

UNITED STATES COURT OF APPEALS June 5, 2014
TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

JAMES CRAIG TAYLOR,
Petitioner - Appellant,

v.

ANITA TRAMMELL,
Respondent - Appellee.

No. 14-5029
N.D. Oklahoma
(D.C. No. 4:10-CV-00651-CVE-PJC)

**ORDER DENYING
CERTIFICATE OF APPEALABILITY***

Before **PORFILIO, ANDERSON, and BRORBY**, Circuit Judges.

Petitioner and Appellant, James Craig Taylor, an Oklahoma state prisoner proceeding *pro se*, seeks a certificate of appealability (“COA”) to enable him to appeal the denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. Concluding that Mr. Taylor has failed to establish entitlement to the issuance of a COA, we deny him a COA and dismiss this matter. We need not consider Mr.

*This order is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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.

Taylor's entitlement to proceed on appeal *in forma pauperis* ("ifp"), because the district court granted him the right to proceed on appeal *ifp*.

BACKGROUND

Mr. Taylor was charged in the Pawnee County District Court in Oklahoma with Malice Aforethought Murder in the First Degree (Count I) and Carrying a Firearm After Former Conviction of a Felony (Count II). Following a three-week trial, a jury convicted Mr. Taylor on March 6, 2006 of Felony Murder in the Second Degree and Possession of a Firearm After Former Conviction of a Felony. Following the jury's recommendation as to sentence, the state district court sentenced Mr. Taylor to life imprisonment for Count I and five years' imprisonment for Count II.

On April 5, 2006 Mr. Taylor filed a motion for a new trial on the ground of juror misconduct, denial of due process and newly discovered evidence. On May 3, 2006, Mr. Taylor filed a supplemental motion for a new trial, providing notice of additional newly discovered evidence. On June 23, 2006, he filed a second supplemental motion for a new trial and the trial court held a hearing on the motion. On August 18, 2006, the trial court denied Mr. Taylor's motion for a new trial.

Mr. Taylor filed a direct appeal to the Oklahoma Court of Criminal Appeals ("OCCA"), in which he raised nine propositions of error, including insufficiency

of the evidence as to various points, claimed errors in assorted evidentiary rulings, failure to disclose exculpatory evidence, ineffective assistance of counsel, and cumulative error. Mr. Taylor claimed that these errors violated the United States and Oklahoma Constitutions.

Prior to the OCCA's disposition of this appeal, Mr. Taylor filed (on March 6, 2007) a motion for a new trial based on newly discovered evidence. On January 23, 2008, the OCCA affirmed the judgment and sentence imposed on Mr. Taylor, and denied the motion for a new trial, stating that the newly discovered evidence "supplied by [Mr. Taylor] only tends to discredit or impeach State witnesses and therefore is insufficient to warrant a new trial." Summary Op. at 12; R. Vol. 1 at 83. The OCCA subsequently denied Mr. Taylor's petition for rehearing.

On May 1, 2009, Mr. Taylor filed an application for post-conviction relief in Pawnee County district court. The court denied relief on May 21, 2010. Mr. Taylor appealed, arguing three points:

(1) the trial court denied Mr. Taylor the right to present a defense that another person committed the crime for which he was charged and to confront witnesses against him by excluding evidence critical to his defense, in violation of the Fifth, Sixth and Fourteenth Amendment;

(2) Mr. Taylor should be granted a new trial on the ground that the testimony from an individual (Kristy Kay Timmerman) was critical to Mr. Taylor's defense and statutes of limitation now immunize her from prosecution; and

(3) Mr. Taylor should be granted a new trial based on newly discovered evidence that supports his claims that another individual (Ed Russell) admitted to someone else that he (Russell) had killed the victim in this case.

On September 16, 2010, the OCCA affirmed the denial of post-conviction relief.¹

Mr. Taylor then filed the instant *pro se* petition for habeas corpus relief, arguing seven issues:

(1) The State failed to disclose material exculpatory and impeachment evidence to the defense prior to trial, including witness recantations and information about promises and threats made by the district attorney's office in order to obtain informant testimony and cooperation, and knowingly presented false testimony to the court and jury;

(2) Newly discovered evidence revealed that Mr. Taylor was denied due process in view of: post-trial deals and consideration received by the State's informant/accomplice witnesses about which the defense and jury were unaware at trial; post-trial recantations of some of the State's witnesses; new information showing that informant witnesses allegedly gave false testimony at trial; and there was a pattern of State coercion and intimidation, both prior to and during the trial, directed to obtaining informant testimony;

¹In denying relief, the OCCA found that “[a]ny issue that could have been previously raised, but was not, is waived, and may not be the basis of a subsequent post-conviction application.” Order at 1; R. Vol. 1 at 97. With respect to any claim of ineffective assistance of counsel, the OCCA recited the appropriate standard under Strickland v. Washington, 466 U.S. 668 (1984), and determined that “[t]he fact appellate counsel fails to recognize or raise a claim, regardless of merit, is not and cannot alone be sufficient to establish ineffective assistance, or to preclude enforcement of a procedural default. We [find] [Mr. Taylor] has not established that trial or appellate counsel's performance was deficient, or that the result of his trial and appeal was not reliable and fair.” Order at 2; R. Vol. 1 at 98. As we explain more fully below, the OCCA's statement of its application of the Strickland standard to appellate ineffectiveness is, in fact, incorrect. See note 2, *infra*.

(3) The court deprived Mr. Taylor of the right to present a defense that some other person committed the crime and to rebut or impeach a State investigator's claim that all other suspects had been eliminated;

(4) The evidence was insufficient to support the conviction on second degree felony murder, and, in particular, the evidence did not establish each element of the underlying felony;

(5) The testimony about gang affiliation and that Mr. Taylor has solicited the murder of two witnesses violated Mr. Taylor's rights to due process and a fair trial;

(6) Mr. Taylor was never given notice that he would have to defend against the charge of grand larceny as a basis for second degree felony murder; and

(7) The trial court failed to instruct the jury on applicable Oklahoma law, which lowered the State's burden of proof and deprived Mr. Taylor of due process of law.

The State responds that the OCCA's decision as to Issues (1), (2) and (4) was not contrary to or an unreasonable application of Supreme Court law; that Issues (5), (6) and (7) are matters of state law and therefore not subject to federal habeas review; and Issue (3) is procedurally defaulted for purposes of habeas relief.

After concluding that all issues were exhausted, and that Mr. Taylor had failed to meet his burden to prove the necessity of an evidentiary hearing, the district court proceeded to address each issue, applying the standard of review dictated by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") as appropriate.

That AEDPA standard of review “erects a formidable barrier to federal habeas relief,” Burt v. Titlow, 134 S. Ct. 10, 16 (2013), and “requires federal courts to give significant deference to state court decisions” on the merits. Lockett v. Trammel, 711 F.3d 1218, 1230 (10th Cir. 2013); see also Hooks v. Workman, 689 F.3d 1148, 1162-63 (10th Cir. 2012) (“This highly deferential standard for evaluating state-court rulings demands state-court decisions be given the benefit of the doubt.” (quotations omitted)).

Under AEDPA, we may not grant a state prisoner’s petition under § 2254 with respect to “any claim that was adjudicated on the merits in State court proceedings” unless the prisoner can show that the state court’s adjudication of the claim “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.” 28 U.S.C. § 2254(d)(1); see also Harrington v. Richter, 131 S. Ct. 770, 783-84 (2011).

“Clearly established law is determined by the United States Supreme Court, and refers to the Court’s holdings, as opposed to dicta.” Lockett, 711 F.3rd at 1231 (quotations omitted). A state court decision is “contrary to” the Supreme Court’s clearly established precedent “if the state court applies a rule different from the governing law set forth in [Supreme Court] cases, or if it decides a case differently than [the Supreme Court has] done on a set of materially indistinguishable facts.” Bell v. Cone, 535 U.S. 685, 694 (2002)

(quotations omitted). A state court decision is an “unreasonable application” of Supreme Court precedent if “the state court identifies the correct governing legal rule from [the] Court’s cases but unreasonably applies it to the facts of the particular state prisoner’s case.” Williams v. Taylor, 529 U.S. 362, 407 (2000). “Evaluating whether a rule application was unreasonable requires considering the rule’s specificity. The more general the rule, the more leeway [state] courts have in reaching outcomes in case-by-case determinations.” Richter, 131 S. Ct. at 786 (quoting Yarborough v. Alvarado, 541 U.S. 652, 664 (2004)). An *unreasonable* application of federal law” is therefore “different from an *incorrect* application of federal law.” Id. at 785 (quoting Williams, 529 U.S. at 410 (opinion of O’Connor, J.)).

Accordingly, a federal court may “issue the writ” only when the petitioner shows that “there is no possibility fairminded jurists could disagree that the state court’s decision conflicts with [the Supreme] Court’s precedents.” Id. at 786. Furthermore, we apply a presumption of correctness to the state court’s factual findings, and “[t]he applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1).

The district court applied that rigorous standard to the claims adjudicated by the OCCA, in its analysis of each of Mr. Taylor’s seven issues. The court addressed the claims in groups, according to the treatment accorded them by the OCCA. Thus, it first considered the issues on which the OCCA ruled on their

merits; the issues which involved matters of state law (and are therefore not properly brought in a federal habeas proceeding); and finally, issues which are procedurally barred.

A. Issues addressed on their merits:

The district court first considered Issue (1) – Mr. Taylor’s claim that the State failed to disclose exculpatory and impeachment evidence. The court found “after a review of the record and transcripts” that Mr. Taylor “failed to show that the OCCA’s decision was contrary to, or an unreasonable application of, federal law.” Op. & Order at 20; R. Vol. 1 at 475.

Issue (2) involves the claim that newly discovered evidence demonstrates that Mr. Taylor was denied due process in connection with his conviction. In particular, he claims that his newly discovered evidence showed post-trial “deals” with various important witnesses, witness recantations, instances of witness intimidation, and the introduction of false testimony, all of which cast serious doubt on the fairness of his conviction. The district court examined each claim and the record relating to that claim, ultimately concluding, again, that Mr. Taylor had failed to show that the OCCA’s decision was contrary to or an unreasonable application of federal law.

In Issue (4), Mr. Taylor claims that the evidence was insufficient to support his conviction for second degree felony murder because “the State’s evidence was so unworthy of belief that no rational fact finder could find guilt beyond a

reasonable doubt and the evidence did not establish each of the elements of the underlying felony.” Habeas Pet. at 35; R. Vol.1 at 38. The district court concluded, after a review of the record and all relevant testimony, that “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Op. & Order at 36; R. Vol. 1 at 491 (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). It further found the “decision by the OCCA was not objectively unreasonable.” Id. It thus properly denied Mr. Taylor’s request for relief on this issue.

B. State law issues:

The district court next addressed three issues (Issues (5), (6) and (7)), which the court correctly determined “are matters of state law and are not subject to federal habeas review.” Id. Issues (5) and (6) involve evidentiary matters—whether the trial court erroneously admitted testimony regarding Mr. Taylor’s claimed gang affiliation and whether he solicited the murder of two of the State’s witnesses; and whether he was given notice that he would have to defend against the charge of grand larceny as the basis for second degree felony murder. Issue (7) involved the claim that the trial court erred by not instructing the jury that two individuals were accomplices as a matter of law.

Although acknowledging that the State argued that these issues were not properly considered in a habeas petition, because they relate to matters of state law only, the district court went on to consider the merits of these claims and

analyze whether Mr. Taylor suffered any due process violation. With respect to the gang affiliation testimony, the district court concluded that Mr. Taylor “failed to show how the trial court abused its discretion or how this evidence ‘fatally infected’ his trial and rendered the whole proceeding fundamentally unfair.” Op. & Order at 42; R. Vol. 1 at 497. With respect to the claim that Mr. Taylor failed to receive notice of the State’s intention to use grand larceny as the underlying felony for the second degree felony murder charge, the district court again concluded, after a thorough examination of the record, that the trial was not “unfair” and Mr. Taylor was not “denied due process.” *Id.* at 44; R. Vol. 1 at 499. The court reached the same conclusion regarding the claim that the trial court erred by failing to instruct the jury about certain alleged accomplices.

C. Procedurally defaulted issues:

After analyzing the claims that the State courts addressed on their merits, including matters of state law, the district court turned to Issue (3), which the OCCA held was procedurally barred because he failed to raise it in his direct appeal. This issue—the claim that the trial court impaired his defense that some other person committed the crime—is the focus of Mr. Taylor’s arguments on appeal, and was the primary defense presented at trial. More specifically, Mr. Taylor claims he was denied the opportunity to present certain testimony at trial to support his theory that a third party committed the crime, and that he has new evidence supporting that theory, which arose after his post-conviction hearing.

He raised this issue to the OCCA on post-conviction appeal, and it was procedurally barred. And, the OCCA rejected his claim that his trial and appellate counsel had been ineffective, stating, with respect to appellate counsel, that “[t]he fact appellate counsel fails to recognize or raise a claim, regardless of merit, is not and cannot alone be sufficient to establish ineffective assistance, or to preclude enforcement of a procedural default.” Order Affirming Denial of Post-Conviction Relief (“Order”) at 2; R. Vol. 1 at 563.² He renews his argument

²Although neither the district court nor Mr. Taylor mentioned this point, the quoted statement by the OCCA, as the basis for rejecting a defendant’s claim that appellate counsel was ineffective for failing to raise an issue, is an incorrect statement of Strickland’s standard for analyzing whether appellate’s counsel’s performance was deficient. And, we have explicitly stated so on several occasions. See Milton v. Miller, 744 F.3d 660, 669-70 (10th Cir. 2014); McGee v. Higgins, 568 F.3d 832, 838 (10th Cir. 2009); Cargle v. Mullin, 317 F.3d 1196, 1204-05 (10th Cir. 2003). “As we recognized in both McGee and Cargle . . . , this ‘truncation . . . [has] enable[d] the OCCA to reject appellate ineffectiveness allegations without any assessment of the merits of the underlying predicate claims, so that the OCCA has been able to declare that a ‘failure to raised even a meritorious claim does not, in itself, constitute deficient performance.’” Milton, 744 F.3d at 669 (quoting Cargle, 317 F.3d at 1204) (further quotation omitted). “It is clearly wrong, as a matter of federal law, to require as a necessary condition for relief under Strickland something beyond the obvious merit of the omitted claim.” Id. at 669-70. Indeed, the “very focus of a Strickland inquiry regarding performance of appellate counsel is upon the merits of omitted issues, and no test that ignores the merits of the omitted claim in conducting its ineffective assistance appellate counsel analysis comports with federal law.” Id.

As we explain more fully in text, this error by the OCCA does not necessarily mandate habeas relief for Mr. Taylor. It *does* mean that the merits of his ineffective assistance of appellate counsel must be examined de novo on their merits, with no deference to the OCCA’s decision, which the district court did.

here that ineffective assistance of appellate counsel excuses his procedural default of this claim in State court.

As the district court stated, the doctrine of procedural default prohibits a federal court from considering a specific habeas claim where the state's highest court has declined to reach the merits of that claim on adequate and independent state procedural grounds, unless a petitioner "demonstrate[s] cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate[s] that failure to consider the claim[] will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 724 (1991); see also Thacker v. Workman, 678 F.3d 820, 835 (10th Cir. 2012) ("If a particular claim was defaulted in state court on an independent and adequate state procedural ground, we recognize the state courts' procedural bar ruling and do not address the claim on the merits unless cause and prejudice or a fundamental miscarriage of justice is shown.") (quoting Johnson v. Champion, 288 F.3d 1215, 1223 (10th Cir. 2002)) (further quotation omitted). "To be independent, the procedural ground must be based solely on state law." Id. The procedural ground is "adequate" if it is "strictly or regularly followed and applied evenhandedly to all similar claims." Id. (further quotation omitted).

As the district court further explained, when a state court imposes an independent and adequate procedural bar to an issue, we may not consider the claims unless the petitioner can show cause and prejudice for the default, or

demonstrate that a fundamental miscarriage of justice would result if the claims are not considered. The “cause” requirement demands that a petitioner show “that some objective factor external to the defense impeded . . . efforts to comply with the state procedural rules.” Murray v. Carrier, 477 U.S. 478, 488 (1986); see also Coronado v. Ward, 517 F.3d 1212, 1215 (10th Cir. 2008). To show “prejudice,” Mr. Taylor must show “‘actual prejudice’ resulting from the errors of which he complains.” United States v. Frady, 456 U.S. 152, 168 (1982). Finally, the fundamental miscarriage of justice exception to procedural bar “requires that [Mr. Taylor] demonstrate that he is ‘actually innocent’ of the crime of which he was convicted.” Coronado, 517 F.3d at 1216 (quoting McCleskey v. Zant, 499 U.S. 467, 494 (1991)).

The district court then applied that procedural bar standard, concluding that the OCCA’s procedural bar determination was “independent” and “adequate.” It examined “cause” for that default, considering whether Mr. Taylor’s claim of ineffective assistance of appellate counsel constitutes “cause.” The district court accordingly applied the Strickland standard, considering whether the attorney’s representation fell below an objective standard of reasonableness and whether any errors prejudiced the defense. As we explained, *supra* note 2, the district court was obligated to review de novo (with no AEDPA deference to the OCCA’s determination) Mr. Taylor’s claim of ineffective assistance of appellate counsel for failing to raise an issue.

The district court began its analysis of Mr. Taylor’s claim of ineffective assistance of appellate counsel by observing that the Sixth Amendment “does not require an attorney to raise every nonfrivolous issue on appeal.” Banks v. Reynolds, 54 F.3d 1508, 1515 (10th Cir. 1995); see also Hawkins v. Hannigan, 185 F.3d 1146, 1152 (10th Cir. 1999) (holding that if the omitted issue is meritless, then counsel’s failure to raise it on appeal is not constitutionally ineffective assistance). “If the omitted issue is so plainly meritorious that it would have been unreasonable to winnow out even from an otherwise strong appeal, its omission may directly establish deficient performance.” Cargle v. Mullin, 317 F.3d 1196, 1202 (10th Cir. 2003). If the omitted issue “has merit but is not so compelling. . . [the court must assess] . . . the issue relative to the rest of the appeal, and deferential consideration must be given to any professional judgment involved in its omission; of course, if the issue is meritless, its omission will not constitute deficient performance.” Id.

In accordance with that analysis, the district court considered the merits of the procedurally-defaulted claim to determine whether appellate counsel’s representation was constitutionally deficient. The district court found the omitted issues meritless, “[a]fter a review of the state record and transcripts.” Op. & Order at 49; R. Vol. 1 at 504.³ Accordingly, after finding “no merit to the claims

³In connection with this analysis, Mr. Taylor argues that the district court “applied the wrong standard for admissibility of third-party perpetrator evidence (continued...) ”

underlying [Mr. Taylor's] allegation of ineffective assistance of appellate counsel[,] . . . ineffective assistance of appellate counsel cannot serve as 'cause' to overcome the procedural bar." Id. at 56.

³(...continued)
in Oklahoma." Application for COA & Opening Br. at 25. He argues this is grounds for issuance of a COA. We disagree.

Mr. Taylor claims that the trial court prevented him from presenting three witnesses in support of his defense theory that someone else committed the murder for which he was convicted. As the district court noted, the Supreme Court in Holmes v. South Carolina, 547 U.S. 319, 327 (2006) stated, trial judges are permitted to exclude evidence:

proffered by criminal defendants to show that someone else committed the crime with which they are charged . . . where it does not sufficiently connect the other person to the crime, as, for example, where the evidence is speculative or remote, or does not tend to prove or disprove a material fact in issue at the defendant's trial.

Id. at 327. Mr. Taylor claims that the district court "relied on" Gore v. State, 119 P.3d 1268, 1275-76 (Okla. Crim. App. 2005) for the proposition that in Oklahoma, "proof of an overt act in the commission of a crime is . . . a threshold showing" for a defense theory of third party perpetrator. Id. at 1275-76. Mr. Taylor further avers that Gore's "overt act requirement" was "rejected" by the OCCA in Summers v. State, 231 P.3d 125, 146-47 (Okla. Crim. App. 2010), and the district court's "reliance" on Gore for that point requires issuance of a COA.

Mr. Taylor's argument is misplaced. In fact, the OCCA in Summers observed that "a careful reading of the entire Gore decision . . . reveals that any true 'overt act requirement,' in the context of third-party perpetrator evidence, died a (not very quiet) death in Gore." Summers, 231 P.3d at 146. The district court accordingly committed no error in citing Gore in its discussion, and it committed no error in its discussion of the trial court's evidentiary rulings relating to Mr. Taylor's third-party perpetrator defense.

Finally, the district court considered, separately, the remaining sub-issue of Issue (3) – Mr. Taylor’s claim that new evidence supports his third-party perpetrator defense. He avers in his habeas petition that he “informed the Court of Criminal Appeals [of this new evidence] when appealing the denial of post-conviction relief . . . , but the Court . . . did not address it.” Habeas Pet. at 29; R. Vol. 1 at 32. As mentioned above, in its denial of his request for post-conviction relief, the OCCA stated that “[a]ny issue that could have been previously raised, but was not, is waived and may not be the basis of a subsequent post-conviction application.” Order at 1; R. Vol. 1 at 562. Thus, this issue was also procedurally barred pursuant to an independent and adequate state ground, and could only be evaluated at this late date if Mr. Taylor demonstrated cause for his failure to raise this claim earlier.

Mr. Taylor’s claimed “cause” for failing to raise this issue earlier is that this “new evidence” was not discovered until after the hearing on his post-conviction relief. The district court found, without much discussion, that he failed to show such cause.⁴

Having concluded that Mr. Taylor failed to show cause to excuse the default of the issues which the OCCA found procedurally barred, the district court

⁴We note that, in view of the district court’s analysis of the evidence presented showing Mr. Taylor’s culpability, and considering the nature of the “newly discovered evidence” allegedly supporting his third-party perpetrator defense, the district court could also have easily concluded Mr. Taylor demonstrated no prejudice from the procedural bar of the evidence.

then considered whether Mr. Taylor could show that a fundamental miscarriage of justice would result if his procedurally barred issues are not considered. See Coleman, 501 U.S. at 750. As the court noted, this doctrine can apply “in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent.” Op. & Order at 57; R. Vol. 1 at 512 (quoting Carrier, 477 U.S. at 496); see Black v. Workman, 682 F.3d 880, 915 (10th Cir. 2012). A showing of innocence sufficient to allow the consideration of procedurally barred claims must be “so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of harmless constitutional error.” Schlup v. Delo, 513 U.S. 298, 316 (1995). Mr. Taylor must “support his allegations of constitutional error with new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence – that was not presented at trial.” Id. at 324.

The district court addressed and rejected this argument, and in that process succinctly summarized the essence of Mr. Taylor’s defense:

Petitioner asserts that “he has proclaimed his innocence of this crime since day one” and “that he was not there” when the [victim] was murdered. Further, in Ground [(3)], Petitioner alleges that he has new evidence to support his claim that Ed Russell killed [the victim], and that he was deprived of the right to present a third party perpetrator defense. Additionally, in Grounds [(1) and (2)], Petitioner asserts claims of exculpatory evidence and “newly discovered evidence” that some witnesses recanted their testimony, gave false testimony, or received deals in exchange for their

testimony. However, Petitioner falls short of showing innocence sufficient to allow consideration of the procedurally barred claims. The new evidence is not exculpatory scientific evidence, new eyewitness accounts, or physical evidence. In fact, this Court has already concluded, in Grounds [(1) and (2)], that the exculpatory evidence and “newly discovered” evidence was impeachment evidence, rather than evidence to support a claim of actual innocence.

Op. & Order at 58; R. Vol. 1 at 513 (quoting Habeas Pet.). The district court accordingly declined to consider the claims which were procedurally barred.

Lastly, the district court declined to issue a COA, stating that “[n]othing suggests that the Tenth Circuit would find that this Court’s application of AEDPA standards to the decision by the OCCA was debatable amongst jurists of reason. As to the claims denied on a procedural basis, Petitioner has failed to satisfy the second prong of the required showing, i.e., that the Court’s ruling resulting in the denial of the claims on procedural grounds was debatable or incorrect.” *Id.* at 59-60; R. Vol. 1 at 514-15. Mr. Taylor now requests a COA from our court.

DISCUSSION

A COA is a prerequisite to appellate jurisdiction in a habeas action. *See* 28 U.S.C. § 2253(c)(1)(A); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). We may not issue a COA unless “the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). To make such a showing, the applicant must demonstrate

“that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Allen v. Zavaras, 568 F.3d 1197, 1199 (10th Cir. 2009) (quoting Slack, 529 U.S. at 484). When the district court dismisses a petition on procedural grounds, “the applicant faces a double hurdle.” Coppage v. McKune, 534 F.3d 1279, 1281 (10th Cir. 2008). A COA cannot issue unless the petitioner shows both (1) “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right” and (2) “that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack, 529 U.S. at 484.

Thus, we may not issue a COA unless we are convinced that the district court, in applying the deferential AEDPA standards and procedural default analysis to Mr. Taylor’s numerous issues, failed to satisfy the above rigorous standard. The district court’s decision was lengthy (sixty pages) and thorough. The court carefully examined the entire record and exhaustively examined the applicable legal authorities. Mr. Taylor’s request for a COA and his Opening Brief have failed to convince us that the district court erred. Except for the few minor amplifications in our examination of the district court’s decision, we cannot improve on the district court’s determination. We certainly find that no

jurists of reason would debate the propriety of the district court's discussion and conclusions.

CONCLUSION

For the foregoing reasons, we DENY a COA and DISMISS this matter.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge