[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-15982
Non-Argument Calendar

D.C. Docket No. 5:08-cv-00292-RS-MD

WELLINGTON L. FARMER,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

(May 20, 2013)

Before HULL, JORDAN, and FAY, Circuit Judges.

PER CURIAM:

Wellington Farmer, a Florida prisoner convicted of several offenses, including aggravated battery on a law enforcement officer, appeals *pro se* the

district court's denial of his federal habeas petition, filed under 28 U.S.C. § 2254. We granted a certificate of appealability ("COA") on the following issues:

> (1) Whether the state post-conviction court unreasonably applied the standard in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), in finding that defense counsel was not ineffective for failing to object when the trial court instructed the jury regarding the "harm theory" of battery, which was not charged in the information.
>
> (2) With respect to Claim 1-G of Farmer's § 2254 petition:
>
> (A) Whether the district court correctly determined that the state court's denial of relief was not entitled to deference under 28 U.S.C. § 2254(d); and
>
> (B) Whether Farmer is entitled to relief on his claim that counsel was ineffective in failing to argue, when moving for a judgment of acquittal, that the evidence was insufficient to establish the "touch-or-strike" theory of battery.

For the reasons set forth below, we affirm the denial of Farmer's § 2254 petition.

I.

In 2008, Farmer filed a § 2254 habeas petition, raising numerous claims for relief, including that his trial counsel was ineffective for: (1) failing to object when the trial court instructed the jury regarding an alternative theory of aggravated battery that was not charged in the information ("Claim 1-B-A"); and (2) failing to move for a judgment of acquittal ("JOA") by arguing that there was insufficient evidence to support his aggravated battery conviction ("Claim 1-G"). Specifically, as to Claim 1-B-A, Farmer alleged that the information did not follow the language

of the aggravated battery statute, as it excluded the element of "intentionally caused bodily harm." However, the trial court's jury instruction on aggravated battery included the bodily harm element, and Farmer's counsel did not object. As to prejudice, he argued that counsel's failure to object to the jury instruction: (1) lowered the state's burden of proof; (2) precluded appellate review of the jury instruction; and (3) called the jury's verdict into question. As to Claim 1-G, Farmer asserted that the state failed to present any evidence to support his aggravated battery conviction, as the alleged victim's own testimony established that Farmer did not touch or strike him. Although counsel moved for a JOA, he failed to make a reasoned argument challenging the sufficiency of the evidence.

In response, the state argued that Farmer failed to properly exhaust Claims 1-B-A and 1-G of his § 2254 petition because he did not brief them to the state appellate court after the denial of his Fla.R.Crim.P. 3.850 motion. With its response, the state introduced the underlying state court record, which showed that Farmer was charged with: (1) attempted second degree murder; (2) aggravated battery on a law enforcement officer; (3) aggravated fleeing or attempting to elude a law enforcement officer; and (4) resisting a law enforcement officer with violence. Specifically, as to aggravated battery, the information charged that,

> Farmer. . . did actually and intentionally touch or strike Joe Nugent, a law enforcement officer, against the will [of Officer] Nugent, while [Officer] Nugent was engaged in the lawful performance of a duty and while [Farmer] knew that [Officer] Nugent was a law enforcement

> officer, and in committing said battery did use a motor vehicle, a deadly weapon. . .

At trial, the state presented several witnesses, including Officer Nugent, who testified regarding an incident involving Farmer and Officer Nugent. In sum, evidence showed that, after Officer Nugent grabbed onto Farmer's car in an attempt to apprehend him, Farmer began driving with Officer Nugent hanging "half in and half out" of the car, despite Officer Nugent's pleas for Farmer to stop, until Officer Nugent eventually dropped to the ground. After the state rested its case, Farmer's counsel moved for a JOA, arguing that, if the court declined to dismiss the charge for attempted second degree murder, then the court must dismiss the aggravated battery charge based on double jeopardy. Ultimately, the state agreed to drop the attempted murder charge, and the trial court denied the JOA motion as to the other counts. In his closing argument, Farmer's counsel argued that Farmer had acted in self defense.

At the close of trial, without objection, the trial court instructed the jury that, before it could find Farmer guilty of aggravated battery on a police officer, the state must prove certain elements beyond a reasonable doubt. Specifically, the court stated, "[t]he first element is a definition of battery. []Farmer, the [d]efendant, intentionally touched or struck Joe Nugent against his will, or intentionally caused bodily harm to Joe Nugent." The jury convicted Farmer on all the charges presented.

After an unsuccessful direct appeal, Farmer filed a Rule 3.850 motion for post-conviction relief, raising numerous claims, including substantially the same claims that he raised as Claims 1-B-A and 1-G in his federal habeas petition. After an evidentiary hearing, the state court denied relief. As to counsel's failure to object to the jury instruction on aggravated battery, the court found that the evidence presented at trial was more than sufficient to allow the jury instruction and, moreover, "counsel had no reason to object because the evidence presented was consistent with the jury instruction." Further, the court found that, even if counsel erred by failing to object, the error "did not rise to the level that the proceedings would have been different, nor that the defendant was fundamentally prejudiced." As to Farmer's claim regarding counsel's motion for a JOA, the court found that his claim was meritless because his counsel had moved for a JOA. Farmer appealed and, in his counseled appeal brief, he argued only that he received ineffective assistance of counsel regarding his conviction for aggravated fleeing or attempting to elude. The state appellate court affirmed.

In the instant § 2254 proceeding, Farmer filed a reply to the state's response, arguing that, as to exhaustion, he sought to appeal all of his Rule 3.850 claims but, through no fault of his own, counsel prevented him from doing so. In support, Farmer attached numerous exhibits, including correspondence between himself and his Rule 3.850 counsel, Victoria Wiggins. Wiggins and Farmer each moved for

the state appellate court to allow Farmer to file a supplemental *pro se* brief, but the court denied those motions.

In a report and recommendation ("R&R"), the magistrate judge found that Farmer had failed to exhaust the claims that he did not present to the Florida appellate court. The district court vacated the R&R and remanded to the magistrate for further consideration in light of *Hitchcock v. Sec'y, Dep't of Corr.*, 360 F. App'x 82 (11th Cir. 2010), an unpublished decision from this Court.

Subsequently, the magistrate issued another R&R, finding that, applying the reasoning in *Hitchcock*, the state's procedural default defense should be rejected. Specifically, *Hitchcock* involved a similar procedural history to the instant case and, in *Hitchcock*, this Court concluded that Hitchcock's claims were not procedurally defaulted. The district court adopted the second R&R, rejected the state's procedural default argument, and ordered the parties to respond to the merits of Farmer's claims.

After the state's response and Farmer's reply, the magistrate issued a third R&R, rejecting his claims on the merits. As to Claim 1-B-A, the magistrate found that it must give deference to the state court's factual finding that the evidence at trial rendered the jury instruction appropriate and, thus, counsel had no reason to object. Moreover, Farmer had not shown that the state court's decision was objectively unreasonable. Even conceding that counsel's conduct was deficient,

Farmer could not show that he was prejudiced by the error. First, Farmer's claim that counsel failed to preserve this issue for appeal is inaccurate because, under Florida law, a claim of instructional error may be raised on appeal even absent a contemporaneous objection if a fundamental error occurred. Second, applying the "actual prejudice" standard and the appropriate deference, the record could support the state court's conclusion that the trial error, if any, was harmless. By asserting self defense as an affirmative defense to aggravated battery, Farmer conceded that he used his car, a deadly weapon, to strike a law enforcement officer, but he argued that he used reasonable force. Thus, counsel could not be ineffective for failing to object to an allegation that was essential to Farmer's defense. In sum, the state court's ruling was not contrary to or an unreasonable application of federal law, and it was not based on an unreasonable determination of the facts.

As to Claim 1-G, the magistrate first found that the state post-conviction court failed to address Farmer's claim on the merits and, as such, the magistrate reviewed the claim *de novo*. However, Farmer's claim, that his counsel was ineffective for failing to move for a JOA on the aggravated battery count based on sufficiency grounds, was meritless. Specifically, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that the evidence supported a guilty verdict based on the charged elements of touching or striking Officer Nugent by using a deadly weapon. Thus, a motion for a JOA on

sufficiency grounds would have failed, and counsel could not have been ineffective for failing to file a meritless motion. Over Farmer's objections, the district court adopted the magistrate's third R&R and denied his § 2254 petition.

II.

In its response brief, the state asserts that the claims on which we have granted a COA are barred from federal habeas review because Farmer failed properly to exhaust them in state court. Specifically, after the state post-conviction court held an evidentiary hearing, Farmer did not reassert the instant ineffective assistance claims to the state appellate court and, as such, those claims were abandoned. On appeal, Farmer does not address the issue of exhaustion.

Exhaustion of state remedies presents a mixed question of law and fact, subject to *de novo* review. *Fox v. Kelso*, 911 F.2d 563, 568 (11th Cir. 1990). Likewise, whether a petitioner has procedurally defaulted a particular claim is a mixed question of law and fact, which we review *de novo*. *Bailey v. Nagle*, 172 F.3d 1299, 1306 (11th Cir. 1999). We will not review issues that are outside the scope of the COA. *Jordan v. Sec'y, Dep't of Corr.*, 485 F.3d 1351, 1356 (11th Cir. 2007). However, where the COA has been issued as to the merits of a claim, we have construed the COA to encompass a threshold procedural issue. *See Wright v. Sec'y for Dep't of Corr.*, 278 F.3d 1245, 1258 (11th Cir. 2002).

As an initial matter, although we issued a COA on the merits of Claims 1-B-A and 1-G of Farmer's § 2254 petition, we construe the COA to encompass the threshold procedural issue of exhaustion. *See id*. It appears that Farmer failed adequately to exhaust these issues in state court because he did not brief them on appeal from the denial of his Rule 3.850 motion. *See Ward v. Hall*, 592 F.3d 1144, 1156 (11th Cir. 2010) (holding that, to exhaust state remedies, the petitioner must fairly present every issue in his federal petition to the state's highest court, either on direct appeal or on collateral review). Moreover, any further attempts by Farmer to exhaust his claims in state court would be futile because he could have pursued the claims during his first Rule 3.850 proceeding. *See Bailey*, 172 F.3d at 1305 (stating that we may treat unexhausted claims as procedurally defaulted if it is clear from state law that any future attempts at exhaustion would be futile); *Frazier v. State*, 898 So.2d 1183, 1183-84 (Fla. Dist. Ct. App. 2005) (explaining that a successive Rule 3.850 motion is subject to dismissal if it raises grounds that could have been raised in a prior Rule 3.850 motion).

Before the district court, Farmer argued that he attempted to preserve all of his habeas claims during his state post-conviction proceedings. In support, Farmer presented evidence that Wiggins, his state post-conviction counsel, refused to include the claims in the appeal brief, despite Farmer's requests that Wiggins do so. Additionally, Farmer and Wiggins both requested permission for Farmer to

present additional claims in a supplemental *pro se* brief, but the state appellate court denied those requests. Farmer appeared to argue, essentially, that the procedural default of his claims should be excused because his failure to preserve the claims was due to his counsel's refusal to brief the claims. However, a "defendant cannot base his cause and prejudice for procedural default on his attorney's performance unless the attorney's performance was constitutionally ineffective," and a "petitioner cannot establish constitutionally ineffective assistance of counsel in state post-conviction proceedings because there is no constitutional right to an attorney in such proceedings." *Jimenez v. Fla. Dep't of Corr.*, 481 F.3d 1337, 1344 (11th Cir. 2007). Because Farmer is not entitled to effective assistance of counsel in a state habeas proceeding, he could not establish cause for the procedural default by relying on Wiggin's decision not to brief the claims. *See id*.

In reaching the merits of Farmer's claims, the district court relied on *Hitchcock*, an unpublished, nonbinding, decision, in which we declined to apply the procedural bar under similar factual circumstances. *See Hitchcock*, 360 F. App'x at 83-88. Nonetheless, research does not reveal a published case in which we have held that counsel's refusal to brief an issue on appeal was sufficient cause to excuse the procedural default of an unexhausted claim. Regardless, for the

reasons discussed below, even if Farmer had adequately exhausted his claims, the district court did not err in denying his claims on the merits.

III.

We review the district court's denial of a habeas petition *de novo*, the district court's factual findings for clear error, and mixed questions of law and fact *de novo*. *McNair v. Campbell*, 416 F.3d 1291, 1297 (11th Cir. 2005). "An ineffective assistance of counsel claim is a mixed question of law and fact subject to *de novo* review." *Id.*

If a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the decision of the state court (1) "was contrary to, or involved an unreasonable application of, clearly established [f]ederal 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 [s]tate court proceeding." 28 U.S.C. § 2254(d)(1), (2). A state court's factual findings are presumed correct absent clear and convincing evidence to the contrary. 28 U.S.C. § 2254(e)(1).

For an ineffective-assistance-of-counsel claim raised in a § 2254 petition, the inquiry turns upon whether the relevant state court decision was contrary to, or an unreasonable application of *Strickland*. *See Cullen v. Pinholster*, 563 U.S. ___, ___, 131 S.Ct. 1388, 1403, 179 L.Ed.2d 557 (2011). To succeed on an ineffective-

assistance claim under *Strickland*, the § 2254 petitioner must show that his Sixth Amendment right to counsel was violated because (1) his attorney's performance was deficient, and (2) the deficient performance prejudiced his defense. *Strickland*, 466 U.S. at 687, 697, 104 S.Ct. at 2064, 2070. Counsel's performance is deficient only if it falls below the range of competence demanded of attorneys in criminal cases. *Id.* at 687-88, 104 S.Ct. at 2064. Prejudice is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S.Ct. at 2068. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* "[S]ome conceivable effect on the outcome of the proceeding" is insufficient to show prejudice. *Id.* at 693, 104 S.Ct. at 2067. "When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Id.* at 695, 104 S.Ct. at 2068-69. To make this determination, we review "the totality of the evidence before the judge or jury." *Id.*, 104 S.Ct. at 2069.

Because judicial review of counsel's performance already "must be highly deferential," a federal habeas court's review of a state court decision denying a *Strickland* claim is thus "doubly deferential." *See Cullen*, 563 U.S.at ___, 131 S.Ct. at 1403. The pertinent inquiry "is whether there is any reasonable argument

that counsel satisfied *Strickland*'s deferential standard." *Harrington v. Richter*, 562 U.S. __, ___, 131 S. Ct. 770, 788, 178 L.Ed.2d 624 (2011).

Florida courts have recognized that "due process prohibits a defendant from being convicted of a crime not charged in the information or indictment." *Crain v. State*, 894 So.2d 59, 69 (Fla. 2009). For this reason, under Florida law, it is "fundamental error" to instruct the jury on a theory of the crime not charged in the information, where evidence and argument are presented on the uncharged theory. *Brown v. State*, 41 So.3d 259, 262 (Fla. Dist. Ct. App. 2010). When constitutional rights are implicated, the Florida Supreme Court has considered issues that were not preserved by an objection during trial. *Crain*, 894 So.2d at 68-69.

Under Florida law, the offense of simple battery can be proven based on one of two theories. *See* Fla. Stat. § 784.03(1)(a). The first theory, referred to as the "touch-or-strike theory," is satisfied when the defendant "[a]ctually and intentionally touches or strikes another person against the will of the other." *Id.* A second theory, referred to as the "harm theory," is satisfied when the defendant "intentionally causes bodily harm to another person." *Id.* The offense of aggravated battery occurs when the defendant uses a deadly weapon in committing a simple battery. *See* Fla. Stat. § 784.045(1)(a)(2).

In this case, as the state concedes, the trial court improperly instructed the jury on both the touch-or-strike theory and the harm theory of battery, as the

indictment alleged only that Farmer intentionally touched or struck Officer Nugent against his will. *See Brown*, 41 So.3d at 262. Thus, it appears that counsel was likely deficient for failing to object to the erroneous jury instruction. Regardless, the state court properly applied the two-prong test under *Strickland* and found that, even assuming that counsel's performance was deficient, Farmer could not show prejudice. In light of the double deference that we afford to a state court's adjudication of an ineffective-assistance-of-counsel claim, Farmer has not established that there is no reasonable argument that counsel satisfied *Strickland*'s deferential standard. *See Cullen*, 563 U.S.at ___, 131 S.Ct. at 1403; *Harrington*, 562 U.S. at ___, 131 S.Ct. at 788. Specifically, viewing the record evidence as a whole, it does not appear that, but for trial counsel's failure to object to the jury instruction, Farmer would not have been convicted. *See Strickland*, 466 U.S. at 694-95, 104 S.Ct. at 2068-69. Here, evidence at trial was sufficient to establish that Farmer committed aggravated battery under a touch-or-strike theory of battery. Although Farmer did not touch or strike Officer Nugent with his body, Farmer continued driving his car while Officer Nugent was hanging from the car and asking Farmer to stop. Farmer's operation of the car caused Officer Nugent's legs to drag the ground, and forced Officer Nugent to drop from a moving car, hit the ground, and roll several times in the road. Moreover, eyewitnesses stated that the car ran over both of Officer Nugent's legs.

While the same evidence may have also supported a jury finding that Farmer intentionally caused Officer Nugent bodily harm, the jury verdict stated that it found Farmer guilty of aggravated battery *as charged*. Moreover, the trial evidence supported a verdict that, as charged in the information, Farmer used his car to touch-or-strike Officer Nugent against his will or, by extension, to cause Officer Nugent to strike the ground. Further, on appeal, Farmer asserts that the state did not present evidence that Officer Nugent sustained injuries, which undermines his claim that the jury convicted him based on a theory that he intentionally caused bodily harm to Officer Nugent.

Notably, it is also possible that, even if counsel had objected to the jury instruction, the prosecutor, in response, would have moved to amend the information to include the harm theory. Under Florida law, trial judges have discretion to allow mid-trial amendments "unless there is a showing of prejudice to the substantial rights of the defendant." *See State v. Clements*, 903 So.2d 919, 921 (Fla. 2005) (emphasis removed). Here, the trial court may have allowed the amendment because the evidence suggesting that Farmer intentionally caused Officer Nugent to strike the pavement also suggested that Farmer caused Officer Nugent to suffer bodily harm. Thus, presumably, defense counsel would not have approached the trial any differently if the harm theory had been charged from the

outset, and the trial court may have concluded that a mid-trial amendment would not affect Farmer's substantial rights.

Additionally, Farmer argues that counsel's failure to object precluded appellate review of the jury instruction. However, this argument is misplaced, as Florida appellate courts may review a claim of fundamental error, even if it was not preserved by an objection. *See Crain*, 894 So.2d at 69; *Brown*, 41 So.3d at 262. In sum, Farmer has not shown a reasonable likelihood that, if counsel had challenged the jury instruction for including the harm element, the outcome of Farmer's trial would have been different. *See Strickland*, 466 U.S. at 694-95, 104 S.Ct. at 2068-69. Thus, under the deferential standard that applies to a state court's adjudication of a claim of ineffective assistance of counsel, the state court's decision did not result in an unreasonable application of *Strickland*, such that there was no reasonable argument to support it. *See Cullen*, 563 U.S.at ___, 131 S.Ct. at 1403; *Harrington*, 562 U.S. at ___, 131 S. Ct. at 788.

IV.

Under § 2254(d), if a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the decision of the state court (1) "was contrary to, or involved an unreasonable application of, clearly established [f]ederal 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 [s]tate court proceeding." 28 U.S.C. § 2254(d)(1), (2).

As an initial matter, the state correctly notes that Farmer's appeal brief does not specifically address whether the district court erred in determining that, as to Claim 1-G of his federal habeas petition, the state court's decision was not entitled to deference. Thus, Farmer has abandoned any argument on this issue. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (holding that issues not raised by a *pro se* litigant in his initial brief before this Court are deemed abandoned). Regardless, the district court correctly found that the state post-conviction court did not reach the merits of Claim 1-G of Farmer's § 2254 petition. In both his Rule 3.850 motion and his federal habeas petition, Farmer specifically asserted that his trial counsel was ineffective for failing to move for a JOA by challenging the sufficiency of the evidence to support the aggravated battery charge. However, in its decision, the state post-conviction court mischaracterized this claim as asserting that counsel did not file a motion for a JOA on *any basis*, which was a claim that was contradicted by the record. Thus, the state court misconstrued the substance of Farmer's claim—that counsel should have specifically raised a sufficiency challenge, and, thus, the court failed to address its merits. As such, the district court did not err in finding that the state court's decision was not entitled to deference under § 2254(d).

V.

The Due Process Clause of the Fourteenth Amendment requires the state to prove each element of the offense charged beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S.Ct. 2781, 2787, 61 L.Ed.2d 560 (1979). Under *Jackson*, federal courts must look to state law for the substantive elements of the criminal offense, but to federal law for the determination of whether the evidence was sufficient under the Due Process Clause. *Coleman v. Johnson*, 566 U.S. __, __, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012). As discussed above, under Florida law, to prove aggravated battery under the touch-or-strike theory, the state must prove that the defendant: (1) intentionally touched or struck another person; (2) against the will of that person; and (3) used a deadly weapon in doing so. *See* Fla. Stat. §§ 784.03(1)(a), 784.045(1)(a)(2). Moreover, under Florida law, a motor vehicle can qualify as a "deadly weapon" for purposes of Florida's aggravated-battery statute. *See, e.g.*, *Clark v. State*, 746 So.2d 1237, 1239 (Fla. 1999). For federal sufficiency review, the relevant question is whether, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Coleman*, 566 at ___, 132 S.Ct. at 2064 (emphasis in original).

In denying Farmer's § 2254 petition, the district court did not err in finding that counsel was not ineffective for failing to argue, in support of the motion for a

JOA, that the evidence was insufficient to establish a "touch-or-strike" theory of battery. Specifically, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found that Farmer (1) intentionally touched or struck Officer Nugent; (2) against Nugent's will; (3) by using a deadly weapon—Farmer's car. *See* Fla. Stat. §§ 784.03(1)(a), 784.045(1)(a)(2); *Clark*, 746 So.2d at 1239. Although Officer Nugent testified that he initially made contact with Farmer's car in an attempt to apprehend Farmer, he also testified that he begged Farmer to stop the car so that he would not be killed. However, despite Officer Nugent's requests, Farmer continued to drive the car, while Officer Nugent's feet dragged the across the ground. Farmer's conduct forced Officer Nugent to drop to the ground from a moving car and roll several times across the ground. Thus, while Farmer did not touch or strike Officer Nugent with his hands or feet or drive his car into Officer Nugent, he used his car—a deadly weapon—to cause Officer Nugent to strike the ground. Moreover, Officer Nugent's testimony that he begged Farmer to stop supported the jury's conclusion that Officer Nugent's contact with the car was against his will.

Because a reasonable trier of fact could have found Farmer guilty of battery under a touch-or-strike theory, Farmer's trial counsel was not deficient for failing to raise a sufficiency challenge in support of the motion for a JOA. *See Strickland*, 466 U.S. at 687-88, 104 S.Ct. at 2064. Regardless, for the same reasons, there

appears to be no reasonable likelihood that, if counsel had raised such an argument, Farmer's trial would have resulted in an acquittal. *See id.* at 694-95, 104 S.Ct. at 2067-68. Thus, the district court did not err in finding that under *Strickland*, Farmer failed to establish that his trial counsel was deficient or that he was prejudiced as a result.

For the foregoing reasons, we affirm the district court's denial of Farmer's § 2254 petition.

AFFIRMED.

JORDAN, Circuit Judge, concurring:

I concur in all of the majority's opinion, except for the statement in Part III that a state court's decision on the prejudice prong of *Strickland v. Washington*, 466 U.S. 668 (1984), is entitled to double deference on federal habeas review. In my view, we give only single deference (the deference required by AEDPA) to a state court's prejudice ruling. *See Evans v. Secretary*, 703 F.3d 1316, 1334-36 (11th Cir. 2013) (*en banc*) (Jordan, J., concurring). Applying that single deference, habeas relief is not warranted for the reasons stated on pages 14-16 of the majority opinion.