

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

Joe Larke Williams,)	
)	Civil Action No. 5:14-cv-04389-JMC
Petitioner,)	
)	
v.)	ORDER
)	
Larry Cartledge,)	
)	
Respondent.)	
_____)	

Petitioner, proceeding *pro se*, brought this action seeking relief pursuant to 28 U.S.C. § 2254 (2012). (ECF No. 1.) This matter is before the court for review of the Magistrate Judge’s Report and Recommendation (“Report”) (ECF No. 37), recommending that Respondent’s Motion for Summary Judgment (ECF No. 20) be granted and Petitioner’s action (ECF No. 1) be denied. The Report sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s recommendation herein without a recitation.

I. LEGAL STANDARD

A. The Magistrate Judge’s Report and Recommendation

The Magistrate Judge’s Report is made in accordance with 28 U.S.C. § 636(b)(1) (2012) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court, and the recommendation has no presumptive weight—the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

B. Summary Judgment

Summary judgment should be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is “material” if proof of its existence or non-existence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). A genuine question of material fact exists where, after reviewing the record as a whole, the court finds that a reasonable jury could return a verdict for the non-moving party. *Newport News Holdings Corp. v. Virtual City Vision*, 650 F.3d 423, 434 (4th Cir. 2011).

In ruling on a motion for summary judgment, a court must view the evidence in the light most favorable to the non-moving party. *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 123–24 (4th Cir. 1990). The non-moving party may not oppose a motion for summary judgment with mere allegations or denials of the movant’s pleading, but instead must “set forth specific facts” demonstrating a genuine issue for trial. Fed. R. Civ. P. 56(e); see *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Shealy v. Winston*, 929 F.2d 1009, 1012 (4th Cir. 1991). All that is required is that “sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *Anderson*, 477 U.S. at 249. “Mere unsupported speculation . . . is not enough to defeat a summary judgment motion.” *Ennis v. Nat’l Ass’n of Bus. & Educ. Radio, Inc.*, 53 F.3d 55, 62 (4th Cir. 1995).

C. Relief under 28 U.S.C. § 2254

The Antiterrorism and Effective Death Penalty Act of 1996, as codified in 28 U.S.C. § 2254, governs Petitioner’s federal habeas claims. Petitioners seeking relief pursuant to § 2254

usually must exhaust all available state court remedies before seeking relief in federal court. § 2254(b). Federal courts may not thereafter grant habeas corpus relief unless the underlying state adjudication comports with § 2254(d), which provides:

[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—(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.*

§ 2254(d) (emphasis added).

A state court’s decision is contrary to clearly established federal law when it “applies a rule that contradicts the governing law set forth” by the United States Supreme Court or confronts facts essentially indistinguishable from a prior Supreme Court decision and “nevertheless arrives at a result different from [Supreme Court] precedent.” *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000). In contrast, a state court’s decision involves an “unreasonable application” of “clearly established” federal law 1) “if the state court identifies the correct governing legal rule from this [Supreme] Court’s cases but unreasonably applies it to the facts of the particular state prisoner’s case” or 2) “if the state court either unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply.” *Id.* at 407.

In line with *Williams*, the Fourth Circuit has noted that an “unreasonable application” is not necessarily an “incorrect application” of federal law, explaining that “an incorrect application of federal law is not, in all instances, objectively unreasonable.” *Humphries v. Ozmint*, 397 F.3d 206, 216 (4th Cir. 2005) (citing *Williams*, 529 U.S. at 413). Thus, to grant a habeas petition, a federal court must determine that the state courts’ adjudication of a petitioner’s claims was “not

only incorrect, but that it was objectively unreasonable.” *McHone v. Polk*, 392 F.3d 691, 719 (4th Cir. 2004).

In making this determination, a federal court’s habeas review focuses on the state court decision that already addressed the claims, not “the petitioner’s free-standing claims themselves.” *McLee v. Angelone*, 967 F. Supp. 152, 156 (E.D. Va. 1997), *appeal dismissed*, 139 F.3d 891 (4th Cir. 1998). And a Petitioner who brings a habeas petition in federal court must rebut facts relied upon by the state court with “clear and convincing evidence.” 28 U.S.C. § 2254(e)(1); *Cagle v. Branker*, 520 F.3d 320, 324 (4th Cir. 2008) (“[F]or a federal habeas court to overturn a state court’s credibility judgments, the state court’s error must be stark and clear.” (citing 28 U.S.C. § 2254(e)(1))).

D. Federal Habeas Corpus Statute of Limitations

28 U.S.C. § 2254(d), as amended, governs review of Petitioner’s claim since he filed it after the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) went into effect. *Lindh v. Murphy*, 521 U.S. 320 (1997); *Breard v. Pruett*, 134 F.3d 615 (4th Cir. 1998). AEDPA explicitly states that a one-year statute of limitations period applies to habeas applications from persons in custody “pursuant to the judgment of a State court.” 28 U.S.C. § 2244(d)(1). The statute clarifies that the limitation period shall run from the latest of:

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C.A. § 2244(d)(1)(A)-(D). Finally, AEDPA makes clear that “[t]he time during which a properly filed application for State post-conviction or collateral relief with respect to the pertinent judgment or claim that is pending shall not be counted toward any period of limitation under this subsection.” 28 U.S.C. § 2244(d)(2).

II. ANALYSIS

A. *The Report and Petitioner’s Objection*

In her Report, the Magistrate Judge first found that Petitioner’s habeas claim as to Grounds Two, Three, and Four were procedurally barred. (ECF No. 37 at 22–23.) Petitioner made no objections to these specific findings. This court finds that the Magistrate Judge made no clear error in concluding that these issues of Plaintiff’s habeas petition were procedurally barred.

Petitioner does, however, object to the Magistrate Judge’s findings with regard to Ground One of his habeas petition. In his habeas petition, Petitioner contended that he was denied effective assistance of counsel because his plea counsel “fail[ed] to request that the incorrect prior conviction listed on Petitioner’s rap sheet that was presented to the trial judge be stricken from the record because such a motion would have ensured that the misinformation would not have been considered as a factor by the trial judge at sentencing.” (ECF No. 1 at 6.) The Magistrate Judge, however, found that this claim failed on the merits. (ECF No. 37 at 24–25.) Specifically, the Magistrate Judge concluded:

A review of the record indicates that plea counsel objected to the alleged incorrect distribution charge during the plea colloquy. Additionally, based on the sentence imposed by the plea court, Petitioner was not prejudiced by any alleged misstatement by the solicitor. Therefore, Petitioner cannot demonstrate that the PCR court unreasonably misapplied clearly established federal law in rejecting this claim, or that the PCR court made objectively unreasonable factual findings.

(*Id.* at 24 (citations omitted).) This court agrees.

As the main part of his objection to this specific finding of the Magistrate Judge, Petitioner summarizes and advances the same arguments his post-conviction relief (“PCR”) counsel unsuccessfully argued in support of his ineffective assistance of counsel habeas claim for his state appeal. (See ECF No. 41 at 4 (citing *Townsend v. Burke*, 334 U.S. 736 (1948).) In response to these objections, this court agrees with the Magistrate Judge that the state court’s findings in response to those arguments were not an objectively unreasonable application of clearly established federal law. See *Humphries v. Ozmint*, 397 F.3d 206, 216 (4th Cir. 2005); *McHone v. Polk*, 392 F.3d 691, 719 (4th Cir. 2004) (noting that to grant a habeas petition, a federal court must determine that the state courts’ adjudication of a petitioner’s claims was “not only incorrect, but that it was objectively unreasonable”); see also *Cagle v. Branker*, 520 F.3d 320, 324 (4th Cir. 2008) (“[F]or a federal habeas court to overturn a state court’s credibility judgments, the state court’s error must be stark and clear.” (citing 28 U.S.C. § 2254(e)(1)(2012))). This court therefore finds unavailing Petitioner’s objections and further finds that the Magistrate Judge committed no clear error in dismissing this ground of Petitioner’s habeas petition on the merits.

III. CONCLUSION

For these reasons, the court **ADOPTS** the findings of the Magistrate Judge’s Report and Recommendation (ECF No. 37). It is therefore **ORDERED** that Respondent’s Motion for Summary Judgment (ECF No. 20) is **GRANTED** and Petitioner’s Petition for Writ of Habeas Corpus (ECF No. 1) is **DISMISSED** without an evidentiary hearing.

CERTIFICATE OF APPEALABILITY

The law governing certificates of appealability provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, Petitioner has not met the legal standard for the issuance of a certificate of appealability.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

March 15, 2016
Columbia, South Carolina