IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
August 3, 2020
Lyle W. Cayce
Clerk

No. 17-30801

DEREK N. MOORE,

Petitioner - Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent - Appellee

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

Before KING, GRAVES, and OLDHAM, Circuit Judges.

JAMES E. GRAVES, JR., Circuit Judge:

In 2008, a Louisiana jury convicted Derek N. Moore of second degree murder and attempted second degree murder. Moore filed a federal habeas petition pursuant to 28 U.S.C. § 2254(d) alleging ineffective assistance of appellate counsel ("IAAC") due to state appellate counsel's failure to raise a *Batson v. Kentucky*, 476 U.S. 79 (1986) claim on direct appeal. As explained below, we affirm the district court's denial of habeas relief and find the state adjudication reasonable.

I. BACKGROUND

Moore's jury trial took place in the 19th Judicial District Court, Parish of East Baton Rouge. After voir dire of three panels of prospective jurors, a jury

was selected. The jury convicted Moore, and he was sentenced to life imprisonment without parole for second degree murder and fifteen years imprisonment without parole for attempted second degree murder.

On direct appeal, Moore filed both a counseled-appellate brief and a pro se-appellate brief. The counseled-brief argued that the trial court erred in excluding Moore's alibi witness and that the evidence was insufficient to convict him. Of significance to this appeal, neither the counseled-brief nor the pro se-brief alleged a *Batson* violation. Moore's conviction was affirmed, *State v. Moore*, 2009-2186 (La. App. 1 Cir. 5/7/10), 2010 WL 1838314, the Louisiana Supreme Court denied review, *State v. Moore*, 2010-1304 (La. 1/7/11), 52 So. 3d 882, and the Supreme Court denied review, *Moore v. Louisiana*, 563 U.S. 993 (2011).

Moore applied for post-conviction relief. Among other claims, Moore indirectly argued that his state appellate counsel was ineffective for failing to raise a *Batson* claim based on the prosecutor's peremptory strike of a black female prospective juror. The 19th Judicial District Court's Commissioner recommended that the trial court dismiss Moore's IAAC claim because Moore did not (1) "deny that the State struck all schoolteachers on the panel, nor [did] he offer any support for his contentions that the State's explanation of striking jurors who were teachers was unacceptable;" (2) "identify any otherwise similar panelists that were allowed to serve"; (3) "identify any instance in which different questions were asked to a particular group of potential jurors"; (4) provide evidence or indication beyond his "allegations" that the prosecutor's single reference to race and proffered explanation evidenced "discriminatory intent"; and (5) offer proof that he could satisfy both prongs of *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The trial court adopted the Commissioner's recommendation and denied Moore relief. The court of appeal denied Moore's writ of review without providing reasons, *State v. Moore*, 2013-

0898 (La. App. 1 Cir. 8/28/13), 2013 WL 12120767, as did the Louisiana Supreme Court, *State ex rel. Moore v. State*, 2013-2241 (La. 4/25/14), 138 So. 3d 638.

Moore petitioned for federal habeas relief and classified his first claim as a straight *Batson* violation rather than an IAAC claim based on a failure to raise *Batson* on direct appeal. Under the straight *Batson* claim, Moore referenced his IAAC claim by stating that "appellate counsel should be found to have provided ineffective assistance of counsel as determined by *Strickland v. Washington*, 466 U.S. 668 (1984) which establishes cause and prejudice, when counsel failed to assign this issue as error on direct appeal." The State responded to and construed Moore's straight *Batson* claim as a properly exhausted IAAC claim, noting that "[Moore] has exhausted his state court remedies regarding the claims he now brings before this court." Based on Moore's classification of the claim, the magistrate judge ("MJ") recommended denying Moore's *Batson* claim on the merits without reviewing Moore's IAAC claim premised on a failure to raise *Batson* on direct appeal. The district court, accepting the MJ's recommendation, denied habeas relief and dismissed the case with prejudice.

We granted a certificate of appealability (COA) and ordered supplemental briefing on two issues: (1) whether the federal district court erred by reviewing the state court's ruling on the underlying *Batson* claim instead of the state court's ruling on the IAAC claim and (2) the merits of Moore's IAAC claim.

II. STANDARD OF REVIEW

In reviewing a denial of habeas relief, we review the district court's "'factual findings for clear error and issues of law de novo.'" *Richards v. Quarterman*, 566 F.3d 553, 561 (5th Cir. 2009) (quoting *Barrientes v. Johnson*, 221 F.3d 741, 750 (5th Cir. 2000)). "The district court's denial of relief may be

affirmed on any basis apparent in the record." *Jacques v. Bureau of Prisons*, 632 F. App'x 225 (5th Cir. 2016) (citing *Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir.2000)).

The Antiterrorism and Effective Death Penalty Act (AEDPA) governs this case. Under the AEDPA, habeas relief "shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings 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 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." *See* 28 U.S.C. § 2254(d).

Moore seeks relief under § 2254(d)(1). "[R]eview under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). Section "2254(d)'s 'highly deferential standard for evaluating state-court rulings' . . . demands that state-court decisions be given the benefit of the doubt." *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (quoting *Lindh v. Murphy*, 521 U.S. 320, 333, n. 7 (1997)).

III. DISCUSSION

A. Whether the district court erred by reviewing the merits of Moore's *Batson* claim instead of the IAAC claim?

The Louisiana 19th Judicial District Court's denial of Moore's post-conviction relief is the last state court to consider Moore's IAAC claim based on state appellate counsel's failure to raise a *Batson* challenge on direct appeal. The Commissioner's recommendation (as adopted in full by the state court) to dismiss Moore's IAAC claim constitutes an "adjudication on the merits," *see*

Hill v. Johnson, 210 F.3d 481, 485 (5th Cir. 2000), that is entitled to AEDPA deference, *see Batchelor v. Cain*, 682 F.3d 400, 405 (5th Cir. 2012).

Although the state court dismissed Moore's IAAC claim for post-conviction relief, Moore confusingly labeled the first claim in his federal habeas petition as a straight *Batson* challenge. In response to Moore's habeas petition, the State viewed the IAAC claim as properly exhausted and responded to the merits of the IAAC claim in accordance with the state court's denial of Moore's post-conviction relief. Based on Moore's mislabeled habeas petition, the MJ and district court reviewed only the merits of the *Batson* claim instead of the IAAC claim.

"It is the substance of the relief sought by a pro se pleading, *not the label that the petitioner has attached to it*, that determines the true nature and operative effect of a habeas filing." *Hernandez v. Thaler,* 630 F.3d 420, 426–27 (5th Cir. 2011) (emphasis added). Liberally construing Moore's pro se habeas petition, we find that Moore's reference to *Strickland* and state appellate counsel's performance appears to be an IAAC claim raised under his straight *Batson* claim.

Moreover, the district court's denial of Moore's *Batson* claim in turn speaks to the viability of Moore's IAAC claim for habeas relief. The district court found no clear error in the state court's ruling on the *Batson* challenge and determined that Moore could not demonstrate that the State's race-neutral explanation for striking a black female prospective juror was pretextual. Based on these findings, the district court implicitly determined that Moore cannot satisfy the prejudice prong of the *Strickland* test used to review IAAC claims. We therefore conclude that the district court did not commit reversible error in failing to explicitly review the merits of the IAAC claim, which we now review

below.[1] *See Teague v. Quarterman*, 482 F.3d 769, 773 (5th Cir. 2007) ("We may affirm a district court's decision on any basis established by the record.").

B. Whether there was any reasonable basis for the state court to deny Moore's ineffective assistance of appellate counsel (IAAC) claim for failure to raise a *Batson* challenge?

Moore's IAAC claim hinges on what transpired during jury selection, so we recount the relevant facts here. Our review is limited to the record that was before the state court that adjudicated the claim on the merits. *Pinholster*, 563 U.S. at 181. The state court's factual findings are presumed correct unless Moore rebuts these findings with "clear and convincing evidence." 28 U.S.C. § 2254(e)(1).

Voir dire during Moore's trial involved three panels of prospective jurors. The first panel of 13 prospective jurors consisted of 2 black jurors and 11 white jurors. The prosecutor peremptorily struck 6 jurors—5 white jurors and 1 black juror. Defense counsel exercised 4 peremptory challenges—3 against white jurors and 1 against a black juror. Both the prosecutor and defense counsel peremptorily challenged the same black juror—Roosevelt Ridley, who worked in a food warehouse but was unemployed at the time of trial. After the dismissal of Ridley, one black juror remained from the first panel.

The second panel of 13 prospective jurors consisted of 4 black jurors, 8 white jurors, and a male juror describing his race as "other."[2] The prosecutor

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[1] Although Moore contends that the district court erred in failing to resolve all claims for relief raised in his habeas petition, this court is not bound by the Eleventh Circuit's decision in *Clisby v. Jones,* 960 F.2d 925 (11th Cir. 1992) (holding that that district courts in its circuit must resolve all claims for relief raised in a habeas petition regardless of whether relief is ultimately granted or denied).

[2] The trial court asked Juan Barroso for his race, and Barroso stated, "human being." The court stated it needed Barroso "to give [the judge] a race . . ." Barroso responded, "Well, according to the Constitution, I am a human being. And that is what I call myself." Barroso eventually settled on classifying himself as "other."

asked questions about the prospective jurors' backgrounds, including their experience as a victim of crime, knowledge of anyone arrested for a crime, knowledge of anyone who used or sold drugs, ability to be fair and impartial, and ability to convict. Defense counsel questioned jurors about their occupations. Defense counsel exercised 4 peremptory challenges—3 against white jurors (George McManus, James Brashier, and Regina Wilson) and 1 against a black juror (Linda Guerin). The prosecutor exercised 6 peremptory challenges—2 against white jurors (Elizabeth Quinn and Lillie Hebert), 3 against black jurors (Derek Bell, Tanji Williams, and Linda Guerin), and 1 against the "other" juror (Juan Barroso). Defense counsel immediately objected to the state's strikes, contending that *Batson* had been violated.

The trial court asked the prosecutor to respond to the use of peremptory challenges against three of the four potential black jurors on the second panel. The following exchange occurred:

> DEFENSE COUNSEL: Just at this time for the record, I'm going to make a *Batson* challenge, because the State has, from my understanding, the State has peremptorily challenged three of the four black members of this panel.
>
> THE COURT: Counsel, you are making your objection—You are making your challenge on this panel, and this panel only?
>
> DEFENSE COUNSEL: Yes, sir.
>
> THE COURT: Ms. Washington [the prosecutor]?
>
> PROSECUTOR: Your Honor, from panel 1 and 2, we have kept a black from yesterday, we kept a black today. Two that we did strike today were teachers, and for the record, Mr. Barroso is also a teacher. We struck all teachers off the panel. The truck driver indicated that he really doesn't want to be here. He indicated that he would rather be out there making money because he is losing money being here.

> THE COURT: All right. The defense has raised a *Batson* challenge. I do note that the—how many we had [sic] on this panel, three? Yeah, we only had three on this panel, right?
>
> DEFENSE COUNSEL: Four.
>
> THE COURT: All right, there were four blacks on this challenge. The State used peremptory challenge [sic] against three of them. The reason for striking Juror Number 019, Derek Bell, the court accepts that reasoning. Mr. Bell did state that he wished not to be here. Court will accept that reasoning for striking Mr. Bell. Juror Number 136, Ms. Linda Guerin, I note both the State and defense used a peremptory challenge against Ms. Guerin. The State has stated their reasoning is that Ms. Guerin was a teacher, and they have stricken all teachers off this particular panel. I will accept that reasoning for Ms. Guerin, not so much striking all of teachers, but both the defense and State used a peremptory challenge on her. All right. Juror Number 244, Ms. Tangi Williams, the State has made the argument that they struck Ms. Williams because she is a teacher, same reason they struck 017, Juan Barroso, who listed his ethnicity as other. Court will accept that explanation for striking Ms. Tangi Williams, and does not find it to be race motivated.
>
> DEFENSE COUNSEL: Just note our objection.
>
> THE COURT: Note the defense objection. We will take a recess. . .

Defense counsel did not argue pretext. The trial court overruled the *Batson* challenge and accepted the prosecutor's reasons that Derek Bell (black male prospective juror) did not want to serve for economic reasons[3], that Linda Guerin (black female prospective juror) was a teacher and had been jointly preempted, that Tanji Williams (black female prospective juror) was a teacher,

[3] Specifically, Derek Bell responded that he did "not really" want to serve on the jury because it was "killing [him] right now, being [at jury selection]" and he was "supposed to be at work." Bell explained that he was an independent truck driver paid based on the haul and that his wife and two children depended on him financially.

and that the prosecutor had struck all teachers, including Barroso ("other" male prospective juror).

A third panel was called and consisted of 5 black jurors and 7 white jurors. The court granted the prosecution's removal of one black female juror, Estella Lee, for cause and without objection from defense counsel. The court also granted the defense's removal of one black male juror, Eddie Hulett, for cause.[4] The prosecution exercised no peremptory challenges. The defense issued 4 peremptory challenges—2 against black jurors (Sherell Singleton and Terrie Comena) and 2 against white jurors (Matthew Sullivan and Robert Cope). The final 12-person jury consisted of 3 black jurors and 9 white jurors. Moore was convicted by a 10-2 verdict.

1. Applying *Strickland*

Moore contends that his appellate counsel was ineffective for failing to raise the *Batson* challenge on direct appeal. An IAAC claim "requires a showing that (1) [appellate] counsel's performance was legally deficient; and (2) the deficiency prejudiced the defense." *United States v. Bernard*, 762 F.3d 467, 471 (5th Cir. 2014) (citing *Strickland*, 466 U.S. at 687). In denying post-conviction relief, the Commissioner concluded that Moore did not "offer any support for his contentions that the State's explanation of striking jurors who were teachers was unacceptable" and that Moore could not demonstrate a "reasonable probability that the appellate court would have afforded [him] any relief if the [*Batson*] issue had been raised on appeal."

"Applying AEDPA deference to *Strickland*'s already deferential standard, we must deny relief if 'there is any reasonable argument that [appellate] counsel satisfied *Strickland*'s deferential standard' despite failing

[4] The transcript revealed that the court asked Eddie Hulett whether he wore "prescription glasses" and Hulett responded "yes."

to make the argument described above. In other words, we must deny relief 'if there was a reasonable justification for the state court's decision.'" *Higgins v. Cain*, 720 F.3d 255, 265 (5th Cir. 2013) (quoting *Harrington v. Richter*, 562 U.S. 86, 788 & 790 (2011); *see also Pinholster*, 563 U.S. at 190 (describing the combined standards of review under *Strickland* and Section 2254(d) as "doubly deferential" to the state court's decision).

a) Deficiency Prong

Deficient performance falls "below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. When reviewing appellate counsel's conduct in the context of *Strickland*, we first assess whether counsel failed to raise a nonfrivolous issue that was clearly stronger than the issues raised on appeal. *Smith v. Robbins*, 528 U.S. 259, 288 (2000). Appellate "[c]ounsel need not raise every nonfrivolous ground of appeal, but should instead present solid, meritorious arguments based on directly controlling precedent." *Ries v. Quarterman*, 522 F.3d 517, 531-32 (5th Cir. 2008) (internal quotation marks and citation omitted). In other words, Moore must overcome the presumption that appellate counsel made a sound strategic decision not to present the *Batson* issue. *See Higgins*, 720 F.3d at 265.

Moore argues that there is no reasonable justification for appellate counsel's failure to raise the *Batson* claim and that, regardless of how many white people were struck from the panel, the record shows that the State struck all the black women. He contends that, if appellate counsel had reviewed the voir dire transcript, competent counsel would have discovered a meritorious issue.

The State argues that Moore's appellate counsel had to look beyond defense counsel's selective objection and confront the "complete voir dire record" which contextualizes "the frivolity of appealing [Moore's] *Batson* claim." The State contends "that every juror regardless of color had been struck

for being a teacher." Indeed, Moore does not challenge critical facts in the record and concedes that defense counsel struck two of the black jurors on the second panel—Derek Bell, a truck driver who did not want to serve on the jury for financial reasons, and Linda Guerin, who was peremptorily stricken by Moore's trial counsel "for whatever reason."

A review of Moore's direct appeal indicates that appellate counsel "assign[ed] error to the [trial court's] exclusion of an alibi witness, to the sufficiency of the evidence, and to the imposition of sentence immediately after the denial of post-trial motions without a waiver of the time delay." *State v. Moore*, 2009-2186 (La. App. 1 Cir. 5/7/10), 2010 WL 1838314. The state court record before us contains no testimonial evidence as to whether Moore's appellate counsel, Lieu T. Vo Clark, made a tactical decision not to raise the *Batson* claim or simply overlooked that potential ground for reversal. However, we can "pretermit consideration of appellate counsel's performance because we conclude that the state habeas court's conclusion as to prejudice was reasonable." *Blanton v. Quarterman*, 543 F.3d 230, 245 (5th Cir. 2008).

b) Prejudice Prong

Under the second prong of *Strickland*, Moore must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 694. The State contends that Moore cannot show prejudice, as his *Batson* claim would have been rejected on direct appeal. Thus, the MJ's conclusion that no *Batson* violation occurred establishes that appellate counsel's failure to raise the *Batson* challenge on direct appeal did not prejudice Moore.

Under *Batson*, the use of peremptory challenges to exclude persons from a jury based on their race violates the Equal Protection Clause. We apply a three-step test for determining whether a peremptory challenge was based on race: (1) the opponent of a peremptory strike must first establish a prima facie

case of purposeful discrimination; (2) if a prima facie showing is made, the burden shifts to the proponent of the strike to articulate a race-neutral explanation for the challenge; and (3) the trial court then must determine if the opponent of the strike has carried the ultimate burden of proving purposeful racial discrimination. *See Purkett v. Elem*, 514 U.S. 765, 767-68 (1995) (citing *Batson*, 476 U.S. at 93–98).

To establish a prima facie case under *Batson*, "a defendant (1) must show that he is a member of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove members of the group from the venire; (2) is entitled to rely on the fact that peremptory challenges constitute a jury selection practice that permits those to discriminate who are of a mind to discriminate; and (3) must show that these facts and circumstances raise an inference that the prosecutor exercised peremptory challenges on the basis of race." *Higgins*, 720 F.3d at 265–66 (citations omitted).

The third prong of the *Batson* prima facie case—i.e. the inference that the prosecutor's use of strikes was based on race—is at issue here. *See Batson*, 476 U.S. at 96. The Supreme Court has provided two examples of "relevant circumstances" courts can consider in deciding whether a defendant has established a prima facie case: (a) "a 'pattern' of strikes against black jurors included in the particular venire"; and (b) "the prosecutor's questions and statements during voir dire examination and in exercising his challenges." *Id.* at 97.

Moore's trial counsel raised the *Batson* violation on the second of three jury selection panels. There were four potential black jurors. Both the prosecution and defense used one peremptory challenge against Linda Guerin (a black female high school teacher). Derek Bell (a black male truck driver) wanted to be excused so that he could return to work. Dzandria Chipe (a black male purchasing manager) was left on the panel without any peremptory

strikes or challenges for cause. Moore questions the prosecution's strike against Tanji Williams (another black female schoolteacher). Moore argues that prosecutor's explanation—"we have kept a black from yesterday, we kept a black today"—suggests that Williams was excluded for her race.

Assuming that Moore established a prima facie case under *Batson*, the burden then shifts to the proponent of the strike to articulate a race-neutral explanation for the challenge. *Elem*, 514 U.S. at 767-68. The State argues that the prosecution met this burden by explaining that Tanji Williams was struck because she was a schoolteacher and that the two other schoolteachers, Juan Barroso (stricken by the prosecutor only) and Linda Guerin (stricken by both parties), were also removed from the panel.

Turning to the final step of *Batson*, we must determine if the opponent of the strike has carried the ultimate burden of proving purposeful discrimination. *Id*. The Supreme Court has explained that

> the critical question in determining whether a prisoner has proved purposeful discrimination at step three is the persuasiveness of the prosecutor's justification for his peremptory strike. [T]he issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy.

Miller–El v. Cockrell, 537 U.S. 322, 338–39 (2003) (*Miller–El I*) (internal citation omitted). In other words, "the decisive question is normally whether a proffered race-neutral explanation can be believed." *Ladd v. Cockrell*, 311 F.3d 349, 356 (5th Cir. 2002). "If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be

considered at *Batson*'s third step." *Miller-El v. Dretke*, 545 U.S. 231, 241 (2005) (*Miller–El II*).

Moore points to the prosecutor's immediate reference to race—"we have kept a black from yesterday, we kept a black today"—as evidence of purposeful discrimination. For obvious reasons, it makes sense for a prosecutor to reference the juror's race when responding to a *Batson* challenge. *See United States v. Stavroulakis*, 952 F.2d 686, 696 (2d Cir. 1992) ("Reference merely to the race of one excused venireman, without more, is insufficient to raise an inference of discrimination."). Indeed, as the Commissioner noted, Moore cannot not offer evidence "beyond his allegations" that the prosecutor's strikes or proffered explanation evidenced "discriminatory intent."

Moore also takes issue with the fact that the prosecutor struck non-white schoolteachers but did not strike a white male college professor, Robert Cope, from the first of three panels. Cope described himself as an "Associate Professor and Head of the Department of Marketing and Finance at Southeastern Louisiana University." Ultimately, Cope did not serve on the selected jury because the defense exercised a strike against him.

We have recognized an "occupation" that "tend[s] to sympathize with criminal defendants" as a proper race-neutral reason for striking jurors. *See United States v. Wallace*, 32 F.3d 921, 925-26 n.5 (5th Cir. 1994); *see also Love v. Scribner*, 278 F. App'x 714, 716 (9th Cir. 2008) (finding a prosecutor's explanation that "teachers and social workers don't sit on the jury" was "sufficient to satisfy the prosecutor's burden at the second *Batson* step"). From a straightforward comparison of schoolteachers and professors, there could be several reasons why the prosecutor chose to distinguish between the two professions at Moore's trial. *See United States v. Johnson*, 4 F.3d 904, 913 (10th Cir. 1993) (finding that prosecutor's explanation that her "experience with jurors who are schoolteachers has not been favorable . . . we just don't believe

they make good jurors" to be "not racially motivated" as the prosecutor "did not strike a third black woman who served as the foreperson of the jury"); *see also United States v. Maxwell*, 473 F.3d 868, 872 (8th Cir. 2007) ("The inference that a juror's employment might make the juror more sympathetic to a criminal defendant is a valid, race-neutral reason for striking a juror.").

While two circuits have treated schoolteachers and professors as similarly situated, the facts lending support to a finding of the prosecutor's purposeful discrimination in those cases were more substantial than what Moore has alleged here. *See, e.g., Harris v. Hardy*, 680 F.3d 942, 961-63 (7th Cir. 2012) (finding the prosecutor's disfavor of jurors with teacher backgrounds was pretextual because he struck a black juror whose wife was a former teacher but kept two non-black jurors that were teachers at one point); *Maxwell,* 473 F.3d at 870-72 (8th Cir. 2007) (finding no *Batson* violation where the district court accepted the prosecutor's race-neutral explanation even though the trial judge was "very, very concerned about counsel having rather lame excuses" in striking two black male jurors).

A review of the entire state court record reveals that Moore cannot surmount the "doubly deferential" consideration we afford to the Commissioner's denial of the IAAC claim. *Pinholster*, 563 U.S. at 190. For example, Moore does not confront the fact that the prosecutor kept Robert Cope, a white male professor, but struck Paul Humes, a white male who worked at Louisiana State University as the Director of the School of Animal Sciences, from the first panel of prospective jurors. Notably, none of the potential jurors on the first panel were schoolteachers. This lends support to the explanation that the prosecution sought to only exclude schoolteachers, as evidenced by the fact that all schoolteachers were dismissed from the second panel. Finally, we have no comparators in the third panel as none of the potential jurors were employed as schoolteachers or professors. Therefore, we

find that Moore cannot carry the ultimate burden of proving purposeful discrimination under *Batson* nor can he establish that he was prejudiced as a result of his representation on direct appeal under *Strickland*.

IV. CONCLUSION

Because Moore is to unable satisfy the elements of his IAAC claim, we AFFIRM the district court's denial of Moore's habeas relief.