

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 6, 2026

Christopher M. Wolpert
Clerk of Court

TAVARREON DICKERSON,

Petitioner - Appellant,

v.

MICHAEL MILLER, Warden,

Respondent - Appellee.

No. 25-5054
(D.C. No. 4:22-CV-00074-GKF-SH)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **MORITZ** and **FEDERICO**, Circuit Judges.

Tavarreon Dickerson's infant daughter, R.D., stopped breathing while at home under his care. Tragically, despite medical treatment by emergency and hospital personnel, R.D. died in the hospital days later. After considering conflicting expert testimony regarding the cause of R.D.'s death, a jury convicted Dickerson of first-degree child abuse murder. He unsuccessfully sought relief from the conviction

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

through the Oklahoma courts, then he filed a 28 U.S.C. § 2254 application, which the district court denied.

Dickerson requested this court issue a certificate of appealability (COA) on four claims, and he obtained a COA on one: whether his appellate counsel was ineffective for failing to argue that his trial counsel was ineffective for not investigating and retaining an appropriate expert to testify regarding potential natural causes of death.¹ Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

Early in the morning of January 10, 2016, Dickerson was caring for six-week-old R.D. when she stopped breathing. First responders rendered emergency treatment and brought her to the hospital, where imaging showed bleeding in her brain. R.D. died after being on life support for three days.

The autopsy indicated that in addition to the bleeding in her brain, R.D. had internal contusions on the front and back of her head; a hemorrhage in her left optic nerve sheath; a subdural thoracic spinal cord injury; and two posterior rib fractures. The spinal cord injury and rib fractures were older than the head injuries and showed signs of healing. The state charged Dickerson with first-degree child abuse murder

¹ The three other claims for which Dickerson requested a COA were (1) whether the state's failure to disclose the full contents of a demonstrative exhibit violated *Brady v. Maryland*, 373 U.S. 83 (1963); (2) whether prosecutorial misconduct violated his rights under the Fifth and Fourteenth Amendments; and (3) whether cumulative error violated his rights under the Sixth, Eighth, and Fourteenth Amendments. No reasonable jurist would debate the district court's denial of these claims, *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (setting forth standards for COAs), and therefore we do not expand the COA to cover them.

on the theory that R.D. died from abusive head trauma, formerly known as Shaken Baby Syndrome.

State Proceedings. The state’s expert witnesses testified that the medical evidence showed R.D. suffered blunt-impact injuries. Over the course of the state proceedings, Dickerson produced three expert witnesses to dispute the state’s evidence.

Dickerson’s first expert—presented at trial—opined that R.D. may have died from a rupture in a vascular malformation (VM) in the anterior mid-brain, but he admitted the medical evidence available to him was not sufficient to show a rupture. The second expert—presented at an evidentiary hearing in conjunction with the direct appeal—opined that additional testing did not show that the anterior VM ruptured, but that it was a previously unknown VM in the posterior mid-brain that ruptured. The third expert—presented during state post-conviction proceedings—opined that R.D. died not from a VM, but from interstitial pneumonia.

On direct appeal, the Oklahoma Court of Criminal Appeals (OCCA) rejected Dickerson’s claim that his trial counsel was ineffective for failing to gather more evidence about the VM to support the first expert witness’s opinion. Then, during the state post-conviction proceedings, the OCCA held that his appellate counsel was not ineffective for failing to argue that trial counsel was ineffective for failing to pursue a theory that R.D. died from natural causes other than a VM rupture. It held that Dickerson “failed to demonstrate that trial counsel’s strategic decision to pursue a defense that aligned with the medical evidence, was supported by expert testimony,

and offered a non-abusive causation theory for R.D.'s fatal brain injury was objectively unreasonable." Aplt. App., vol. III at 202. The OCCA further concluded that Dickerson had not established prejudice because he "failed to show a reasonable probability that the outcome of his trial would have been different had trial counsel pursued a different tactic, particularly one that so brazenly discounts all other medical opinions." *Id.* at 203.

Section 2254 Proceeding. After the conclusion of the state post-conviction proceedings, the federal district court took up Dickerson's § 2254 application.

As relevant here, Dickerson claimed his "[a]ppeal counsel was Constitutionally ineffective in failing to raise a claim alleging trial counsel ineffectiveness for failing to investigate and retain an appropriate expert to investigate other potential natural causes of death" beyond brain-based conditions. Aplt App., vol. I at 21. He alleged that "[a]t no time, either prior to trial or on appeal, did counsel ask any pathologist to investigate or examine any other vital organs to determine if there was an explanation for what happened to R.D. beyond the State's theory that bleeding in her head caused her death." *Id.* at 44. Pointing to his third expert's testimony that R.D. suffered from terminal lung disease, he argued "[w]hile the defense at trial and on appeal focused on the brain bleed, presumably because that is what the State focused on, at no time was the jury informed that R.D. had other significant medical issues that could have caused her death." *Id.* at 44-45. He thus argued that counsel performed deficiently in failing to investigate other

potential causes of death and to raise trial counsel's failure to investigate as an issue on appeal.

The district court concluded Dickerson failed to show that the OCCA's rejection of his ineffective-assistance claim met the stringent standards for relief under 28 U.S.C. § 2254(d) and denied the habeas application.

DISCUSSION

I. Legal Standards

We review the district court's denial of habeas relief de novo, "applying the same standard as the district court." *Menzies v. Powell*, 52 F.4th 1178, 1195 (10th Cir. 2022). "In district court, review is deferential when the state appellate court has rejected a claim on the merits." *Id.* The federal courts may grant relief only if the state court's decision was (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) "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." 28 U.S.C. § 2254(d).

The governing precedent for ineffective-assistance claims is *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, an applicant must show that (1) counsel performed deficiently, and (2) the applicant suffered prejudice as a result of the deficient performance. *Id.* at 687. To satisfy the first requirement, an applicant "must show that counsel's representation fell below an objective standard of reasonableness," *id.* at 688, and to satisfy the second, an applicant "must show that

there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different,” *id.* at 694.

“When a habeas petitioner alleges ineffective assistance of counsel, courts must engage in doubly deferential judicial review. Deference rests on both the constitutional standard (from *Strickland*) and the standard for habeas relief.” *Menzies*, 52 F.4th at 1196 (citation omitted). “Given the two layers of deference, a court must consider whether there is *any reasonable argument* that counsel satisfied *Strickland*’s deferential standard.” *Id.* (internal quotation marks omitted).

II. Analysis

A. Arguments Under § 2254(d)(1)

The premise underlying Dickerson’s claim is that both his trial and appellate counsel “were constitutionally ineffective for limiting their investigation and defense of Mr. Dickerson to the possibility of a [VM] rupture as was presented at trial through [the first] defense expert . . . and during appeal proceedings through [the second] defense expert” Aplt. Opening Br. at 17-18. He asserts that if his appellate counsel had “conducted a reasonable investigation and retained an expert” regarding non-brain-based causes of death, “she could have raised a related claim on direct appeal demonstrating trial counsel was ineffective, which creates a reasonable probability that the outcome of the direct appeal would have been different.” *Id.* at 18.

In support, he cites *Rompilla v. Beard*, 545 U.S. 374, 389-90 (2005), in which the Supreme Court held counsel performed deficiently when, although they

undertook some investigation, they failed to examine a readily available court file that counsel knew the prosecution would probably use. In those circumstances, the Court held that the state court’s conclusion that counsel was effective was unreasonable, given the “easy availability of the file” and “the great risk” that the information in the file “would hamstring counsel’s chosen defense.” *Id.* Dickerson points out that R.D.’s medical records documented that she suffered from pneumonia when she was admitted to the hospital, and the autopsy report documented significant respiratory issues. Analogizing to *Rompilla*, he criticizes the OCCA for “fail[ing] to consider this claim through the lens that trial and appellate [counsel] failed to recognize and acknowledge red flags within R.D.[’s] medical records suggesting that R.D. died of interstitial pneumonia—a cause completely distinct from the brain bleeds proffered at trial and direct appeal.” Aplt. Opening Br. at 21.

Unlike the readily available court file in *Rompilla*, however, Dickerson’s claim rests on specialized evidence requiring medical knowledge to interpret. And the record reflects that appellate counsel provided the second expert with the available medical evidence (including R.D.’s treatment records and the autopsy report) and asked for his opinions, without offering him direction or requiring him to focus on VMs. *See* Aplt. App., vol. II at 287-88; *id.*, vol. XIV at 34-35, 78-79; *id.*, vol. XXII at 37. Appellate counsel also facilitated additional testing the expert requested to investigate certain other potential causes of death and acquiesced to the expert’s desire to consult other experts. *See id.*, vol. II at 288-90. Yet upon completing his review, the second expert did not advise appellate counsel of any concerns about

non-brain-bleed causes of death, including any concerns about the respiratory impairments that Dickerson alleges were evident from the medical files. At that time, therefore, appellate counsel was offered no medical foundation to argue that trial counsel should have followed up on non-brain-based causes of death.

“[C]ounsel is not required to keep hiring experts until the most favorable one possible is found.” *DeLozier v. Sirmons*, 531 F.3d 1306, 1333 (10th Cir. 2008). In these circumstances, reasonable jurists could conclude that “counsel’s reliance on expert advice . . . was at least within the bounds of professional competence.” *Postelle v. Carpenter*, 901 F.3d 1202, 1216 (10th Cir. 2018); *see also Davis v. Sharp*, 943 F.3d 1290, 1303 (10th Cir. 2019) (holding that counsel “reasonably drew a line” at further investigation after receiving expert evaluation); *Wilson v. Sirmons*, 536 F.3d 1064, 1089 (10th Cir. 2008) (“[I]n many situations, the expert will know better than counsel what evidence is pertinent to . . . diagnoses and will be more equipped to determine what avenues of investigation are likely to result in fruitful information. To a degree, counsel should be able to rely on that expert to determine what evidence is necessary to an effective evaluation, and what additional evidence the expert needs to complete testing.”). Dickerson’s *Rompilla*-based argument thus does not establish the OCCA’s decision was contrary to or an unreasonable application of *Strickland*. *See Harrington v. Richter*, 562 U.S. 86, 101 (2011) (“A state court’s determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court’s decision.” (internal quotation marks omitted)); *Menzies*, 52 F.4th at 1196

(recognizing that a federal habeas “court must consider whether there is *any reasonable argument* that counsel satisfied *Strickland*’s deferential standard” (internal quotation marks omitted)).

B. Arguments Under § 2254(d)(2)

Dickerson also argues the OCCA made certain unreasonable determinations of the facts.

Characterization of Claim as Similar. Dickerson first asserts it was unreasonable for the OCCA to state that his post-conviction ineffective-assistance claim was “substantially similar” to the ineffective-assistance claim he raised on direct appeal. Aplt. App., vol. III at 202. But as the district court stated, the OCCA understood the post-conviction claim was distinct; it recognized his argument and analyzed the claim. Dickerson has not shown that the OCCA’s remark characterizing the claims as similar was material to its decision. *See Frederick v. Quick*, 79 F.4th 1090, 1104 (10th Cir. 2023) (“[A] factual finding may be unreasonable under § 2254(d)(2) only if the state court plainly misapprehended or misstated the record and the misapprehension goes to a material factual issue that is central to the petitioner’s claim.” (internal quotation marks omitted)).

Counsel’s Performance as Strategic Choice. Dickerson also challenges the OCCA’s characterization of counsel’s performance as a strategic choice. He points to affidavits in the record indicating that trial counsel never obtained tissue slides of R.D.’s vital organs or consulted an expert regarding possible lung disease or pneumonia, and that appellate counsel did not obtain new tissue evidence regarding

R.D.’s respiratory system. *See* Aplt. App., vol. XXII at 34-35, 37. Again, however, when faced with complex medical evidence, counsel were entitled to rely on their experts. Trial counsel’s first expert focused on the VM, and the record reflects that trial counsel deliberately chose not to seek additional evidence regarding the VM because they were concerned about fatally undermining the only medical-evidence-based defense their expert had identified. *See id.*, vol. XV at 302-03; *id.*, vol. XVI at 127-29. And as discussed above, the second expert consulted by appellate counsel also focused on a VM, despite having access to R.D.’s medical records and additional testing he had requested.

Under § 2254(d)(2), “if reasonable minds reviewing the record might disagree about the finding in question, then we will defer to a state court’s factual findings.” *Martinez v. Quick*, 134 F.4th 1046, 1056 (10th Cir.) (internal quotation marks omitted), *cert. denied*, 146 S. Ct. 385 (2025). On this record, at the least reasonable minds could differ as to whether counsel’s failure to conduct additional investigation was a strategic choice. Dickerson therefore has not demonstrated entitlement to federal habeas relief. *See id.*

Third Expert Discounted Other Doctors’ Opinions. Finally, Dickerson argues it was unreasonable for the OCCA to state that he failed to show prejudice in part because his third expert’s opinion “brazenly discounts all other medical opinions.” Aplt. App., vol. III at 203. He asserts that this was an incorrect summary of the third expert’s opinion, as the third expert did agree with many portions of the other medical testimony, and his opinion was not so out of line that it could not create a

reasonable probability of a different outcome. But the record reflects that at times, the third expert did express substantial disagreement with the other medical opinions in the record. *See, e.g., id.*, vol. XVII at 49-50 (expert asserting that treating physicians, state’s expert witnesses, and first and second defense expert witnesses all “[got] it wrong”); *id.* at 51 (expert attributing other doctors’ opinions to “group thinking or bandwagon thinking”). Therefore, reasonable jurists might differ about whether the third expert discounted other opinions. Dickerson has not shown entitlement to federal habeas relief. *See Martinez*, 134 F.4th at 1056.

CONCLUSION

We affirm the district court’s judgment.

Entered for the Court

Nancy L. Moritz
Circuit Judge