

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 3, 2026

Christopher M. Wolpert
Clerk of Court

LARRY JONATHAN COLLINS,

Petitioner - Appellant,

v.

CHRISTE QUICK, Warden,

Respondent - Appellee.

No. 25-5156
(D.C. No. 4:22-CV-00422-GKF-CDL)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HARTZ, BACHARACH**, and **EID**, Circuit Judges.

Larry Collins, an Oklahoma prisoner proceeding pro se,¹ seeks a certificate of appealability (COA) to appeal the district court's denial of his application for relief under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2253(c)(1)(A). We deny a COA and dismiss the matter.

I. Background

An Oklahoma jury convicted Mr. Collins of first-degree murder and two counts of possession of a firearm by a convicted felon. He was sentenced to life imprisonment.

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ We liberally construe Mr. Collins's pro se filings but do not act as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

After an unsuccessful direct appeal, Mr. Collins sought postconviction relief in state court. In support of his state application, he submitted an affidavit purportedly signed by William Johnson, an associate who had testified against Mr. Collins at trial, stating that police threatened him and made him “lie on Larry Collins.” R. vol. I at 220. The state district court denied relief. Mr. Collins filed a Petition in Error, and the OCCA affirmed.

Mr. Collins next filed a § 2254 application in the United States District Court for the Northern District of Oklahoma asserting 13 grounds for relief.² The district court denied on the merits the five claims Mr. Collins had litigated on direct appeal: that the evidence was insufficient to support his convictions (Grounds 1 and 2); that the trial court failed to instruct the jury that Mr. Johnson was an accomplice whose testimony required corroboration (Ground 3); that trial counsel was ineffective in failing to request that instruction (Ground 4); and that the cumulative effect of these errors deprived him of a fair trial (Ground 5). It also denied claims that appellate counsel was ineffective for failing to challenge (1) the State’s use of Mr. Johnson’s allegedly perjured testimony and (2) the trial court’s refusal to substitute counsel (Grounds 12(1) and 12(2)). The court further held that Mr. Collins’s remaining trial-error and appellate-ineffectiveness claims (Grounds 6 through 11 and Grounds 12(3) through 12(6)) were procedurally defaulted, concluding that the OCCA had rejected them on an independent and adequate state procedural ground because he first raised them in his postconviction appeal. And it

² Mr. Collins’s COA application renumbers several of his claims from his § 2254 application. We refer to the claims by their numbers in his § 2254 application and in the district court’s review.

dismissed as noncognizable his due-process challenge to the state court's denial of a postconviction evidentiary hearing (Ground 13). Finally, the court denied a federal evidentiary hearing and declined to issue a COA. Mr. Collins now seeks a COA from this court.

II. Discussion

A COA will issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). The applicant must show that the district court's resolution of the claim was “debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where the district court has denied a claim on procedural grounds, the applicant must show both that the underlying constitutional claim is debatable and “that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.*

In assessing whether to grant a COA, we review Mr. Collins's claims under the restrictions on relief imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). When a claim has been adjudicated on the merits in state court, a federal court can grant him relief only if the state-court decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court,” or “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” § 2254(d)(1)–(2). For the claims that the OCCA adjudicated on the merits, then, we must determine whether reasonable jurists would debate the district court's decision given AEDPA deference to the state-court decision. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

A. Claims and Theories Not Presented in the § 2254 Application

Mr. Collins's COA application mentions a number of claims and theories never presented in his § 2254 application: a claim under *Brady v. Maryland*, 373 U.S. 83 (1963); a challenge to the joinder of his murder and firearm charges; a claim that the jury should have received a lesser-included-offense instruction; several claims faulting trial counsel for not objecting to the joinder of charges and not pressing various evidentiary challenges; and a Confrontation Clause claim based on the denial of cross-examination of Mr. Johnson.³ Because these claims and theories were not presented in his § 2254 application, we do not consider them. *See Heard v. Addison*, 728 F.3d 1170, 1175 (10th Cir. 2013).

B. Procedurally Defaulted Claims: Grounds 6 through 11 and 12(3) through 12(6)

Mr. Collins raised Grounds 6 through 11 and Grounds 12(3) through 12(6) for the first time in his Petition in Error to the OCCA, not in his state-court application for postconviction relief. The OCCA therefore declined to consider them under OCCA Rule 5.2(A), which permits a postconviction appeal only from issues raised in the state district court. *See* Rule 5.2(A), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2002). The federal district court held that Rule 5.2(A) is an independent and adequate state ground for rejecting a claim and the claims are therefore procedurally defaulted.

³ He also contends that the district court wrongly adopted a magistrate judge's recommendation without conducting its own review, but no magistrate judge made a recommendation.

Such a defaulted claim will not be reviewed unless the applicant shows cause and prejudice or a fundamental miscarriage of justice. *See Coleman v. Thompson*, 501 U.S. 722, 750 (1991). The district court found neither.⁴

In his COA application, Mr. Collins argues the default should be excused because appellate counsel was ineffective for failing to raise trial counsel's conflict of interest. But ineffective assistance can supply cause only if it independently amounts to a violation of the right to counsel. *See Edwards v. Carpenter*, 529 U.S. 446, 451 (2000). And for the reasons given in our discussion of Ground 12(2), his claim does not amount to such a violation.

Mr. Collins alternatively claims actual innocence as a ground for excusing procedural default. That excuse requires new reliable evidence showing that, more likely than not, no reasonable juror would have convicted. *See Schlup v. Delo*, 513 U.S. 298, 327–28 (1995). Mr. Collins points largely to gaps in the State's proof—the untested casings, the inconclusive surveillance footage, and the missing projectile—that were highlighted to the jury and are therefore not new. *See Taylor v. Powell*, 7 F.4th 920, 927 (10th Cir. 2021). Although he faults the prosecution for not testing the casings, he never explains how any testing would show that no reasonable juror would have convicted. And his only new evidence, Mr. Johnson's recantation affidavit, does not meet *Schlup's*

⁴ Although Mr. Collins invoked cause and actual innocence in his reply brief below, the district court did not separately address those arguments, citing only the § 2254 application and the supporting brief. That omission does not preclude our resolving the questions on the record before us. *See Davis v. Roberts*, 425 F.3d 830, 834 (10th Cir. 2005).

standard. We agree with the district court’s observation that there was “ample evidence of Collins’s guilt apart from Johnson’s testimony,” so a recantation touching only that testimony does not open the actual-innocence gateway. R. vol. I at 590 (discussing Ground 12(1)).

C. Claims Adjudicated on the Merits

Grounds 1 and 2: Sufficiency of the Evidence. Mr. Collins contends that the evidence was insufficient to support his murder conviction. In reviewing the sufficiency of the evidence, “the relevant question is 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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Mr. Collins argues the State failed to prove that he fired the fatal shots or acted with intent to kill, pointing to the absence of a recovered weapon and the circumstantial nature of the case.

But the State was not required to “rule out every hypothesis except that of guilt.” *Id.* at 326. The district court identified evidence from which a rational juror could find both identity and intent: surveillance and testimony placing Mr. Collins with the victim minutes before the shooting; 9mm casings recovered at the scene, consistent with ammunition found in the car he was driving; and his own communications and internet searches evincing consciousness of guilt.

In his COA application, Mr. Collins presses the significance of Mr. Johnson’s affidavit. But the *Jackson* inquiry is confined to “the record evidence adduced at the trial.” *Anderson-Bey v. Zavaras*, 641 F.3d 445, 448 (10th Cir. 2011) (internal quotation

marks omitted). And here the affidavit was not produced until after his direct appeal. No reasonable jurist would debate the district court's rejection of this claim.⁵

Grounds 3 and 4: The Accomplice-Witness Instruction. Grounds 3 and 4 of Mr. Collins's § 2254 application claimed the trial court denied him due process by failing to instruct the jury that Mr. Johnson was an accomplice whose testimony required corroboration, and that trial counsel was ineffective for failing to request that instruction. Because Mr. Collins did not request the instruction at trial, the OCCA reviewed the claim on direct appeal for plain error and rejected it. An omitted instruction warrants habeas relief only if it rendered the trial "so fundamentally unfair as to deny [the applicant] a fair trial." *Foster v. Ward*, 182 F.3d 1177, 1187 (10th Cir. 1999).

The district court held the absence of an accomplice instruction did not meet that standard. It found no evidence of a plan between Mr. Collins and Mr. Johnson to harm anyone, observed that defense counsel had impeached Mr. Johnson with his criminal history and prior inconsistent statements, and noted that the jury was instructed to weigh each witness's interest, relationship to the parties, and bias. And because Mr. Collins was not entitled to the instruction, the court further concluded that the OCCA did not unreasonably reject Ground 4, his ineffective-assistance claim.

⁵ Mr. Collins titles this section of his COA application "Insufficient Evidence (Grounds 1 ,2[])," but his argument addresses only the murder conviction (Ground 1). His COA "Ground 2" instead advances a *Brady* claim not raised in his § 2254 application. We discern no argument that would make debatable the district court's rejection of his sufficiency challenge to his possession conviction (Ground 2 in his § 2254 application).

Mr. Collins suggests a COA is warranted because the “OCCA unreasonably ignored” Mr. Johnson’s posttrial affidavit. COA Appl. at 23. But our review under § 2254(d) is limited to the record before the OCCA. *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). The affidavit—notarized after his direct appeal—was not part of the record, so the OCCA could not have ignored evidence it did not have. No reasonable jurist would debate the district court’s denial of relief on Grounds 3 and 4.

Grounds 12(1) and 12(2): Ineffective Assistance of Appellate Counsel. Grounds 12(1) and 12(2) contend appellate counsel was ineffective for failing to raise two issues on direct appeal: the State’s use of allegedly perjured testimony to obtain his conviction (Ground 12(1)) and the trial court’s failure to appoint substitute counsel (Ground 12(2)). The district court held that the OCCA reasonably rejected both claims as meritless, and neither rejection is debatable. *See Cargle v. Mullin*, 317 F.3d 1196, 1202 (10th Cir. 2003) (recognizing that omitting a meritless issue is not ineffective assistance). As to Ground 12(1), the court concluded that the perjury Mr. Collins identified was elicited by his own counsel on cross-examination, not by the prosecution; cross-examination corrected and exploited any potential inaccuracies; and the jury was informed of the witness’s pending charges and criminal record; so the jury was amply informed of the possibility of false testimony and there was no denial of due process. *See United States v. Vaziri*, 164 F.3d 556, 563 (10th Cir. 1999). And regarding Ground 12(2), the court held that his dissatisfaction with counsel reflected a disagreement over trial strategy, which does not establish the good cause required for substitute counsel. *See United States v.*

Lott, 310 F.3d 1231, 1249 (10th Cir. 2002). Mr. Collins offers no argument showing that either ruling is debatable.

Ground 5: Cumulative Error. In Ground 5, Mr. Collins also contends that the cumulative effect of the alleged trial errors deprived him of a fair trial. Cumulative-error analysis “applies only where there are two or more actual constitutional errors.” *Thacker v. Workman*, 678 F.3d 820, 849 (10th Cir. 2012) (brackets and internal quotation marks omitted). The district court denied relief on this ground because Mr. Collins had established no such error, and no reasonable jurist would debate that resolution.

D. Ground 13: State Postconviction Evidentiary Hearing

In Ground 13, Mr. Collins maintains that the state postconviction court’s refusal to hold an evidentiary hearing denied him due process. The district court held that this claim was not cognizable because it challenged the State’s collateral-review process, not the judgment authorizing his custody. *See Sellers v. Ward*, 135 F.3d 1333, 1339 (10th Cir. 1998). No reasonable jurist would debate that ruling.

E. Federal Evidentiary Hearing

Mr. Collins also contends that the federal district court erred in denying him an evidentiary hearing. But he fails to show that the court could not decide his § 2254 application on the existing record. *See Alverson v. Workman*, 595 F.3d 1142, 1163 (10th Cir. 2010). Reasonable jurists would therefore not debate whether the district court abused its discretion in denying an evidentiary hearing.

III. Conclusion

We DENY a COA and DISMISS the matter. We GRANT the motion to proceed in forma pauperis.

Entered for the Court

Harris L Hartz
Circuit Judge