

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

VERNELL CONLEY
ADC #110709

PETITIONER

v.

No. 5:15-cv-93-DPM

DEXTER PAYNE, Director,
Arkansas Division of Correction*

RESPONDENT

ORDER

1. Motion to supplement objections, *Doc. 92*, granted.
2. Conley concedes Claims 1 & 2 and offers no particularized objections on Claims 3 & 4. The Court adopts the recommendation on those claims.
3. On Claim 5: The Court sustains Conley's objections 1, 2, 5 & 7 and overrules objections 3, 4, & 6. *Doc. 78 & 92*. Nonetheless, the sustained objections don't change this Court's assessment of Conley's claim here. On *de novo* review, the Court therefore adopts the remainder of Magistrate Judge Ray's thorough recommendation, *Doc. 69*. FED. R. CIV. P. 72(b)(3). Trial counsel believed that, even if

* Dexter Payne is the Director of what is now known as the Arkansas Division of Correction. The Court directs the Clerk to amend the docket accordingly. FED. R. CIV. P. 25(d).

Conley's sentences were ultimately run consecutively, the chance of receiving an overall lower sentence was better with a single jury. And that belief wasn't unreasonable, particularly given the wide ten-years-to-life range Conley faced on the delivery charge and trial counsel's recent experience with Washington County juries. Whether reviewed *de novo* under *Strickland* or through § 2254(d)'s doubly deferential lens, the strategic decision not to sever fell "within the range of competence demanded of attorneys in criminal cases." *McMann v. Richardson*, 397 U.S. 759, 771 (1970).

Conley's petition will be dismissed with prejudice. No certificate of appealability will issue. 28 U.S.C. § 2253(c)(1)-(2).

So Ordered.

DP Marshall Jr.
D.P. Marshall Jr.
United States District Judge

6 January 2021