[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14603
Non-Argument Calendar

D.C. Docket No. 3:14-cv-00730-TJC-MCR

DELMAR REINHEIMER,

Petitioner - Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents - Appellees.

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

(September 8, 2020)

Before NEWSOM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

Delmar Reinheimer, a Florida prisoner serving a 13-year sentence for lewd or lascivious battery on a minor younger than 16 but older than 12, appeals the

district court's denial of his 28 U.S.C. § 2254 petition—in particular, the denial of his claim that his counsel was ineffective for affirmatively misadvising him about the Jimmy Ryce Act's applicability.[1] We issued a certificate of appealability to decide "[w]hether the district court erred in finding that Reinheimer's affirmative-misadvice claim regarding the Jimmy Ryce Act was procedurally defaulted in light of his failure-to-advise claim that was presented in state court." *Reinheimer v. Sec'y, Dep't of Corrs.*, No. 17-14603-D, slip op. at 23 (11th Cir. Nov. 15, 2018).

We review the district court's denial of a habeas petition on failure to exhaust and procedural default grounds *de novo*. *See Nyland v. Moore*, 216 F.3d 1264, 1266 (11th Cir. 2000). An applicant doesn't exhaust his state court remedies "if he has the right under the law of the [s]tate to raise, by any available procedure, the question presented." 28 U.S.C. § 2254(c). A claim is procedurally defaulted when a petitioner fails to exhaust the claim, the State hasn't expressly waived that failure, and the claim could no longer be brought in state court after the federal court dismisses it without prejudice. *McNair v. Campbell*, 416 F.3d 1291, 1304–05 (11th Cir. 2005). If an appellant doesn't raise an issue on appeal regarding a district court's ruling, he abandons the issue and waives our consideration of it.

[1] Fla. Stat. §§ 394.910-394.932, formerly known as the Jimmy Ryce Act, outlines a civil-commitment procedure for the long-term care and treatment of sexually violent predators. Because the parties have referred to the law as the Jimmy Ryce Act throughout the post-conviction proceedings, we do so as well.

See Fed. Sav. and Loan Ins. Corp. v. Haralson, 813 F.2d 370, 373 n.3 (11th Cir. 1987); *Johnson v. Wainwright*, 806 F.2d 1479, 1481 n.5 (11th Cir. 1986).

"To properly exhaust a claim, 'the petitioner must afford the State a full and fair opportunity to address and resolve the claim on the merits.'" *Kelley v. Sec'y for the Dep't of Corrs.*, 377 F.3d 1317, 1343 (11th Cir. 2004) (quoting *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992)). A federal habeas petitioner must present his claims "to the state courts such that the *reasonable reader* would understand each claim's *particular legal basis* and *specific factual foundation*." *Id.* at 1344–45 (emphasis added). "To ensure exhaustion, petitioners must present their claims in this manner of clarity throughout 'one complete round of the State's established appellate review process.'" *Id.* at 1345 (quoting *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)).

Here, the district court properly found that Reinheimer failed to exhaust his claim that his trial counsel affirmatively misadvised him about the Jimmy Ryce Act. Reinheimer first raised the Jimmy Ryce Act in an evidentiary hearing before the Florida state circuit court on his amended motion for postconviction relief. In a colloquy between Reinheimer's counsel and the court, counsel indicated that before the hearing, Reinheimer had filed an amended petition where he alleged that

"he had failed to be advised of the Jimmy Ryce Act."[2] In response, the court explained that because Reinheimer had not yet been civilly detained under the Act (and it was unclear whether he ever would be), his counsel's failure to inform was not sufficient to set aside the plea. In any event, the court noted, the written plea form had contained a Jimmy Ryce warning, which Reinheimer had initialed. After this colloquy, the Jimmy Ryce Act was never mentioned again.

Reinheimer's bare allegation that he had "failed to be advised" could not, and did not, allow a reasonable reader to understand that the claim was one of affirmative misadvice. The state court understood Reinheimer's argument as a failure-to-inform claim and treated it as such. The court rejected the claim in part because Reinheimer's initials next to the Jimmy Ryce warning on his written plea form suggested that he had been informed.

Contrary to Reinheimer's assertion that his failure-to-inform and misadvice claims rest on the same premise, we have consistently distinguished between claims alleging that counsel failed to inform the defendant of the collateral consequences of a conviction and claims alleging that counsel affirmatively misadvised the defendant about such consequences. *See Holmes v. United States*, 876 F.2d 1545, 1553 (11th Cir. 1989); *Slicker v. Wainwright*, 809 F.2d 768, 770

[2] As the district court noted, however, the record did not contain any written amended petition in which Reinheimer raised a claim that counsel was ineffective for either failing to advise or misadvising him of the potential implications of the Jimmy Ryce Act.

(11th Cir. 1987); *Downs-Morgan v. United States*, 765 F.2d 1534, 1540–41 (11th Cir. 1985). Indeed here, the two claims are mutually exclusive—a defendant cannot be affirmatively misadvised about the Jimmy Ryce Act if counsel failed to inform him altogether. Reinheimer was required to consistently present the same acts or omissions supporting his claim through one complete round of Florida's appellate review process, and he did not do so. *See Kelley*, 377 F.3d at 1344.

Reinheimer relies on *Collier v. Jones*, 910 F.2d 770, 774 n.3 (11th Cir. 1990), for the proposition that his failure-to-inform and misadvice claims are "sufficiently similar" such that he properly exhausted his misadvice claim before the state courts. His reliance is misplaced. As an initial matter, *Collier* did not address exhaustion, but rather preservation for direct appeal. 910 F.2d at 772–74. And while an appellate court may under limited circumstances consider an argument made for the first time on appeal, *see Ochran v. United States*, 117 F.3d 495, 502–03 (11th Cir. 1997), a district court generally may not grant a writ of habeas corpus on an unexhausted claim, 28 U.S.C. § 2254(b)(1)(A). Moreover, the arguments raised in the district court and on appeal in *Collier* were more closely related than the argument that Reinheimer makes here. In the district court, Collier had alleged his counsel was ineffective for failing to fully investigate the background of the state's key witness. *Collier*, 910 F.2d at 774. On appeal, he argued that his counsel was ineffective for failing to move for acquittal "on the

basis that the state had presented only the uncorroborated testimony of an accomplice." *Id.* The latter was complementary to the former—had counsel investigated properly, the defense would have been able to argue that the witness was actually Collier's accomplice, and so Collier could not, under Alabama law, be convicted solely on accomplice testimony. *Id*. Here, by contrast, Reinheimer's claims are contradictory. His counsel could not have both failed to inform him altogether about the Jimmy Ryce Act, while also giving affirmative misadvice.

Finally, because Reinheimer does not contest on appeal the procedural-default aspect of the district court's order and instead argues only about whether his claim was exhausted, he has abandoned any challenge to the finding that the claim also was procedurally defaulted. *See Haralson*, 813 F.2d at 373 n.3; *Johnson*, 806 F.2d at 1481 n.5.

Because Reinheimer failed to exhaust his affirmative-misadvice claim, the State did not affirmatively waive exhaustion, and Reinheimer abandoned any challenge to the finding that future attempts to exhaust his claim would be futile under Florida law, the district court correctly determined that his unexhausted claim was also procedurally defaulted. *See McNair*, 416 F.3d at 1305. Thus, we affirm.

AFFIRMED.