FILED
United States Court of Appeals
Tenth Circuit

September 13, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MIGUEL ANGEL DIAZ-MARTINEZ,

Petitioner - Appellant,

v.

ATTORNEY GENERAL OF THE STATE OF COLORADO; BARRY GOODRICH, Warden, Crowley County Correctional Facility,

Respondents - Appellees.

No. 22-1396
(D.C. No. 1:22-CV-00753-WJM)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HARTZ**, **TYMKOVICH**, and **MATHESON**, Circuit Judges.

Miguel Angel Diaz-Martinez, a pro se Colorado prisoner,[1] seeks a certificate of appealability (COA) to appeal the district court's denial of his application for relief under 28 U.S.C. § 2254. We deny a COA and dismiss this matter.

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Because Diaz-Martinez proceeds pro se, we construe his filings liberally but do not serve as his advocate. *See United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009).

I. BACKGROUND

The relevant facts are set forth in *People v. Miguel Angel Diaz-Martinez*, No. 18CA0570 (Colo. App. Nov. 5, 2020) (unpublished). Diaz-Martinez was charged with 43 counts of various sexual offenses. Two weeks before trial he pleaded guilty to nine of the counts. Several weeks later he moved to withdraw his guilty plea on the grounds that (1) he did not understand the plea agreement, (2) his attorneys coerced him into pleading guilty, and (3) his attorneys provided ineffective assistance during the plea proceedings. Diaz-Martinez also asked the court to appoint alternate counsel. The court denied both requests and sentenced him to a 50-year term of imprisonment. The Colorado Court of Appeals (CCA) affirmed the conviction and sentence and the Colorado Supreme Court denied certiorari review.

Diaz-Martinez then filed his § 2254 application in the United States District Court for the District of Colorado. For his first claim he argued that "[t]he lack of an interpreter to assist a non-English speaking defendant in attorney-client communication[s] . . . impair[ed] the constitutional right to effective assistance of counsel." R., Vol. I at 10. His second claim alleged that the trial court violated his constitutional rights when it excluded him from a bench conference. His third claim alleged that the trial court erred by "summarily denying" his ineffective-assistance claims without first appointing alternate counsel to investigate. *Id.* at 13.

The district court denied the claims on the merits and dismissed the case with prejudice; it also denied Diaz-Martinez's request for a COA.

II. CERTIFICATE OF APPEALABILITY

A COA is a jurisdictional prerequisite to appealing the denial of federal habeas relief. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). We may issue a COA only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

"We look to the District Court's application of [The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)] to petitioner's constitutional claims and ask whether that resolution was debatable amongst jurists of reason." *Miller-El*, 537 U.S. at 336. In other words, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* at 338 (internal quotation marks omitted).

Under AEDPA when a state court has adjudicated a federal claim on the merits, relief is available if the applicant establishes that the state-court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). The federal court must presume a state court's factual findings to be correct unless the applicant rebuts that presumption by "'clear and convincing evidence.'" *Hooks v. Workman*, 689 F.3d 1148, 1164 (10th Cir. 2012) (quoting 28 U.S.C. § 2254(e)(1)). The presumption applies to factual determinations by both state trial and appellate courts. *See Al-Yousif v. Trani*, 779 F.3d 1173, 1181 (10th Cir. 2015).

III. ANALYSIS

A. Ineffective Assistance of Counsel (Claims 1 and 3)

The Sixth Amendment generally requires defense counsel to provide effective assistance to a criminal defendant. *See Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). To prevail on an ineffective-assistance claim, a habeas petitioner must show (1) that counsel's performance was deficient (the identified acts and omissions were outside the wide range of professionally competent assistance) and (2) he was prejudiced by the deficient performance (there is a reasonable probability that but for counsel's unprofessional errors the result would have been different). *Id.* at 687. "These two prongs may be addressed in any order, and failure to satisfy either is dispositive." *Grant v. Royal*, 886 F.3d 874, 903 (10th Cir. 2018) (internal quotation marks omitted). This two-part standard applies to guilty-plea challenges based on ineffective assistance of counsel. *See Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (recognizing that a defendant in a criminal case has a Sixth Amendment right to effective assistance of counsel that extends to the plea-bargaining process).

Where the state court has ruled on the merits of an ineffective-assistance claim, "[t]he pivotal question is whether the state court's application of the *Strickland* standard was unreasonable. This is different from asking whether defense counsel's performance fell below *Strickland*'s standard." *Harrington v. Richter*, 562 U.S. 86, 101 (2011). "Evaluating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Id.* (brackets and internal quotation marks omitted).

"[T]he *Strickland* standard is a general standard, [so] a state court has more latitude to reasonably determine that a defendant has *not* satisfied that standard." *Grant*, 886 F.3d at 904 (ellipsis and internal quotation marks omitted).

1. *Claim I*

Diaz-Martinez argued that the lack of a Spanish interpreter during his conversations with his attorneys "impair[ed]" his constitutional right to effective assistance of counsel. R., Vol. I at 10. The CCA denied this claim for two reasons. First, this conclusory allegation did not demonstrate either deficient performance or prejudice. Second, "at the plea hearing, Diaz-Martinez told the court that the plea documents had been explained to him in Spanish, that he understood the documents, and that he did not need any additional time to review them." *Id.* at 91-92. Therefore, the court "conclude[d] that even if counsel erred in not providing him with an interpreter, that error was not prejudicial and does not establish ineffective assistance." *Id.* at 92.

The district court determined that this was not an unreasonable application of *Strickland* nor was it based on an unreasonable determination of the facts. The court determined that "[t]he state court record supports the [CCA's] summary of the evidence . . . [a]nd [Diaz-Martinez] does not point to any clear and convincing evidence to the contrary. As such, the CCA reasonably determined that any possible error in not providing . . . an interpreter . . . was not prejudicial. . . ." *Id.* at 254.

The district court also ruled that the CCA's decision to reject Diaz-Martinez's conclusory allegation of ineffective assistance was not an unreasonable application of federal law, which requires a habeas petitioner to identify counsel's deficient

performance and the resulting prejudice. *See, e.g.*, *Snow v. Sirmons*, 474 F.3d 693, 724-25 (10th Cir. 2007) (rejecting an ineffective-assistance claim where applicant failed to indicate "why counsel's failure to object to the evidence was deficient and how such alleged failure prejudiced him"). We deny a COA because reasonable jurists would not debate the district court's resolution of this claim.

2. *Claim 3*

In his third claim Diaz-Martinez argued that the trial court (1) wrongly denied the motion to withdraw his guilty plea based on counsels' ineffective assistance during the plea proceedings, and (2) erred by failing to appoint alternate counsel to investigate his claims. The CCA addressed, and rejected, each argument.

a. *Lack of involvement*

According to Diaz-Martinez, his attorneys were ineffective because they seemed disinterested in his case and had not "'helped him much.'" R., Vol. I at 90 (internal quotation marks omitted). The CCA found that "[t]he record refutes these claims." *Id.* "[C]ounsel were very involved in this case and filed motions seeking, among other things, to change venue, exclude . . . evidence, suppress statements and other evidence, and challenge the constitutionality of a statute." *Id.* "[C]ounsel also successfully negotiated a plea deal that required Diaz-Martinez to plead guilty only to nine counts, instead of the original forty-three." *Id.*

The district court ruled that the CCA's decision was not an unreasonable determination of the facts based on the evidence in the state-court record. The court presumed that the CCA's factual findings were correct and found that Diaz-Martinez

failed to rebut that presumption by clear and convincing evidence. Also, the court determined that the CCA's decision was not an unreasonable application of federal law. We deny a COA because reasonable jurists would not debate the court's resolution of this claim.

b. *Inaccuracies in plea agreement*

Diaz-Martinez also argued that counsel provided ineffective assistance because they failed to correct inaccuracies in the plea agreement. The CCA ruled that "any errors in the plea agreement were harmless and, thus, could not have prejudiced Diaz-Martinez. Therefore, counsel's failure to correct [the] errors does not establish ineffective assistance." *Id.* at 91.

The district court ruled that the CCA's decision was not an unreasonable determination of the facts or an unreasonable application of *Strickland*. Because reasonable jurists would not debate the court's resolution of this claim, we deny a COA.

c. *No factual basis for guilty plea*

Next, Diaz-Martinez argued that "counsel failed to ensure that the factual basis provided at the plea hearing supported the charges in the plea agreement." *Id.* But the CCA rejected this argument because by signing and entering into the plea agreement "Diaz-Martinez waived the right to have a factual basis for his guilty plea established at the hearing." *Id.*

The district court found that the CCA's finding was supported by the record and that Diaz-Martinez "does not challenge the factual basis for the state court's ruling." *Id.* at 257. It also determined that the CCA's ruling was not an unreasonable application of

federal law because the federal Constitution does not require that a court determine there is a factual basis for a guilty plea before accepting it. *See Freeman v. Page*, 443 F.2d 493, 497 (10th Cir. 1971). We deny a COA because reasonable jurists would not debate the court's resolution of this claim.

d. *No opportunity for questions*

Diaz-Martinez further maintained "that defense counsel's actions led him to plead guilty under the mistaken impression that the trial court would address his questions while the answers could still inform his decision to plead guilty." R., Vol. I at 92. Again, the CCA found that "[t]he record refutes this assertion." *Id.* "When Diaz-Martinez mentioned that he had questions, counsel [told the court] that what he wanted to do was to make a statement to the court at the sentencing hearing, and Diaz-Martinez confirmed to the court that this was in fact what he wanted to do." *Id.*

The district court ruled that the CCA's decision was not an unreasonable determination of the facts or an "unreasonable application of clearly established law." *Id.* at 258. Because reasonable jurists would not debate the court's resolution of this claim, we deny a COA.

e. *No review of plea agreement or discovery*

According to Diaz-Martinez, counsel provided ineffective assistance because he was not allowed to review the plea agreement or discovery. The CCA found that "Diaz-Martinez testified at the [plea] hearing that he had reviewed the plea agreement and related documents with counsel. His signature also appears on the plea agreement, acknowledging that he had read and understood the agreement." *Id.* at 92. Further, the

CCA, citing *People v. Krueger*, 296 P.3d 294, 299–300 (Colo. App. 2012), said that "a defendant who is represented by counsel does not have an unqualified right to personally review all discovery materials." R., Vol. I at 93.

The district court determined that the CCA's decision was not an unreasonable application of *Strickland* because Diaz-Martinez "fail[ed] to demonstrate that the CCA's conclusion regarding his review of the plea agreement and discovery 'was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'" *Id.* at 259 (quoting *Harrington*, 562 U.S. at 103). We deny a COA because reasonable jurists would not debate the court's resolution of this claim.

f. *Alternate counsel*

Last, the CCA rejected Diaz-Martinez's argument that the trial court erred when it denied his request to appoint alternate counsel to investigate his claims "[b]ecause none of [his] allegations of ineffective assistance establish inadequate representation." *Id.* at 93. The district court agreed. Because reasonable jurists would not debate the court's resolution of this claim, we deny a COA.

B. Right to be Present (Claim 2)

"[A] defendant has a due process right to be present at a proceeding whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge." *United States v. Gagnon*, 470 U.S. 522, 526 (1985) (internal quotation marks omitted). "The presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent

only." *Id.* (brackets and internal quotation marks omitted). "Thus, a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987). But "this privilege of presence is not guaranteed when presence would be useless, or the benefit but a shadow." *Id.* (internal quotation marks omitted).

In his petition Diaz-Martinez alleged that the trial court denied his right to a fair trial when it excluded him from a bench conference. He described the conference as a "secret meeting" to decide whether he should be given "more time to consider his hesitant, worrisome and invalid guilty plea." R., Vol. I at 12. But the CCA found that "the record shows that the real purpose of this conversation was to determine if the trial scheduled for the following week should be vacated, given his guilty plea." *Id.* at 95. "The bench conference was, in essence, a scheduling conversation." *Id.* Therefore, the CCA concluded that there was no constitutional violation.

The district court ruled that the CCA's decision was not an unreasonable determination of the facts or law. Because reasonable jurists would not debate the court's resolution of this claim, we deny a COA.

IV. CONCLUSION

We deny a COA and dismiss this matter. We grant Diaz-Martinez's request to add exhibits to his application.

Entered for the Court

Harris L Hartz
Circuit Judge