[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10005

Non-Argument Calendar

CHRISTOPHER WATTS,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-01329-BJD-MCR

Before NEWSOM, GRANT, and TJOFLAT, Circuit Judges.

PER CURIAM:

Christopher Watts, a Florida prisoner proceeding pro se, appeals the District Court's denial of his 28 U.S.C. § 2254 petition. We granted a certificate of appealability (COA) limited to the following question:

> Whether the district court erred in finding procedurally defaulted Watts' claim that counsel was ineffective for failing to secure an expert witness to analyze whether law enforcement tampered with the crime scene by moving a baseball bat.

After careful review, we answer that question in the negative and affirm.

I. Facts

Watts is serving three life sentences for armed robbery, armed burglary, and sexual battery stemming from a 2014 incident in which he forcibly entered a woman's home and battered her. According to the victim, the assailant shattered her sliding glass door, entered with a sawed-off shotgun, took her belongings, and sexually battered her. She later noticed the man had a tattoo on his right shoulder and had wrapped his bleeding hand with one of her towels.

A key piece of evidence at trial was a shard of glass with blood on it, discovered after the incident by an acquaintance helping to clean up the crime scene. DNA analysis revealed the blood

matched Watts with a statistical frequency of one in 18 quintillion. The State relied heavily on that evidence at trial, along with the victim's testimony and the testimony of law enforcement officers who observed cuts on Watts and his identifying tattoo.

The baseball bat in question belonged to the victim, who testified that she typically kept it wedged in the sliding glass door as a security measure. At trial, she recalled that the bat was later found on a nearby table but did not believe the intruder had used or even noticed it. Law enforcement similarly testified that the bat was on the table when they arrived and was never linked to the crime itself.

II. Postconviction Proceedings

In June 2017, Watts filed a pro se motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. He later filed an amended motion. Relevant here, Watts raised two claims of ineffective assistance of trial counsel.

In Claim One, Watts argued that counsel failed to investigate the physical evidence. He focused on inconsistencies in the testimony about the location of the baseball bat and theorized that the door may have been shattered from the inside, contrary to the State's theory of forced entry. He stated that counsel should have hired an expert to assess the trajectory of the glass and evaluate the crime scene.

In Claim Two, Watts argued that counsel was ineffective for failing to retain an expert to show that the crime scene had been contaminated. This second claim focused almost exclusively on the

blood-stained glass and the chain of custody for the DNA evidence. Watts did not mention the baseball bat in this claim.

The state postconviction court denied relief without an evidentiary hearing. As to Claim One, it held that Watts's theory about the baseball bat and direction of the glass breakage was speculative and unsupported by the trial evidence. On Claim Two, the Court found no evidence of tampering or mishandling of the glass shard and concluded that counsel's decision not to call an expert was not deficient.

Watts moved for a rehearing, which was denied. He then sought a belated appeal, which was granted.

In his appellate brief to Florida's First District Court of Appeal (DCA), Watts failed to brief the baseball bat theory. Instead, he wrote that the postconviction court had sufficiently addressed counsel's failure to "contest the bat" but argued that other aspects of the investigation remained unaddressed. The First DCA affirmed without opinion.

Watts then filed a § 2254 petition in the District Court, which the District Court denied. Relevant here, the District Court explained that Watts claimed that his counsel was ineffective for failing to retain an expert witness to establish that the crime scene was contaminated concerned the discrepancies in the evidence regarding the location of the baseball bat and the discovery of the piece of glass containing blood. It noted that Watts's second claim in his state amended motion for postconviction relief had been similar but did not mention a baseball bat.

Watts appealed and we granted the COA that we now confront.

III. Discussion

A. Legal Standard

We review de novo *w*hether a claim has been procedurally defaulted. *Judd v. Haley*, 250 F.3d 1308, 1313 (11th Cir. 2001).

A federal habeas petitioner must exhaust available state court remedies before seeking relief under § 2254. 28 U.S.C. § 2254(b)(1). To exhaust a claim, the petitioner must fairly present it to the state courts through one complete round of the state's established appellate review process. *O'Sullivan v. Boerckel*, 526 U.S. 838, 842, 119 S. Ct. 1728, 1731 (1999). In Florida, that generally requires raising the claim in a Rule 3.850 motion and appealing any denial. *See Leonard v. Wainwright*, 601 F.2d 807, 808 (5th Cir. 1979).[1]

A claim is procedurally defaulted if it was not properly exhausted and state procedural rules now bar further review. *Bailey v. Nagle*, 172 F.3d 1299, 1302–03 (11th Cir. 1999).

B. Procedural Default

At the outset, Watts does not challenge the District Court's finding of procedural default. Although he asserts that he "did present this issue in his very first post-conviction motion as Florida

[1] This Court adopted as binding precedent all decisions of the former Fifth Circuit handed down before close of business on September 30, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

requires," he does not contend that he raised it on appeal to the state court. That omission forfeits the argument. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam) ("While we read briefs filed by *pro se* litigants liberally . . . issues not briefed on appeal by a *pro se* litigant are deemed abandoned." (citations and internal quotation marks omitted)).

Nor does any exception excuse the default. In *Martinez v. Ryan*, 566 U.S. 1, 132 S. Ct. 1309 (2012), the Supreme Court held that, "[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." *Id.* at 9, 132 S. Ct. at 1315. But *Martinez* applies only when two conditions are met: (1) the petitioner lacked counsel or had ineffective counsel during the initial collateral proceeding, and (2) the underlying ineffective-assistance claim is substantial. *Id.* at 14, 132 S. Ct. at 1318.

Watts satisfies neither requirement. As to the first, even if he raised the baseball bat theory in his initial Rule 3.850 motion, he failed to pursue it on appeal. *Martinez* does not extend to failures on postconviction appeal. *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 756 F.3d 1246, 1260 (11th Cir. 2014).

As to the second, Watts's claim is not substantial. To qualify as such, a claim must present a close question about whether counsel performed deficiently and whether that deficiency prejudiced the defendant. *See Hittson v. GDCP Warden*, 759 F.3d 1210, 1269 (11th Cir. 2014); *Strickland v. Washington*, 466 U.S. 668, 693–94, 104 S. Ct. 2052, 2068 (1984). Watts's theory fails this test.

Although Watts faults his counsel for not retaining an expert to analyze the crime scene, strategic decisions about whether to call or retain expert witnesses are "the epitome of a strategic decision" rarely second-guessed on habeas review. *Conklin v. Schofield*, 366 F.3d 1191, 1204 (11th Cir. 2004) (citation and internal quotation marks omitted). Watts offers only speculation that an expert might have testified that law enforcement tampered with the scene by moving the baseball bat. But the trial evidence does not support such an inference. As the state court found, the bat was never linked to the crime, and its location—whether wedged in the door or found on a nearby table—had no bearing on the key evidence at trial.

The State's case rested on overwhelming DNA evidence tying Watts to the scene, physical evidence of his injuries, the victim's testimony, and corroborating law enforcement testimony. No testimony suggested the bat was used in the crime or was significant to the prosecution's theory. *See Chandler v. United States*, 218 F.3d 1305, 1315 (11th Cir. 2000) (en banc) ("Counsel is not required to present every nonfrivolous defense.").

Moreover, Watts cannot demonstrate prejudice. Even assuming counsel should have retained an expert, he must still show a reasonable probability that the outcome of the trial would have been different. *See Strickland*, 466 U.S. at 694–95, 104 S. Ct. at 2068. He has not done so. The trial evidence included conclusive DNA results, the victim's testimony identifying key characteristics of her attacker, and testimony confirming Watts's injuries and matching

tattoo. None of this was undermined by the bat's location. *See McKiver v. Sec'y, Fla. Dep't of Corr.*, 991 F.3d 1357, 1365 (11th Cir. 2021) ("The likelihood of a different result must be substantial, not just conceivable." (citation and internal quotation marks omitted)).

Watts argues only that an expert "might" have opined that the scene was staged. But he neither identifies what such an expert would have concluded nor explains how such testimony would cast doubt on the trial's outcome. That is not enough to satisfy *Strickland*.

IV. Conclusion

Because Watts failed to exhaust his ineffective-assistance claim in state court and has not shown an exception applies, the District Court did not err in denying postconviction relief.

AFFIRMED.