

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEROME JOSEPH McFIELD,

CASE NO. 21-5250 RJB-SKV

Petitioner,

ORDER ADOPTING REPORT AND RECOMMENDATION

DANIEL W. WHITE,

Respondent.

This matter comes before the Court on the Report and Recommendation of U.S.

Magistrate Judge S. Kate Vaughan. Dkt. 11. The Court has considered the Report and

Recommendation, the Petitioner's Objections, and the remaining record.

In this petition, brought under 28 U.S.C. § 2254, the Petitioner challenges his 2018

judgment and sentence based on his guilty plea. Dkt. 1. He raises two grounds for relief:

ineffective assistance of counsel and voluntariness of his plea. *Id.* On August 24, 2021, the

Report and Recommendation was filed, recommending that the petition be denied and a

1 certificate of appealability be denied. Dkt. 11. The facts and procedural background are in the
2 Report and Recommendation (Dkt. 11) and are adopted here.

3 In his objections, Petitioner argues that the Report and Recommendation erred in
4 concluding that trial counsel's performance was sufficient in advising the Petitioner to take the
5 plea because trial counsel failed to obtain all discovery (in particular over 250 photographs of the
6 scene) and share them with the Petitioner. Dkt. 12. Accordingly, the Petitioner reasons, he
7 could not have knowingly entered a plea of guilt. *Id.*

8 The Report and Recommendation (Dkt. 11) should be adopted and the petition dismissed.
9 As stated in the Report and Recommendation, the state courts properly analyzed counsel's
10 performance under *Strickland v. Washington*, 466 U.S. 668 (1984). The Petitioner failed to
11 demonstrate deficient performance in relation to acquiring the scene photographs or other
12 discovery and sharing them with Petitioner. Further, Petitioner failed to show prejudice. He did
13 not demonstrate that "but for" counsel's errors – that Petitioner's direct review of all evidence
14 including the photographs – would have changed his decision to plead guilty and that he would
15 have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). As recommended in the
16 Report and Recommendation, the state courts reasonably rejected Petitioner's challenge to the
17 voluntariness of his guilty plea.

18 Further, the Report and Recommendation's recommendation that the certificate of
19 appealability be denied should also be adopted. The district court should grant an application for
20 a certificate of appealability only if the petitioner makes a "substantial showing of the denial of a
21 constitutional right." 28 U.S.C. § 2253(c)(3). To obtain a certificate of appealability under 28
22 U.S.C. § 2253(c), a *habeas* petitioner must make a showing that reasonable jurists could disagree
23 with the district court's resolution of his or her constitutional claims or that jurists could agree
24

1 the issues presented were adequate to deserve encouragement to proceed further. *Slack v.*
2 *McDaniel*, 529 U.S. 473, 483–485 (2000) (*quoting Barefoot v. Estelle*, 463 U.S. 880, 893 n.4
3 (1983)).

4 Petitioner’s objections do not provide a basis to reject the Report and Recommendation’s
5 recommendation that a certificate of appealability be denied. Petitioner has failed to make a
6 “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253 (c)(3). He did not
7 show that “reasonable jurists could disagree” with the resolution of his claims or that jurists of
8 reason could agree that the issues presented were adequate to deserve encouragement to proceed
9 further. *Slack*, at 483-485. The Report and Recommendation should be adopted, and a
10 Certificate of Appealability should be denied.

11 **ORDER**

12 It is **ORDERED** that:

13 • The Report and Recommendation (Dkt. 11) **IS ADOPTED**;
14 • The petition **IS DENIED**;
15 • The Certificate of Appealability **IS DENIED**; and
16 • This case **IS DISMISSED**.

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
18 to any party appearing pro se at said party’s last known address.

19 Dated this 6th day of October, 2021.

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22 ROBERT J. BRYAN
23 United States District Judge
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