

IN THE SUPREME COURT OF FLORIDA

LEON DAVIS, JR.,

Petitioner,

v.

**CASE NO. SC22-883
L.T. No. 2007-CF-9613
DEATH PENALTY CASE**

RICKY D. DIXON,

**Secretary, Florida
Department of Corrections,**

Respondent.

_____ /

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
AND
MEMORANDUM OF LAW**

COMES NOW, Respondent, Ricky D. Dixon, Secretary, Florida Department of Corrections, by and through the undersigned counsel, and hereby responds to the Petition for Writ of Habeas Corpus filed in the above-styled case. Respondent respectfully submits that the petition should be denied, and states as grounds therefore:

FACTS AND PROCEDURAL HISTORY

Davis was convicted and sentenced for the murders of Pravinkumar Patel and Dashrath Patel and the attempted murder of Prakashkumar Patel committed during the attempted armed robbery of a Polk County BP station. In addition to the convictions and sentences at issue in this case:

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Davis was convicted of three counts of first-degree murder, one count of attempted first-degree murder, and one count each of armed robbery and first-degree arson. The convictions arose from a series of events at the Headley Insurance Agency in Lake Wales. Davis was sentenced to death for two of the murders. The murders in the Headley case occurred within several days of the murders in this case. A limited scope of evidence from the Headley trial was introduced during the guilt phase of the BP trial, and the entire Headley record was admitted for purposes of the penalty phase.

Davis v. State, 207 So. 3d 177, 182–83 (Fla. 2016).

The facts underlying the attempted armed robbery, the murders of Pravinkumar Patel and Dashrath Patel, and the attempted murder of Prakashkumar Patel are detailed in this Court’s direct appeal opinion. Id.

In his Initial Brief Davis, through counsel, raised 12 issues. Issue 5 and, by reference, Issue 2 are pertinent to Davis’s claim in this petition.

ISSUE II: THE TRIAL COURT ERRED IN RELYING ON FACTS NOT IN EVIDENCE TO FIND DAVIS GUILTY, I.E., THE VERDICTS IN THE LAKE WALES CASE AND DETAILS OF EVENTS THAT OCCURRED INSIDE THE HEADLEY INSURANCE AGENCY.

In rejecting this argument, this Court stated:

Davis's argument . . . is without merit. Our review of the sentencing order reveals that the trial court was simply setting forth the historical facts of this case. Following an evidentiary hearing, the court concluded that during the guilt phase, the State would not be permitted to introduce evidence of the fire and the events inside Headley. A careful reading of the trial transcript reveals that this order was assiduously followed. In closely reading the testimony of the guilt phase witnesses who

testified due to their roles in the Headley case, to a person, the testimony of each of these witnesses carefully avoided any comment on the facts surrounding what actually happened inside of Headley, the victims' burn conditions, and events that occurred later that day. For example, Fran Murray, Evelyn Anderson, Lt. Elrod, and the medical personnel, who offered graphic testimony about Bustamante's condition during the Headley trial, did not refer to this evidence during the BP trial. However, the entire Headley record was admitted during the penalty phase of the BP trial, and evidence that was specifically excluded from the guilt phase was admitted during the penalty phase.

Davis's argument that the court relied on facts outside of the guilt phase record in determining his guilt for the BP crimes is inconsistent with the record evidence of the court's caution to avoid the introduction of irrelevant and prejudicial Headley evidence during the guilt phase. We are convinced that the trial court did not rely on such facts to establish Davis's guilt in the BP case and was merely setting forth the historical context of the case. Thus, we conclude that Davis is not entitled to relief.

Davis, 207 So. 3d at 192–93.

ISSUE V: THE TRIAL COURT ERRED IN USING THE FACT OF DAVIS'S PRIOR THEFT CONVICTIONS AND CIRCUMSTANTIAL EVIDENCE OF HIS GUILT FOR ALL CHARGES BECAUSE THE PRIOR CONVICTIONS WERE ADMITTED FOR THE LIMITED PURPOSE OF PROVING ONLY ONE ELEMENT OF THE CHARGE OF FELON IN POSSESSION OF A FIREARM.

In rejected this argument, this Court stated:

Davis argues that this language proves that the trial court considered his felony convictions as proof of his guilt on all of the charged offenses. Davis's argument is without merit. The language emphasized by Davis must be read in context. The trial court did not conclude that Davis committed the BP

crimes because he was a convicted felon. Rather, the trial court focused on Davis's purchase of the revolver before the BP crimes. The fact that Davis purchased a .357 magnum revolver on the same day of the BP crimes is circumstantial evidence of his guilt. Davis is not entitled to relief on this issue.

Id. at 194-95.

ARGUMENT IN OPPOSITION TO CLAIMS RAISED

Davis alleges that extraordinary relief is warranted because he was denied the effective assistance of appellate counsel. The standard of review applicable to ineffective assistance of appellate counsel claims mirrors the Strickland v. Washington, 466 U.S. 668 (1984), standard for claims of trial counsel ineffectiveness. Valle v. Moore, 837 So. 2d 905 (Fla. 2002). Such a claim requires an evaluation of whether counsel's performance was so deficient that it fell outside the range of professionally acceptable performance and, if so, whether the deficiency was so egregious that it compromised the appellate process to such a degree that it undermined confidence in the correctness of the result. Groover v. Singletary, 656 So. 2d 424, 425 (Fla. 1995); Byrd v. Singletary, 655 So. 2d 67, 68-69 (Fla. 1995).

Further, "habeas corpus petitions are not to be used for additional appeals on questions which . . . were raised on appeal or in a [postconviction] motion, or on matters that were not objected to at trial."

Teffeteller v. Dugger, 734 So. 2d 1009, 1025 (Fla. 1999) quoting Parker v. Dugger, 550 So. 2d 459, 460 (Fla. 1989).

CLAIM I

THIS CLAIM IS PROCEDURALLY BARRED FROM CONSIDERATION IN A STATE HABEAS PETITION; FURTHER, FAILING TO PROPERLY EXHAUST A FEDERAL CLAIM IN STATE COURT IS NOT A BASIS FOR INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CLAIM.

Claims that were raised, or should have been raised, on direct appeal are procedurally barred from consideration in a state habeas petition.

Davis cannot seek relief in the form of a writ of habeas corpus for a claim that either was or should have been raised on direct appeal. Lukehart v. State, 70 So. 3d 503, 524–25 (Fla. 2011) (citing Ferrell v. State, 918 So. 2d 163, 178 (Fla. 2005) and Smith v. State, 445 So. 2d 323, 325 (Fla.1983) (“Issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack.”))

Here, appellate counsel argued that the trial court improperly considered Davis’s previous felony theft convictions as proof of his guilt in this case. In doing so, according to Davis’s brief, the court violated his “constitutional rights under the Florida and U.S. Constitutions.” (SC13-

0001/IB 89).¹ This Court held that the trial court did not improperly rely on Davis's prior convictions in reaching its verdict. Instead, "the trial court focused on Davis's purchase of the revolver before the BP crimes. The fact that Davis purchased a .357 magnum revolver on the same day of the BP crimes is circumstantial evidence of his guilt." Davis, 207 So. 3d at 195. Consequently, the argument that the trial court improperly considered Davis's prior felony convictions is procedurally barred it was raised and rejected on direct appeal. Lukehart, 70 So. 3d at 524.

Davis is not entitled to state habeas relief based on an allegation that appellate counsel failed to properly exhaust state court remedies thereby precluding federal habeas review.

Failing to raise a federal claim in state court cannot be the basis for an ineffective assistance of counsel claim unless the defendant can show that the result of the state appeal would have been different. Anderson v. State, 313 So. 3d 1196, 1198 (Fla. 1st DCA 2021). Whether the federal court would consider the claim to be properly exhausted for purposes of federal habeas relief is not a consideration for the state court. See Ward v. Hall, 592 F.3d 1144, 1156 (11th Cir. 2010) (emphasis added) ("A critical

¹ The State is not conceding that this passing reference to the U.S. Constitution is sufficient to exhaust Davis's federal claim in state court. That is a determination for a different court on another day.

prerequisite for any state petitioner seeking federal habeas relief is the requirement that he first *properly raise* the federal constitutional claim in the state courts.”)²

That said, it is appropriate for this Court to enforce the state procedural bar as previously argued. A state court’s enforcement of a procedural rule can be an adequate and independent ground precluding federal habeas review. Marek v. Singletary, 62 F.3d 1295, 1301 (11th Cir.1995); See also Ward v. Hall, 592 F.3d 1144, 1156 (11th Cir. 2010) (quoting Smith v. Jones, 256 F.3d 1135, 1138 (11th Cir. 2001) (“The teeth of the exhaustion requirement comes from its handmaiden, the procedural default doctrine. If the petitioner has failed to exhaust state remedies that are no longer available, that failure is a procedural default which will bar

² Pursuant to 28 U.S.C. § 2254:

(b)(1) An 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 unless it appears that-

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

federal habeas relief, unless either the cause and prejudice or the fundamental miscarriage of justice exception is established.”).

Davis makes no argument, as would be required for relief in a state habeas petition, that this Court would have reached a different conclusion had counsel fully argued the federal constitutional claim. As demonstrated, the Court would not have reached any other conclusion on either the state or federal constitutionality of the trial court’s order because this Court found that the trial court did not consider the prior felony convictions for purposes of reaching a verdict in this case. Hence, the factual basis of the claim is erroneous.

Finally, whether appellate counsel failed to argue the federal constitutional dimensions of a claim is not a violation of the suspension clause of the United States Constitution. The clause states: “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2.

The United States Supreme Court has addressed whether certain procedural requirements of AEPDA result in a violation of the Suspension Clause. The Court held that the added restrictions are not generally constitutionally problematic. See Felker v. Turpin, 518 U.S. 651, 664 (1996)

("The new restrictions on successive petitions constitute a modified res judicata rule, a restraint on what is called in habeas corpus practice 'abuse of the writ.'"). Additionally, the Court has long required prisoners to exhaust state court remedies before seeking federal review. This is a recognition of the respect owed to state court convictions. Duckworth v. Serrano, 454 U.S. 1, 3 (1981) (internal citations omitted) ("It has been settled for nearly a century that a state prisoner must normally exhaust available state remedies before a writ of habeas corpus can be granted by the federal courts."). There is no merit to Davis's assertion that counsel's performance during his state appeal would result in a violation of the Suspension Clause.

CONCLUSION

In conclusion, Respondent respectfully requests that this Honorable Court DENY the instant petition for writ of habeas corpus.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

/s/ Marilyn Muir Beccue
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 2022, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal which will send a notice of electronic filing to the following: Dawn B. Macready, Assistant CCRC-North, Capital Collateral Regional Counsel-North, 1004 Desoto Park Drive, Tallahassee, Florida 32301, **dawn.macready@ccrc-north.org**; and Stacy R. Biggart, Special Assistant CCRC-North, 3495 SW 106th Street, Gainesville, Florida 32608, **stacy.biggart@gmail.com**.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 14-point Arial, in compliance with Fla. R. App. P. 9.045(b).

/s/ Marilyn Muir Beccue
COUNSEL FOR RESPONDENT