if Wilhelm had been properly advised about his eligibility for youthful offender status, he would not have pled guilty and been sentenced

before turning 21. It explained that the defense's strategy was "to delay the proceedings as long as practical to allow the Cowie family to heal as much as they could" in the hope that the family would "support[] a lenient disposition at sentencing." Doc. 14-3 at 59 (internal quotation marks omitted). Further, there "simply was not enough time for defense counsel to fully investigate and evaluate the matter" before Wilhelm turned 21. *Id.* at 60–61. Moreover, the court found that defense counsel never would have recommended, and Wilhelm never would have agreed to, entering a plea while the case was pending before Judge Tamayo because of her reputation as a tough sentencer.

The court also addressed the likelihood of Wilhelm's receiving a reduced sentence under the Youthful Offender Act if he had been sentenced before turning 21. The court noted that the decision to award a reduced sentence under the Act was "optional." *Id.* at 61. And the court found that Judge Tamayo would not "have availed herself of that option" for the same reasons that Judge Dodson declined to exercise his discretion and award a downward departure. *Id.* The court also noted that at the sentencing hearing the Cowie family "strongly objected to any leniency," and it reasoned that "those objections would not have been less" if Wilhelm's sentencing had occurred more than a year earlier, while he was still eligible for youthful offender status. *Id.*

Wilhelm appealed. The Florida District Court of Appeal considered whether Wilhelm's "attorneys were ineffective for . . . miscalculating his age and not taking advantage of the . . . window

during which he qualified for sentencing as a youthful offender" and for "not owning up to this error at the sentencing hearing." *Wilhelm v. State*, 253 So. 3d 736, 737 (Fla. Dist. Ct. App. 2018).

On the claim that counsel was ineffective in failing to adequately advise Wilhelm about youthful offender status, the court acknowledged that Dobson and Smith failed to "correctly account for [Wilhelm's] age and that the window to seek the mitigated sentence expired just a few months after the charges were filed when [] Wilhelm turned 21." *Id.* at 738. But it affirmed the lower court's decision that there was no prejudice flowing from the attorneys' failure to correctly account for Wilhelm's age. *Id.* It explained that the "overarching defense strategy was to delay sentencing to give the victim's family time to heal, hoping that they would not oppose a mitigated sentence" and to wait until Judge Tamayo was no longer presiding over the case. *Id.* Given this strategy, the appellate court concluded that the "failure to explore sentencing under the Youthful Offender Act would simply not have made any difference in the outcome." *Id.* (internal quotation marks omitted).

The court also considered Wilhelm's claim that Dobson's failure to acknowledge at sentencing his mistake in calculating Wilhelm's age constituted ineffective assistance. *Id.* It rejected this claim, stating it had "no merit." *Id.*

The Florida Supreme Court denied Wilhelm's petition for review.

C.

Wilhelm, proceeding *pro se*, then filed a federal habeas petition raising several claims. Two of these claims are relevant to this appeal. First, Wilhelm alleged that his trial counsel was ineffective because of their mistake about his age, which deprived him of the opportunity to promptly enter a plea and to be sentenced under the Youthful Offender Act. Second, he claimed that he was denied effective assistance of counsel when at sentencing Dobson failed to admit to the mistake regarding Wilhelm's age, depriving him of an argument for leniency.

A magistrate judge recommended that the district court deny the petition. The magistrate judge accepted that the attorneys' performance was deficient because they failed "to know their client's age" and did not "talk to [Wilhelm] about the Youthful Offender Act until *after* he had already turned 21." Doc. 20 at 11 (emphasis in original). But the magistrate judge nevertheless concluded that the petition should be denied because the Florida District Court of Appeal's conclusion that Wilhelm "had not shown a reasonable probability of a different outcome" was entitled to deference. *Id.* at 15.

The magistrate judge also rejected Wilhelm's claim that he was denied effective assistance of counsel when Dobson failed to admit at sentencing to the error regarding Wilhelm's age. Although "counsel should have fallen on their sword and admitted their error," the magistrate judge concluded, "their failure to do so was not prejudicial" because "[t]he tenor of the statements made

by the trial court at sentencing, after considering the overwhelming amount of mitigation presented, show that it was unlikely that one additional factor, counsel's admission, would have tipped the scales in [Wilhelm's] favor." *Id.* at 18–19.

Wilhelm objected. The district court adopted the recommendation and denied Wilhelm's petition but granted him a certificate of appealability. This is Wilhelm's appeal.

II.

We review *de novo* a district court's denial of a petition for a writ of habeas corpus. *Morrow v. Warden, Ga. Diagnostic Prison*, 886 F.3d 1138, 1146 (11th Cir. 2018). We liberally construe a *pro se* litigant's pleadings, holding them "to less stringent standards than formal pleadings drafted by lawyers." *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014).

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governs our review of federal habeas petitions. *See* 28 U.S.C. § 2254(d). "AEDPA prescribes a highly deferential framework for evaluating issues previously decided in state court." *Sears v. Warden GDCP*, 73 F.4th 1269, 1279 (11th Cir. 2023). Under AEDPA, a federal court may not grant habeas relief on claims that were "adjudicated on the merits in [s]tate court" unless the state court's decision was (1) "contrary to, or involved an unreasonable application of, clearly established [f]ederal 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 [s]tate court proceeding." 28 U.S.C. § 2254(d).

A state court decision is "contrary to" clearly established law if the court "applie[d] a rule that contradicts the governing law" set forth by the Supreme Court or the state court confronted facts that were "materially indistinguishable" from Supreme Court precedent but arrived at a different result. *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000). To meet the unreasonable application of law standard, "a prisoner must show far more than that the state court's decision was merely wrong or even clear error." *Shinn v. Kayer*, 592 U.S. 111, 118 (2020) (internal quotation marks omitted). Rather, the decision must be "so obviously wrong that its error lies beyond any possibility for fairminded disagreement." *Id.* (internal quotation marks omitted). This standard is "difficult to meet and . . . demands that state-court decisions be given the benefit of the doubt." *Raulerson v. Warden*, 928 F.3d 987, 996 (11th Cir. 2019) (internal quotation marks omitted).

We also must defer to a state court's determination of facts unless the state court decision "was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." 28 U.S.C. § 2254(d)(2). "We may not characterize . . . state-court factual determinations as unreasonable merely because we would have reached a different conclusion in the first instance." *Brumfield v. Cain*, 576 U.S. 305, 313–14 (2015) (alteration adopted) (internal quotation marks omitted). We presume that a state court's factual determinations are correct, absent clear and convincing evidence to the contrary. *See Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1035 (11th Cir. 2022) (en banc).

III.

The United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. The right to counsel includes the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). For claims of ineffective assistance of counsel, a petitioner must demonstrate that (1) counsel's performance was deficient and (2) he was prejudiced by the deficient performance. *Id*. at 687. A court deciding an ineffectiveness claim need not "address both components of the inquiry if the [petitioner] makes an insufficient showing on one." *Id*. at 697.

We focus today on *Strickland*'s prejudice requirement. To establish prejudice, a petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694. A reasonable probability is one "sufficient to undermine confidence in the outcome." *Id*. When applying AEDPA to this prejudice standard, "we must decide whether the state court's conclusion that [counsel's] performance . . . didn't prejudice [the petitioner]—that there was no substantial likelihood of a different result—was so obviously wrong that its error lies beyond any possibility for fair-minded disagreement." *Pye*, 50 F.4th at 1041–42 (internal quotation marks omitted).

Wilhelm argues that his attorneys were ineffective in two ways: by (1) miscalculating his age and thus denying him the opportunity to be sentenced as a youthful offender and (2) failing to

admit at sentencing to the error in calculating his age and thus depriving him of an argument that he should receive a lenient sentence due to counsel's error. We address each issue in turn.

A.

We begin with the claim that Wilhelm received ineffective assistance of counsel because his attorneys miscalculated his age, which deprived him of the opportunity to seek a reduced sentence under the Youthful Offender Act. To demonstrate prejudice for this claim, Wilhelm had to show that if he had been advised about the Youthful Offender Act in a timely manner, there was a reasonable probability that he would have (1) changed his plea and been sentenced before turning 21 and (2) received a reduced sentence under the Act. *See Lawrence v. Sec'y, Fla. Dep't of Corr.*, 700 F.3d 464, 479 (11th Cir. 2012); *Hayes v. Sec'y, Fla. Dep't of Corr.*, 10 F.4th 1203, 1210–11 (11th Cir. 2021).

The Florida District Court of Appeal's determination that Wilhelm failed to demonstrate prejudice is entitled to deference. There was ample evidence in the record to support the state court's conclusion that, even if Wilhelm had been properly advised of the Youthful Offender Act, there was no reasonable probability that he would have changed his plea and been sentenced before he turned 21. The record from the evidentiary hearing shows that the defense's strategy was to delay sentencing in the hope that (1) the Cowie family would heal and support a lighter sentence and (2) Wilhelm could avoid being sentenced by Judge Tamayo, given her reputation for imposing stiff sentences. For Wilhelm to have

been eligible for youthful offender status, he would have had to jettison his strategy of delay and go forward with the sentencing hearing only about four months after Ashley's death and while the case was still assigned to Judge Tamayo.

There was ample evidence in the record, too, to support the conclusion that even if Wilhelm had been sentenced before he turned 21, there was no reasonable probability that he would have received youthful offender status and a reduced sentence. Under Florida law, an eligible defendant does not automatically receive youthful offender status. Instead, the decision to grant youthful offender status is left to the discretion of the trial judge. *See* Fla. Stat. § 958.04 (2012); *Jackson v. State*, 191 So. 3d 423, 427 (Fla. 2016) (describing the "discretionary nature of youthful offender sentencing"). Dobson testified that he did not believe that Judge Tamayo would have exercised her discretion to grant Wilhelm youthful offender status. Indeed, the same considerations that led Judge Dodson to deny a downward departure at sentencing—that Wilhelm kept a small arsenal of weapons in his bedroom and handled firearms while under the influence of drugs and alcohol—would have provided a basis for denying youthful offender status.

Because the state court's determination that Wilhelm failed to establish prejudice was not "so obviously wrong that its error lies beyond any possibility for fairminded disagreement," *Pye*, 50 F.4th at 1041–42 (internal quotation marks omitted), we conclude that the decision of the Florida District Court of Appeal is

entitled to AEDPA deference. Thus, the district court properly denied habeas relief on this claim.

B.

We now turn to Wilhelm's claim that counsel was ineffective by failing to admit at sentencing to their error regarding his age and the availability of youthful offender status. Wilhelm argues that the attorneys had a conflict of interest and chose to protect their professional reputations by failing to disclose their mistake rather than to advocate for him, which deprived him of a potential argument for leniency.

The Florida District Court of Appeal summarily rejected this claim, stating that it had "no merit." *Wilhelm*, 253 So. 3d at 738. This decision is entitled to deference because it was reasonable for the state court to conclude that Wilhelm failed to establish prejudice.[7] At the sentencing hearing, Wilhelm's attorneys presented a thorough and well-developed argument for a downward departure based on Wilhelm's remorse, cooperation with law enforcement,

[7] Wilhelm argues that we should review this claim *de novo* because the Florida District Court of Appeal disposed of this claim in a single sentence, stating that the claim had no merit without explaining the rationale underlying its decision. This argument assumes that for AEDPA deference to apply, a state court must set forth the rationale for its decision. But the United States Supreme Court has recognized that a state court decision may be considered an adjudication on the merits and entitled to AEDPA deference even if it contains no reasoning or explanation. *See Harrington v. Richter*, 562 U.S. 86, 98 (2011) (explaining that AEDPA deference may attach to a state court decision "unaccompanied by an explanation").

and youth, as well as the accidental nature of the shooting. And even though Dobson did not acknowledge his error in calculating Wilhelm's age, he did ask the court at sentencing to consider what Wilhelm's sentence would have been under the Youthful Offender Act. He also discussed the difficulties posed by the brief window during which Wilhelm could seek youthful offender status. Judge Dodson's statements at sentencing about why he refused to exercise his discretion to grant a downward departure—that Wilhelm kept a small arsenal of weapons in his college bedroom and played with firearms while using alcohol and drugs—suggest that he would have imposed the same sentence even if counsel had admitted their mistake about Wilhelm's age. Because the state court decision rejecting this claim was not "so obviously wrong that its error lies beyond any possibility for fairminded disagreement," it is entitled to deference. *Pye*, 50 F.4th at 1041–42 (internal quotation marks omitted). The district court did not err in denying habeas relief.

AFFIRMED.