[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-13645

Non-Argument Calendar

ROBERT EARL GORHAM,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:17-cv-14241-KAM

Before NEWSOM, GRANT, and BLACK, Circuit Judges.

PER CURIAM:

Robert Earl Gorham, a Florida prisoner, appeals the district court's denial of his 28 U.S.C. § 2254 petition. We granted a certificate of appealability on the following issue:

> Whether the district court erred in concluding that 28 U.S.C. § 2254(d) barred habeas corpus relief on Gorham's claim that his trial counsel's failure to convey to him the State's pretrial plea offer of a five-year term of imprisonment was ineffective assistance of counsel?

After review,[1] we affirm the district court.

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[1] We review *de novo* the district court's denial of a habeas corpus petition. *McNair v. Campbell*, 416 F.3d 1291, 1297 (11th Cir. 2005). That is, we review *de novo* "the district court's decision about whether the state court acted contrary to clearly established federal law, unreasonably applied federal law, or made an unreasonable determination of fact." *Reed v. Sec'y, Fla. Dep't of Corr.*, 593 F.3d 1217, 1239 (11th Cir. 2010) (quotation marks omitted). In reviewing the district court's holdings, we are mindful that, in essence, we are reviewing the state court's conclusions. *Peoples v. Campbell*, 377 F.3d 1208, 1224 (11th Cir. 2004). Thus, although a district court's decision is reviewed *de novo*, we must apply deference to the final judgment of a state court. *Reed*, 593 F.3d at 1239.

I. BACKGROUND

A jury convicted Gorham of two counts of burglary of a conveyance with an assault or battery, one count of aggravated assault, and one count of attempted aggravated battery. According to Gorham, while awaiting sentencing, he requested a copy of his attorneys' case files and discovered the five-year plea offer for the first time. Prior to sentencing, Gorham filed a *pro se* motion for a new trial based on the fact he had only recently learned of the five-year plea offer. At a hearing, the state trial court heard arguments and evidence regarding the failure to convey the five-year plea deal.

Gorham's first attorney, Mary Celidonio, testified that, although she could not specifically remember extending the offer to Gorham, it would have been her normal practice to do so. However, she stated the meeting where she believed she conveyed the plea offer "didn't go well" because Gorham fired her during it. During cross-examination, Celidonio acknowledged that soon after the jail visit where Gorham fired her, she received a letter from Gorham asking her to explore the possibility of a plea offer. Gorham introduced communications between himself and Celidonio into evidence, none of which mentioned the five-year offer, which he argued indicated that she never conveyed it to him.

Gorham's second attorney, Rebecca Hamilton, testified that Gorham never wavered from the idea of wanting a jury trial.

Gorham testified that, had he received notice of the five-year plea offer at the time the prosecution extended it, he would have accepted it "[w]ithout a doubt. Absolutely."

The state trial court found that all the documentation between Gorham and his attorneys demonstrated his desire for a speedy jury trial and concluded that, even if Gorham had received the five-year offer, he would not have taken it. The court further emphasized that Gorham would not have taken the deal because it required him to plead guilty to an aggravated assault charge, and Gorham had previously expressed his belief he was only guilty of two batteries. When asked why he rejected a later-offered ten-year plea deal, Gorham stated he wanted to go to trial because attorney Hamilton had convinced him that his case was triable. The state court denied the motion for new trial, stating "the record . . . does not clearly indicate that the offer was necessarily extended, but regardless of whether it was extended or not, . . . the record I think is very clear that Mister Gorham would have rejected that offer as he did the ten-year offer."

On appeal, the state appellate court concluded that defense counsel's failure to inform Gorham the State had offered him a five-year plea offer did not constitute ineffective assistance of counsel, stating the record of the hearing held by the trial court supported its finding Gorham would not have taken the offer if conveyed. *Gorham v. State*, 968 So. 2d 717, 719 (Fla. 4th DCA 2007).

In the present § 2254 petition, in relevant part, Gorham raised a ground of ineffective assistance of counsel, contending his counsel did not convey the five-year written plea offer to him before he proceeded to trial, which constituted ineffective assistance of counsel.

The district court ultimately denied Gorham's § 2254 petition. The district court noted the state trial court's factual findings were entitled to strong deference, and its decision would be deemed "reasonable so long as fair-minded jurists could disagree on [its] correctness," which it found applied here. Accordingly, the district court denied the petition.

II. DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides that, after a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the state court's decision was (1) contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court, or (2) 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). A state court decision can be "contrary to" established law in two ways: (1) if the state arrives at a conclusion opposite to that reached by the U.S. Supreme Court on a question of law; or (2) if a state court confronts facts that are "materially indistinguishable" from relevant Supreme Court precedent but arrives at an opposite result from that arrived at by the Supreme Court. *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000).

The United States Constitution provides "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. Amend. VI. The right to counsel is the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To make a showing

of ineffective assistance of counsel, a prisoner must prove two things: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defense. *Id.* at 687. To establish prejudice from his trial counsel's failure to communicate a plea offer, the defendant must allege and prove a reasonable probability that (1) he would have accepted the offer had counsel advised the defendant correctly, (2) the prosecutor would not have withdrawn the offer, (3) the court would have accepted the offer, and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. *Lafler v. Cooper*, 566 U.S. 156, 164 (2012).

The district court did not err in denying Gorham's § 2254 petition. First, Gorham's contention the state courts erred when they declined to consider whether counsel's failure to convey the plea offer constituted deficient performance fails. A court need not address both prongs of the *Strickland* analysis if a prisoner makes an insufficient showing as to one. *Holladay v. Haley*, 209 F.3d 1243, 1248 (11th Cir. 2000) (stating there is no reason for a court deciding an ineffective-assistance-of-counsel claim to approach the inquiry in the same order, or even to address both components of the inquiry if the prisoner makes an insufficient showing on one).

Second, the state court determined Gorham had not satisfied the prejudice prong of *Strickland* because it found, based on his previous statements, that he would not have accepted the plea offer had counsel advised him of it. We reject Gorham's argument that the Florida court held Gorham to a higher standard than

required, as the Florida court's finding he would not have accepted the plea necessarily finds that Gorham did not allege and prove a "reasonable probability" that he would have accepted the plea offer. *See Lafler*, 566 U.S. at 164. As Gorham did not allege and prove a reasonable probability that he would have accepted the plea offer, he could not establish prejudice. *See id.* Under § 2254(d), this Court need not determine whether the state court's conclusion that he would not have accepted the plea was incorrect, only whether it was unreasonable. *See Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009) (stating under § 2254(d), "[t]he question is not whether a federal court believes the state court's determination under the *Strickland* standard was incorrect but whether that determination was unreasonable—a substantially higher threshold" (quotation marks omitted)). The state court's conclusion was not unreasonable. Moreover, Gorham does not argue that the state trial court would have accepted the five-year plea, which is also required by *Lafler*.

III. CONCLUSION

Even if Gorham's attorney failed to communicate a plea offer to him, the state court reasonably determined that Gorham did not satisfy the prejudice prong of *Strickland*, because Gorham did not allege and prove a reasonable probability that he would have accepted the plea deal and he did not argue the state trial court would have accepted such a plea. Accordingly, we affirm.

AFFIRMED.