NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1132

ANDRE DENNIS,
Appellant

v.

ADMINISTRATOR NEW JERSEY STATE PRISON;
ATTORNEY GENERAL NEW JERSEY

Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 2-14-cv-02136)
District Judge: Honorable Jose L. Linares

Submitted under Third Circuit L.A.R. 34.1(a)
on September 12, 2019

Before: CHAGARES, JORDAN, RESTREPO, Circuit Judges

(Opinion filed: December 13, 2019)

OPINION*

RESTREPO, Circuit Judge

---

*This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Andre Dennis ("Dennis") appeals the denial of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. We granted a certificate of appealability (COA) under 28 U.S.C. § 2253(c)(1) on the issue of whether "counsel rendered ineffective assistance by failing to seek suppression of appellant's statement to police on the ground that officers should have re-administered the *Miranda* warnings after appellant spoke with his brother/co-defendant."[1] For the reasons set forth below, we will affirm the District Court's order, denying Dennis' habeas petition.

I.[2]

On April 20, 2007, Dennis pleaded guilty in the New Jersey Superior Court Law Division in Hudson County, New Jersey to one count of first-degree aggravated manslaughter. On July 22, 2008, he was sentenced to 18 years in prison.

The matter on appeal concerns only the nature and circumstances of Dennis' interrogation leading up to his confession. Police arrested Dennis and read him his *Miranda* rights.[3] During the interrogation, Dennis initially denied shooting the victim, and signed a form waiving his *Miranda* rights. He told the police "a lot of people been bothering me" and "I want to go to sleep." Police then allowed Dennis to sleep. During Dennis' interrogation, police simultaneously questioned Dennis' brother, Antoine, in a separate room. Antoine confessed but did not identify the second shooter and asked to speak with Dennis. Police woke Dennis and allowed the two brothers to speak in a

[1] App. 35.
[2] Since we write solely for the parties, we limit our review and analysis to only the relevant issues and facts.
[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

separate room without the police present. After speaking with Antoine for ten minutes, Dennis confessed and provided a statement that he was the second shooter.

Dennis claims that after he spoke with his brother Antoine, police should have re-administered his *Miranda* warnings and that his Fifth, Sixth, and Fourteenth Amendment rights were violated due to ineffective assistance of counsel for failure to pursue suppression of his statement to police. Dennis asserts that had the request for suppression of the statement been made, it would have been granted by the Court, and he would not have pleaded guilty. He also claims that counsel's ineffectiveness was clear, and that appellate counsel rendered ineffective assistance for failing to raise this claim on appeal in the State Courts.

After his sentence was affirmed on direct appeal, Dennis filed for Post-Conviction Relief (PCR) in the Hudson County Law Division. On August 15, 2011, that court rejected all claims of ineffective assistance of counsel, holding that they "lack[ed] merit, as the only basis for the suppression of his statements were that he had said 'a lot of people' had been 'bothering' him after he was taken into custody."[4] Petitioner then filed an appeal in the Superior Court of New Jersey, Appellate Division on December 14, 2011 alleging numerous claims. The claims for ineffective assistance were once again denied. Subsequently, Dennis sought PCR in the Supreme Court of New Jersey, and on February 4, 2014, his petition was denied.

[4] *State v. Dennis*, 2013 WL 2459864, at *2 (N.J. Super. Ct. App. Div. June 10, 2013).

On April 3, 2014, Dennis filed his § 2254 petition in the U.S. District Court. In his petition, among other claims, he asserted ineffective assistance of counsel both at the trial court and state appellate court levels. Finding his claims without merit, the District Court denied Dennis' habeas petition and request for a COA. With respect to Dennis' claim of ineffective assistance for failure to pursue suppression of his confession, the District Court concluded there was no basis for the suppression of his confession, and therefore, his counsel could not have rendered ineffective assistance in that regard.[5]

Neither the District Court nor the New Jersey Appellate Court directly addressed whether counsel's assistance was ineffective specifically for failure to move to suppress Dennis' statement because the officers should have re-administered *Miranda* warnings to Dennis after he spoke with his brother Antoine. We granted a COA to examine this single issue.[6]

II.

This Court has jurisdiction under 28 U.S.C. §§ 1291 and 2253. The District Court had jurisdiction under 28 U.S.C. § 2254. Under the Anti-Terrorism and Effective Death Penalty Act (AEDPA), where a claim has been adjudicated on the merits by the State Courts, the District Court shall not grant an application for a writ of habeas corpus unless the State Court adjudication:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United

[5] *Dennis v. D'Ilio*, 2017 WL 6372239, at *8 (D.N.J. Dec. 13, 2017).
[6] 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

> States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.[7]

If a State Court did not adjudicate a claim on the merits, we apply the pre-AEDPA standard "reviewing pure legal questions and mixed questions of law and fact *de novo*."[8] Under § 2254(e)(1), we presume that the State Court's factual determinations are correct "unless rebutted by clear and convincing evidence."[9]

Both the District Court and the State Court were silent on the issue of Dennis' ineffective assistance of counsel claim specifically related to Dennis' assertion that he should have been re-administered his *Miranda* rights after he spoke with Antoine. Under *Johnson v. Williams* and AEDPA, a State Court does not need to explicitly address each and every federal claim raised. "When a state court rejects a federal claim without expressly addressing that claim, a federal habeas court must presume that the federal claim was adjudicated on the merits."[10] In order for a claim to be adjudicated on the merits, the Court must evaluate it "based on the intrinsic right and wrong of the matter as determined by matters of substance."[11] The *Williams* presumption can "in some limited circumstances be rebutted."[12]

---

[7] 28 U.S.C. § 2254(d).
[8] *Simmons v. Beard*, 590 F.3d 223, 231 (3d Cir. 2009) (citing *Appel v. Horn*, 250 F.3d 203, 210 (3d Cir. 2001)).
[9] *Id.*
[10] *Johnson v. Williams*, 568 U.S. 289, 301 (2013).
[11] *Id*. at 302–03.
[12] *Id*. at 301.

Dennis attempts to rebut this presumption by asserting that the State Court did not adjudicate on the merits his specific claim of ineffective assistance of counsel related to the suppression of his statement due to failure to provide new *Miranda* warnings after his conversation with Antoine. Since we conclude that appellant's claim is without merit, even under de novo review, we need not address whether the State Court adjudicated the claim on the merits for purposes of § 2254.

III.

Although it is undisputed that *Miranda* warnings are essential during police interrogations, police are not required to re-warn suspects at multiple points throughout the interrogation.[13] The Supreme Court in *Wyrick v. Fields* held that it is unreasonable for police to be required to issue *Miranda* warnings when there is no "significant change in the character of the interrogation."[14]

In *United States v. Pruden*, this Court held that the determination of whether *Miranda* warnings must be re-administered requires answers to two questions:

> (1) At the time the *Miranda* warnings were provided, did the defendant know and understand his rights? (2) Did anything occur between the warnings and the statement, whether the passage of time or other intervening event, which rendered the defendant unable to consider fully and properly the effect of an exercise or waiver of those rights before making a statement to law enforcement officers?[15]

[13] *Berghuis v. Thompkins*, 560 U.S. 370, 386 (2010).
[14] *Wyrick v. Fields*, 459 U.S. 42, 47 (1982).
[15] *United States v. Pruden*, 398 F.3d 241, 246–47 (3d Cir. 2005) (quoting *United States v. Vasquez*, 889 F. Supp. 171, 177 (M.D. Pa. 1995)).

When analyzing the circumstances of Dennis' interrogation and statement under the *Pruden* framework, we find his argument that he should have been re-issued *Miranda* warnings after he spoke with his brother to be unconvincing.

First, as the State Appellate Court and the District Court noted, Dennis was read *Miranda* rights, he signed the *Miranda* waiver form, and he voluntarily gave a recorded statement to police. Dennis gave a voluntary and deliberate waiver with the awareness of his rights and the consequences of abandoning them.[16]

Second, breaking down the series of events leading up to his confession, it cannot be said that his conversation with Antoine left Dennis unable to understand his rights and the effect of his waiver. While there were interruptions in Dennis' interrogation, which included allowing him to speak with his brother alone for approximately ten minutes, examining all the circumstances of the interrogation, there is no indication that Dennis no longer understood his *Miranda* rights and the consequences of his waiver after speaking with his brother. The minor changes throughout the interrogation such as Dennis' relocation to a different room, time to rest, and a conversation with Antoine "would not have caused him to forget the rights of which he had been advised and which he had understood moments before."[17]

In order to succeed on his claim of ineffective assistance of counsel, Dennis must show that 1) "counsel's representation fell below an objective standard of reasonableness" and 2) "there is a reasonable probability that, but for counsel's

[16] *Berghuis*, 560 U.S. at 383.
[17] *Wyrick*, 459 U.S. at 49.

unprofessional errors, the result of the proceeding would have been different."[18] The standard for professional competence is broad, and when examining claims of ineffective assistance, courts are to presume that counsel exercised reasonable professional judgment.[19]

Examining the totality of the evidence surrounding Dennis' confession through the lens of the Supreme Court's decision in *Wyrick v. Fields*, and this Court's decision in *Pruden*, we conclude that Dennis' argument fails to meet the *Strickland* standard of ineffective assistance. Because Dennis gave a voluntary and deliberate waiver of his rights, and there is no indication that Dennis' conversation with his brother caused him to forget his rights, police were not required to re-read Dennis his *Miranda* warnings after he spoke with his brother. Therefore, counsel's decision not to pursue a motion to suppress did not fall below the standard of reasonableness.

Additionally, given the circumstances of the confession, we cannot agree that had counsel raised a motion to suppress, it would have been granted and in turn, he would not have pled guilty or the outcome of the proceedings would have been different. Accordingly, we also conclude that appellate counsel did not render ineffective assistance on Dennis' State Court appeal, and the Order entered by the District Court will be affirmed.

[18] *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).
[19] *Id*. at 690.