UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DOROTHY HOLLOWAY,	§	
TDCJ No. 02205748,	§	
	§	
Petitioner,	§	
	§	
v.	§	**CIVIL NO. SA-21-CA-0951-JKP**
	§	
BOBBY LUMPKIN, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Petitioner Dorothy Holloway's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1), wherein Petitioner challenges the constitutionality of her 2018 state court conviction for manslaughter. Also before the Court are Petitioner's supplemental memorandum in support (ECF No. 1-3), Respondent Bobby Lumpkin's Answer (ECF No. 11), and Petitioner's Reply (ECF No. 14) thereto.

Having reviewed the record and pleadings submitted by both parties, the Court concludes Petitioner is not entitled to relief under the standards prescribed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *See* 28 U.S.C. § 2254(d). Petitioner is also denied a certificate of appealability.

I. Background

The facts of Petitioner's case were accurately summarized by the Texas Fourth Court of Appeals on direct appeal:

> [Petitioner] was diagnosed with congestive heart failure, and a doctor prescribed a LifeVest for her to wear at all times, with the exception of when she showered. A LifeVest is an external defibrillator that administers a shock when a

> patient is at risk of cardiac arrest. [Petitioner] was driving a vehicle without wearing the LifeVest when she suffered a cardiac arrest and crashed into another vehicle. The driver of the other vehicle died at the scene, and [Petitioner] was subsequently charged with manslaughter.

Holloway v. State, No. 04-18-00481-CR, 2019 WL 6888534, at *1 (Tex. App.—San Antonio, Dec. 18, 2019, pet. ref'd); (ECF No. 12-3). After hearing all of the evidence, a Bexar County jury convicted Petitioner of manslaughter in June 2018 and subsequently sentenced her to fourteen years of imprisonment. *State v. Holloway*, No. 2017CR0541 (226th Dist. Ct., Bexar Cnty., Tex. June 25, 2018); (ECF No. 12-25 at 47-48).

The Texas Fourth Court of Appeals affirmed Petitioner's conviction and sentence in an unpublished opinion on direct appeal. *Holloway*, 2019 WL 6888534; (ECF No. 12-3). The Texas Court of Criminal Appeals then refused her petition for discretionary review. *Holloway v. State*, No. 0047-20, 2020 WL 3270302 (Tex. Crim. App. June 17, 2020). Thereafter, Petitioner challenged the constitutionality of her conviction by filing an application for state habeas corpus relief. *Ex parte Holloway*, No. 93,020-01 (Tex. Crim. App.); (ECF No. 13-32 at 4-22). Based, in part, on the findings of the state habeas trial court, the Texas Court of Criminal Appeals eventually denied the application without written order. (ECF No. 3-30).

Petitioner initiated the instant proceedings by filing a petition for federal habeas corpus relief on October 6, 2021. (ECF No. 1). In the petition and accompanying memorandum in support (ECF No. 1-3), Petitioner raises three allegations that were rejected by the Texas Court of Criminal Appeals during her direct appeal and state habeas proceedings: (1) her trial counsel rendered ineffective assistance by overriding Petitioner's desire to testify on her own behalf, (2) trial counsel was ineffective for failing to interview or present certain witnesses at the guilt/innocence phase and punishment phase, and (3) the evidence was insufficient to support a conviction for manslaughter under Texas law.

II. Standard of Review

Petitioner's federal habeas petition is governed by the heightened standard of review provided by the AEDPA. 28 U.S.C.A. § 2254. Under § 2254(d), a petitioner may not obtain federal habeas corpus relief on any claim that was adjudicated on the merits in state court proceedings unless the adjudication of that claim either: (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. *Brown v. Payton*, 544 U.S. 133, 141 (2005). This intentionally difficult standard stops just short of imposing a complete bar on federal court relitigation of claims already rejected in state proceedings. *Harrington v. Richter*, 562 U.S. 86, 102 (2011) (citing *Felker v. Turpin*, 518 U.S. 651, 664 (1996)).

A federal habeas court's inquiry into unreasonableness should always be objective rather than subjective, with a focus on whether the state court's application of clearly established federal law was "objectively unreasonable" and not whether it was incorrect or erroneous. *McDaniel v. Brown*, 558 U.S. 120 (2010); *Wiggins v. Smith*, 539 U.S. 510, 520-21 (2003). Even a strong case for relief does not mean the state court's contrary conclusion was unreasonable, regardless of whether the federal habeas court would have reached a different conclusion itself. *Richter*, 562 U.S. at 102. Instead, a petitioner must show that the decision was objectively unreasonable, which is a "substantially higher threshold." *Schriro v. Landrigan,* 550 U.S. 465, 473 (2007); *Lockyer v. Andrade*, 538 U.S. 63, 75-76 (2003).

So long as "fairminded jurists could disagree" on the correctness of the state court's decision, a state court's determination that a claim lacks merit precludes federal habeas

relief. *Richter*, 562 U.S. at 101 (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). In other words, to obtain federal habeas relief on a claim previously adjudicated on the merits in state court, Petitioner must show that the state court's ruling "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 103; *see also Bobby v. Dixon*, 565 U.S. 23, 24 (2011).

III. Merits Analysis

A. Trial Counsel (Claims 1 and 2).

Petitioner first claims she was denied the right to effective assistance of trial counsel. Specifically, Petitioner claims that her trial counsel: (1) prevented her from testifying on her own behalf at the guilt/innocence phase, and (2) failed to interview or present certain witnesses at both the guilt/innocence phase and punishment phase. Petitioner raised these allegations during her state habeas proceedings, which were rejected by the Texas Court of Criminal Appeals. As discussed below, Petitioner fails to demonstrate the state court's rejection of these allegations was either contrary to, or an unreasonable application of, Supreme Court precedent.

1. The *Strickland* Standard

The Court reviews Sixth Amendment claims concerning the alleged ineffective assistance of trial counsel (IATC claims) under the familiar two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, Petitioner cannot establish a violation of her Sixth Amendment right to counsel unless she demonstrates (1) counsel's performance was deficient and (2) this deficiency prejudiced her defense. 466 U.S. at 687-88, 690. According to the Supreme Court, "[s]urmounting *Strickland*'s high bar is never an easy task." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010).

When determining whether counsel performed deficiently, courts "must be highly deferential" to counsel's conduct, and a petitioner must show that counsel's performance fell beyond the bounds of prevailing objective professional standards. *Strickland,* 466 U.S. at 687-89. Counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Burt v. Titlow*, 571 U.S. 12, 22 (2013) (quoting *Strickland*, 466 U.S. at 690). To demonstrate prejudice, a petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. Under this prong, the "likelihood of a different result must be substantial, not just conceivable." *Richter*, 562 U.S. at 112. A habeas petitioner has the burden of proving both prongs of the *Strickland* test. *Wong v. Belmontes*, 558 U.S. 15, 27 (2009).

Finally, IATC claims are considered mixed questions of law and fact and are analyzed under the "unreasonable application" standard of 28 U.S.C. § 2254(d)(1). *See Gregory v. Thaler*, 601 F.3d 347, 351 (5th Cir. 2010). Where, as here, the state court adjudicated the IATC claims on the merits, a court must review a petitioner's claims under the "doubly deferential" standards of both *Strickland* and Section 2254(d). *See Woods v. Etherton*, 136 S. Ct. 1149, 1151 (2016) (citing *Cullen v. Pinholster*, 563 U.S. 170, 190 (2011)); *Knowles v. Mirzayance*, 556 U.S. 111, 112 (2009). In such cases, the "pivotal question" is not "whether defense counsel's performance fell below *Strickland*'s standards," but whether "the state court's application of the *Strickland* standard was unreasonable." *Richter*, 562 U.S at 101. That is to say, the question to be asked in this case is not whether counsel's actions were reasonable, but whether "there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Id*. at 105.

2. Petitioner's Right to Testify

Petitioner contends that her trial counsel, Abelardo Garza, rendered ineffective assistance by ignoring her desire to testify at the guilt/innocence phase of trial. According to Petitioner, she affirmatively stated to counsel that she wanted to testify, but counsel "over-rode" Petitioner's decision due to his belief that her testifying was a bad idea. Petitioner contends that counsel never explained that she had a constitutional right to testify on her own behalf and that the ultimate decision on whether or not to testify belonged to her alone.

Petitioner is correct that a defendant has a fundamental constitutional right to testify in her own behalf. *Rock v. Arkansas*, 483 U.S. 44, 49-52 (1987). This right belongs to the defendant personally, and cannot be waived by counsel. *Emery v. Johnson,* 139 F.3d 191, 198 (5th Cir. 1997). However, "[a] defendant who argues that his attorney prevented him from testifying must still satisfy the two prongs of *Strickland.*" *United States v. Harris,* 408 F.3d 186, 192 (5th Cir. 2005). Under *Strickland*, this Court's inquiry must be on "whether or not [Petitioner] made a knowing waiver of [her] right to testify." *Bower v. Quarterman,* 497 F.3d 459, 473-74 (5th Cir. 2007). Assuming counsel adequately informed Petitioner of her right to testify, the Court must then evaluate counsel's strategy in advising Petitioner against exercising that right. *Id.* Even then, "it cannot be permissible trial strategy, regardless of its merits otherwise, for counsel to override the ultimate decision of a defendant to testify contrary to his advice." *United States v. Mullins,* 315 F.3d 449, 453 (5th Cir. 2002) (citation omitted).

During Petitioner's state habeas proceedings, Petitioner argued that her counsel failed to explain that she had a right to testify on her own behalf, notwithstanding counsel's belief that it was a bad idea. Petitioner recounted a meeting she had with counsel during the guilt/innocence phase where she affirmatively stated her desire to testify, but counsel nonetheless refused to put

her on the stand. To support her allegation, Petitioner provided the affidavits of two witnesses who were allegedly present for this meeting—Theresa Holloway (her daughter) and James Taylor. In response, counsel submitted an affidavit explaining that he advised Petitioner against testifying on her own behalf but informed her that the decision was hers to make:

> [Petitioner] was given every opportunity to testify during both the guilt and punishment phases of trial. There was an extensive discussion between co-counsel Erik Reynolds, myself and [Petitioner] regarding the advantages and disadvantages of her testifying during the guilt phase of the trial. Based on our conversations, it was our (the attorneys) advice that she would have more to lose than gain. We had already limited much of her drug issues from being presented to the jury and if she were to testify, they could possibly come out even more. The decision to testify was always hers. We did advise her that if she did, we would put on the record, outside the presence of the jury, and that she would do so against our professional advice. We always indicated to her it was her decision and hers alone whether to testify or not. During the guilt phase she decided not to on her own. She did testify during the punishment phase.

(ECF No. 13-32 at 79).

Trial counsel's affidavit directly contradicts Petitioner's allegation that she was not informed of her right to testify. Petitioner claims that counsel never informed her that the decision was hers to make, regardless of counsel's advice. Counsel's affidavit states the opposite—that she was advised that the decision to testify was hers alone, that doing so was against counsel's professional advice, and that Petitioner ultimately chose not to testify. In other words, this issue comes down to credibility.

The state habeas trial court ultimately found trial counsel's affidavit to be truthful and credible and concluded that Petitioner failed to prove that counsel was ineffective under the *Strickland* standard. (ECF No. 13-32 at 72-78). The Texas Court of Criminal Appeals adopted these findings and conclusions when it denied Petitioner's state habeas application. (ECF No. 13-30). These determinations, including the trial court's credibility findings, are entitled to a presumption of correctness unless they lack fair support in the record. *Demosthenes v. Baal*, 495

U.S. 731, 735 (1990); *Miller v. Thaler*, 714 F.3d 897, 903 (5th Cir. 2013). Indeed, such credibility determinations, made on the basis of conflicting evidence, are "virtually unreviewable" by the federal courts. *Pippin v. Dretke,* 434 F.3d 782, 792 (5th Cir. 2005) (quoting *Moore v. Johnson,* 194 F.3d 586, 605 (5th Cir. 1999)). Given the heavy deference afforded to state courts to determine the credibility of witnesses, this Court finds that Petitioner failed to demonstrate that counsel did not adequately inform her of her right to testify or that her subsequent waiver of that right was unknowing and involuntary under *Strickland*. *Bower,* 497 F.3d at 473; *see also Marshall v. Lonberger,* 459 U.S. 422, 434 (1983) ("28 U.S.C. § 2254(d) gives federal habeas courts no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them.").

Similarly, Petitioner has not shown that counsel's strategy in advising Petitioner against taking the stand was unreasonable. Petitioner contends that, had she been allowed to take the stand, she would have testified to the following: (1) she had not used methamphetamine on or before the day of the accident, nor told anyone at the hospital that she had, (2) her November 2015 instruction session with the representative from LifeVest lasted only ten minutes and did not include an instruction that she must always wear the LifeVest when driving, and (3) the LifeVest had repeatedly malfunctioned since it was issued. (ECF No. 1-3 at 5-6).

In response, counsel stated that he and co-counsel advised Petitioner not to testify because she had "more to lose than gain." (ECF No. 13-32 at 79). Counsel explained that the defense already had an expert witness testify regarding the LifeVest and drug issues, and had also successfully limited much of Petitioner's drug issues from being presented to the jury. If Petitioner chose to testify, the State could have inquired further into her prior drug use. The state habeas trial court agreed, finding counsel's reasoning for not calling Petitioner to the stand to be

a reasonable trial strategy. (ECF No. 13-32 at 72-78). The court concluded that Petitioner failed to prove counsel was ineffective under the *Strickland* standard, a conclusion that was eventually adopted by the Texas Court of Criminal Appeals. (ECF No. 13-30).

Petitioner fails to show that the state court's ruling on trial counsel's strategy was contrary to, or involved an unreasonable application of *Strickland* or that it was an unreasonable determination of the facts based on the evidence in the record. Trial counsel have broad discretion when it comes to deciding how best to proceed strategically. *See Ward v. Stephens*, 777 F.3d 250, 264 (5th Cir. 2015) (the Supreme Court has emphasized counsel has "wide latitude in deciding how best to represent a client") (citation omitted). There is also "a strong presumption that counsel's decision not to place [a defendant] on the stand was sound trial strategy." *Bower,* 497 F.3d at 473 (citing *Sayre v. Anderson,* 238 F.3d 631, 635 (5th Cir. 2001)).

Here, Petitioner has made no argument rebutting counsel's strategic reasons for advising Petitioner not to testify, much less demonstrated that the state court's ruling on trial counsel's strategy "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103. Consequently, viewing this allegation under the deferential standard that applies on federal habeas review, Petitioner has not shown that the state court's decision was objectively unreasonable or that he is entitled to relief on his IATC claim. Federal habeas corpus relief is therefore denied.

3. Failure to Call Witnesses

In her next IATC claim, Petitioner contends trial counsel should have called her daughter, Theresa Holloway, as a witness at the guilt/innocence phase. While Theresa testified at the punishment phase, Petitioner argues that counsel did not interview or prepare her to testify, nor

inquire about her testifying at the guilt/innocence phase. Had Theresa been called at the guilt/innocence phase, she would have testified about (1) Petitioner's November 2015 instruction session with the representative from LifeVest that lasted only ten minutes and did not include an instruction for Petitioner to always wear the LifeVest when driving, (2) the LifeVest had repeatedly malfunctioned since the time it was issued in November 2015 until the accident in December 2015, and (3) Petitioner took a number of medications daily but she was not aware of Petitioner taking any illegal drugs since 2013. (ECF No. 1-2) (affidavit of Theresa Holloway).

Petitioner also faults counsel for not interviewing or calling James Taylor to testify at either the guilt/innocence or punishment phases. Taylor allegedly would have testified that Petitioner is a good and truthful person who had expressed concern about the LifeVest malfunctioning. (ECF No. 1-1) (affidavit of James Taylor).

Both of these allegations were raised during Petitioner's state habeas proceedings. In response, counsel submitted an affidavit stating that an expert witness testified about the LifeVest. (ECF No. 13-32 at 79-80). Counsel also indicated that he initially planned to call Theresa at the guilt/innocence phase, but he and co-counsel were ultimately not comfortable with her proposed testimony because she indicated that she would say whatever counsel needed her to say. *Id*. As with the previous IATC allegation, the state habeas trial court found trial counsel's affidavit to be credible and concluded that Petitioner failed to prove that counsel was ineffective under the *Strickland* standard. (ECF No. 13-32 at 76). The Texas Court of Criminal Appeals then adopted these findings and conclusions. (ECF No. 13-30).

Petitioner fails to show that the state court's ruling on trial counsel's investigation and strategy was an unreasonable application of *Strickland* or an unreasonable determination of the facts based on the evidence in the record. *Strickland* requires counsel to undertake a reasonable

investigation. 466 U.S. at 690-91; *Charles v. Stephens*, 736 F.3d 380, 389 (5th Cir. 2013). Counsel must, at minimum, interview potential witnesses and make an independent investigation of the facts and circumstances of the case. *Kately v. Cain*, 704 F.3d 356, 361 (5th Cir. 2013). But in assessing the reasonableness of counsel's investigation, a heavy measure of deference is applied to counsel's judgments and is weighed in light of the defendant's own statements and actions. *Strickland*, 466 U.S. at 691. This wide latitude given to trial counsel includes the discretion to determine how best to utilize limited investigative resources available. *Richter*, 562 U.S. at 107 ("Counsel was entitled to formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies.").

In this case, trial counsel's affidavit—adopted by the state habeas court and ultimately by the Texas Court of Criminal Appeals—explained that counsel was uncomfortable with calling Theresa as a witness at the guilt/innocence phase due to her willingness to say whatever counsel wanted her to say. The state habeas court found this to be a reasonable strategic decision, as Theresa's statements suggest a willingness to lie under oath, and counsel is not obligated to put witnesses on the stand they suspect may be untruthful. (ECF No. 13-32 at 76). Furthermore, although counsel did not explain his decision not to call James Taylor as a witness, the state habeas court presumed the strategy was reasonable because Taylor's proposed testimony was "not highly probative for the defense." *Id*.

Petitioner has provided no persuasive argument rebutting counsel's affidavit, much less demonstrated that the state court's ruling on trial counsel's investigation and strategy "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103. Consequently, given the deference afforded state court determinations on federal habeas review, relief is denied.

B. Sufficiency of the Evidence (Claim 3).

Lastly, Petitioner contends the State failed to present legally sufficient evidence to support her manslaughter conviction because there was no evidence that she was aware of a risk that her failure to follow medical instructions could cause someone else's death. Specifically, citing Section 6.03(c) of the Texas Penal Code, Petitioner asserts that she was not aware of "a substantial and unjustifiable risk" that someone else's death could occur as a result of her failure to wear the LifeVest.

Petitioner's allegation was rejected by the state appellate court on direct appeal and again by the Texas Court of Criminal Appeals when it refused Petitioner's petition for discretionary review. As discussed below, Petitioner fails to show that either court's determination was contrary to, or involved an unreasonable application of, federal law, or that it was an unreasonable determination of the facts based on the evidence in the record.

1. The *Jackson* Standard

In *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), the Supreme Court enunciated the standard of review when a state prisoner challenges the sufficiency of the evidence in a federal habeas corpus proceeding. The Court stated the issue to be "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id*. In applying this standard, the Court went on to say that "[t]his familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Id*. Thus, all credibility choices and conflicts in inferences are to be resolved in favor of the verdict. *United States v. Resio-Trejo,* 45 F.3d 907, 911 (5th Cir. 1995); *United States v. Nguyen,* 28 F.3d 477, 480 (5th Cir. 1994).

In addition, AEDPA imposes a "twice-deferential standard" when a federal court reviews a state prisoner's claim challenging the sufficiency of the evidence. *Parker v. Matthews*, 567 U.S. 37, 43 (2012). As the Supreme Court has explained:

> The opinion of the Court in *Jackson v. Virginia* . . . makes clear that it is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. What is more, a federal court may not overturn a state court decision rejecting a sufficiency of the evidence challenge simply because the federal court disagrees with the state court. The federal court instead may do so only if the state court decision was "objectively unreasonable."

Cavazos v. Smith, 565 U.S. 1, 2 (2011) (citations omitted).

2. Application of the *Jackson* Standard

Petitioner raised her insufficient evidence claim during her direct appeal proceedings, but the Texas Court of Criminal Appeals refused Petitioner's petition for discretionary review without written order. *Holloway*, 2020 WL 3270302. Thus, this Court "should 'look through' the unexplained decision to the last related state-court decision" providing particular reasons, both legal and factual, "presume that the unexplained decision adopted the same reasoning," and give appropriate deference to that decision. *Wilson v. Sellers*, 138 S. Ct. 1188, 1191-92 (2018); *Uranga v. Davis*, 82 F.3d 282, 287 n.33 (5th Cir. 2018). In other words, the Court must look to the last reasoned state judgment that considered and rejected Petitioner's insufficient evidence claim when reviewing the claim under the doubly deferential standard set forth in *Jackson*. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991).

In this case, the last reasoned state court decision was issued by the intermediate court of appeals, which concluded that there was sufficient evidence of Petitioner's mental state to support her conviction for manslaughter:

The jury was charged to find [Petitioner] guilty of manslaughter if it found:

> from the evidence beyond a reasonable doubt that on or about the 6th Day of December, 2015, in Bexar County, Texas, the defendant, Dorothy A Holloway, did recklessly cause the death of an individual, namely, Kristian Maldonado, by disregarding a known risk of heart failure, or operating a motor vehicle contrary to medical instructions, or failing to follow medical aftercare instructions, or operating a motor vehicle after consuming an illegal substance, which acts or omissions resulted in the motor vehicle being driven by Dorothy Holloway to collide with the motor vehicle driven by Kristian Maldonado.

Consistent with the Texas Penal Code's definition of reckless, the jury was also instructed:

> A person acts recklessly, or is reckless, with respect to the result of her conduct when she is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Viewing the evidence in the light most favorable to the jury's verdict, the jury could have found [Petitioner] was diagnosed in August of 2015 with congestive heart failure after she was admitted to a hospital through an emergency room. [Petitioner]'s ejection fraction, which measures the amount of blood the heart can pump out, was between thirty and thirty-five percent. A normal ejection fraction is sixty to seventy percent, and an ejection fraction of thirty percent is considered severely depressed. With an ejection fraction of thirty-five percent, [Petitioner] was at risk for cardiac arrest. Although the jury was presented with evidence that various factors could cause congestive heart failure, the jury could have found [Petitioner]'s heart failure was caused by long-term use of methamphetamine. Such a finding is particularly supported by evidence showing [Petitioner] underwent a heart catherization procedure, and the results showed the decreased ejection fraction was not caused by any blockage. The standard medical protocol for congestive heart failure is to begin a regime of medicine to determine if the patient improves. As a result, [Petitioner] was discharged from the hospital with multiple prescriptions. None of the prescriptions contained any amphetamine. Prior to discharge, [Petitioner] was informed about her condition and its risks. [Petitioner]'s discharge instructions did not state that she should avoid driving, and neither the treating cardiologist or hospitalist were aware of a hospital policy imposing a driving restriction on a patient with an ejection fraction of thirty-five percent.

On November 20, 2015, [Petitioner] returned to the hospital after experiencing shortness of breath for two days. In the social history she provided at admission, [Petitioner] denied any use of recreational drugs except her use of methamphetamine a year to a year-and-a-half earlier when she lost her mother. The hospital's emergency provider report noted [Petitioner] was uncooperative with nursing staff while they were attempting to secure an IV. The report noted [Petitioner] became agitated and began yelling. In response, she was told about the need to stay and possibly be admitted or risk death or respiratory failure. Although the report stated [Petitioner] initially decided to leave against medical advice, she eventually agreed to stay and be evaluated after a lengthy discussion with the charge nurse.

The treating hospitalist testified [Petitioner]'s congestive heart failure was worsening, and the hospital records reflect [Petitioner]'s ejection fracture had decreased to twenty-five to thirty percent. The hospitalist also testified [Petitioner] was not compliant in taking her medication. Although the hospitalist agreed [Petitioner]'s lack of insurance could have been a contributing cause of her noncompliance, he also noted the hospital system made prescriptions available on a sliding income scale and Medicaid also would provide coverage. One of the treating cardiologists testified the medications prescribed for [Petitioner] were "very low cost medications" and could be purchased for $4.00 without insurance.

Because of her worsening condition and her risk of sudden cardiac arrest, [Petitioner] was provided a LifeVest on November 23, 2015. A LifeVest is an external cardiac defibrillator capable of shocking a patient's heart in the event of a cardiac arrest. The LifeVest warns the patient if the patient's heart rate is at a level where a shock is impending. The shock is intended to normalize the patient's heart so as to avoid a cardiac arrest. The patient, however, can manually override the shock. [Petitioner] was trained on using the LifeVest and instructed to wear it at all times except when she showered. Specifically, the cardiologist who was treating [Petitioner] at the hospital testified as follows with regard to [Petitioner]'s wearing of the LifeVest:

Q. Okay. And how often should you wear the LifeVest?

A. All the time except for in the shower.[1]

Q. Okay. And does that include when you're driving?

A. Yes.

Q. Why is it important that they wear the LifeVest at all times—let me rephrase that. Why is it important that [Petitioner] wears the LifeVest at all times?

[1] The cardiology fellow who treated [Petitioner] in the hospital following the accident similarly testified that a patient prescribed a LifeVest is "told to wear it at all times except when they go to shower."

A. She has congestive heart failure with a depressed ejection fraction. When you have congestive heart failure with a depressed ejection fraction you're at risk for cardiac arrest, for sudden cardiac death. Generally, that's from an irregular heart rhythm and as a result this LifeVest can monitor the heart rhythm and shock the heart into a normal rhythm if the device picks up the rhythm.

The cardiologist further testified that if [Petitioner] drove without the LifeVest upon her discharge in November of 2015, she was at risk for sudden cardiac death. When asked whether [Petitioner] was made aware of that risk, the cardiologist testified as follows:

A. It's my understanding when she's counseled by the fitting person, that they discuss that. I discuss that as well with my patients, typically.

Q. And when you say you discuss it, do you discuss that based on her diagnosis she is at risk for sudden cardiac death?

A. For dying, yes.

With regard to the effect [Petitioner]'s use of methamphetamine would have on her heart condition, the cardiologist testified:

Methamphetamines are a toxin to the heart. They also cause high blood pressure and hypertension. And it could cause a rhythm disturbance, it could cause congestive heart failure exacerbation and potentially cardiac arrest.

When the cardiologist was asked if he would counsel patients with congestive heart failure not to use illegal drugs, the cardiologist responded, "Typically, yes."

[Petitioner] was discharged from the hospital on November 24, 2015. The day prior to her discharge, the nursing notes in the hospital records reflect that staff had to prevent [Petitioner] from going outside to smoke a cigarette. The notes further state [Petitioner] became volatile and irate and refused to allow nursing staff to remove her IV before leaving the unit. [Petitioner] eventually returned to her room after security was called to assist.

The nursing notes from the date [Petitioner] was discharged state [Petitioner] became very irate with staff when she was offered a Nicotine patch when she wanted to go outside and smoke. The notes further state [Petitioner] disconnected herself from the LifeVest "stating she would put it back on again at discharge."

The hospital discharge summary states [Petitioner] was admitted for acute exacerbation of congestive heart failure, abbreviated as CHF. The summary also notes [Petitioner] "uses methamphetamines which likely worsened her CHF." Finally, the summary states [Petitioner] was "advised to quit using drugs."

The trends report from the LifeVest provided to [Petitioner] showed she wore the LifeVest the entire day on November 24, 25, 26, 29, 30, and December 1. She wore the LifeVest for a brief period on November 27, and did not wear the LifeVest on November 28. On December 2, 2015, the trends report showed [Petitioner] was warned of an impending shock due to her elevated heart rate. She manually overrode the alarm twelve times before she removed the LifeVest and never put it back on. Although evidence was presented suggesting the possibility that the LifeVest was functioning improperly, evidence was also presented regarding the actions [Petitioner] should have taken to contact the company, and the records from [Petitioner]'s LifeVest showed it was working and did not show any maintenance issues. When a corporate representative from LifeVest was asked about a conscious patient's need to override the alarm twelve times, she responded:

> [I]n this particular problem of heart arrhythmias there are no symptoms. At most you may have some dizziness a half a second before you lose consciousness. It's not like having a heart attack, there's no symptoms leading up to it, which is why we enforce compliance.

The notes from the cardiologist who treated [Petitioner] after the accident state [Petitioner] reported she "has known heart failure with EF of 20% for which she was given a life vest to wear to prevent sudden cardiac arrest." [Petitioner] also reported "during an argument with her boyfriend the day before admission the machine warned her of an impending shock which caused her to remove the vest out of fear and has not worn it since." The day before [Petitioner]'s admission was December 5, 2015 which was three days after the records show [Petitioner] removed the LifeVest.

On December 6, 2015, witnesses observed [Petitioner] passed out behind the wheel of her vehicle while the vehicle was traveling at a high rate of speed on a divided highway. [Petitioner]'s vehicle veered across the median into oncoming traffic and crashed into a vehicle driven by Maldonado, who died at the scene. [Petitioner] was not wearing her LifeVest. A passerby, a nurse, stopped and immediately began performing CPR on [Petitioner] until EMS arrived. After EMS administered one shock, [Petitioner]'s heart returned to a normal rhythm. [Petitioner] was intubated and unconscious but maintained a heart rate and was breathing on her own in route to the hospital from the scene of the accident. At the hospital, [Petitioner] tested positive for amphetamine which the evidence established is a derivative of methamphetamine; however, the test results did not

quantify the level of amphetamine in [Petitioner]'s system.[2] Although evidence was presented regarding certain over-the-counter medications containing amphetamine, the jury could have inferred the positive test results showed [Petitioner] had used methamphetamine, especially given: (1) the cardiology fellow also testified methamphetamine could have been the cause of [Petitioner]'s cardiac arrest; (2) the notes of the cardiologist who treated [Petitioner] after the accident state "[m]ethamphetamine use may have precipitated" the cardiac arrest; (3) [Petitioner]'s daughter reported [Petitioner] continued to smoke methamphetamine twice a month; (4) [Petitioner] stated during a psychiatric consultation that her use of methamphetamine had been "pretty spotty" the past few weeks, she could not recall if she used methamphetamine before the accident, but she knew her use of methamphetamine led to her heart issues that contributed to the car accident and she planned to stop using methamphetamine on her own; and (5) the cardiologist's notes state [Petitioner] admitted using methamphetamine in the "days leading up to her hospitalization" and had "used it off and on for the last year." The evidence established the use of methamphetamine would increase [Petitioner]'s heart rate and blood pressure, and, based on the evidence, the jury could have found [Petitioner]'s use of methamphetamine caused the cardiac arrest [Petitioner] experienced while driving.

Based on the foregoing, and the applicable standard of review which allows a jury to draw any reasonable inference supported by the record, the jury could have found [Petitioner] caused Maldonado's death by driving without the LifeVest after using methamphetamine. Given her medical history and the medical advice she had been given, the jury could have found [Petitioner] was consciously aware and consciously disregarded the "substantial and unjustifiable" risk that driving without the LifeVest after using methamphetamine would result in her experiencing a cardiac arrest while driving and cause an accident resulting in death. The jury could also have found that the risk was of such a magnitude that disregarding the risk was a gross deviation from the standard of care a reasonable person would have exercised. Accordingly, having reviewed the evidence and deferring to the jury's assessment of the credibility of the witnesses and the weight to be given the evidence, we hold the combined and cumulative force of the admitted evidence and the reasonable inferences the jury was permitted to draw are sufficient to support [Petitioner]'s conviction.[3] Our holding

---

[2] During closing argument, the State asserted, "This is not about intoxication, that has come up. The State is not alleging intoxication in this case. We just don't think that's what is there. We're alleging recklessness. We're not saying [Petitioner] was intoxicated when she killed Kristian, we're saying she was reckless."

[3] In her brief, [Petitioner] cites this court's opinion in *Britain v. State* which was affirmed by the Texas Court of Criminal Appeals. 392 S.W.3d 244 (Tex. App.—San Antonio 2012), *aff'd*, 412 S.W.3d 518 (Tex. Crim. App. 2013). In *Britain*, an eight-year-old child's stepmother was convicted by a jury of manslaughter for recklessly causing the death of the child by failing to seek medical treatment. 392 S.W.3d at 245. This court held the evidence was legally insufficient to support the jury's verdict. *Id.* at 249. Unlike the instant case where the medical professionals consistently testified regarding [Petitioner]'s chronic medical condition and the requisite treatment to avoid sudden cardiac death, the testimony of the five medical professionals in *Britain* "was conflicting" with regard

> in this appeal is narrowly tailored to the specific evidence presented in this case and should not be read more broadly.

Holloway, 2019 WL 6888534, at *4-7; (ECF No. 12-3 at 6-12).

Petitioner fails to show that the state court's determination was contrary to, or involved an unreasonable application of, federal law, or that it was an unreasonable determination of the facts based on the evidence in the record. Again, a state appellate court's determination is entitled to great deference when, as was done in this case, the court conducted a thorough and thoughtful review of the evidence. *Callins v. Collins*, 998 F.2d 269, 276 (5th Cir. 1993). As with the state appellate court, this Court has independently reviewed the record and finds the evidence sufficient to support the verdict. Thus, viewing all of the evidence under the doubly deferential standard that applies on federal habeas review, Petitioner has not shown that the state court's decision was objectively unreasonable or that she is entitled to relief under *Jackson*. Federal habeas relief is therefore denied.

IV. Certificate of Appealability

The Court must now determine whether to issue a certificate of appealability (COA). *See* Rule 11(a) of the Rules Governing Section 2254 Proceedings; *Miller–El v. Cockrell,* 537 U.S. 322, 335-36 (2003) (citing 28 U.S.C. § 2253(c)(1)). A COA may issue only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). If a district court rejects a petitioner's constitutional claims on the merits, the petitioner must demonstrate "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel,* 529 U.S. 473, 484 (2000). This requires a petitioner to show "that reasonable jurists could debate whether the petition should

---

to the child's "level of risk, the cause of death, and the ease of diagnosis." 412 S.W.3d at 522. Accordingly, the facts in *Britain* are readily distinguishable from the instant case.

have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller–El*, 537 U.S. at 336 (citation omitted).

A district court may deny a COA *sua sponte* without requiring further briefing or argument. *See Alexander v. Johnson,* 211 F.3d 895, 898 (5th Cir. 2000). For the reasons set forth above, the Court concludes that jurists of reason would not debate the conclusion that Petitioner was not entitled to federal habeas relief. As such, a COA will not issue.

V. Conclusion and Order

Petitioner has failed to establish that the state court's rejection of the aforementioned claims on the merits during her direct appeal and/or state habeas proceedings was either (1) contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States, or (2) based on an unreasonable determination of the facts in light of the evidence presented during Petitioner's state trial, appellate, and habeas corpus proceedings.

Accordingly, based on the foregoing reasons, **IT IS HEREBY ORDERED** that:

1. Federal habeas corpus relief is **DENIED** and Petitioner Dorothy Holloway's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED WITH PREJUDICE**;

2. No Certificate of Appealability shall issue in this case; and

3. All other motions, if any, are **DENIED**, and this case is now **CLOSED**.

SIGNED this the 23rd day of March, 2023.

JASON PULLIAM
UNITED STATES DISTRICT JUDGE