Baker v. United States

United States Court of Appeals for the Sixth Circuit

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No. 24-4055

Reporter
2025 U.S. App. LEXIS 22792 *; 2025 LX 313550

MYRON D. BAKER, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee.

Counsel: [*1] MYRON D. BAKER, Petitioner - Appellant, Pro se, Welch, WV.

For UNITED STATES OF AMERICA, Respondent - Appellee: Mary B. Young, Office of the U.S. Attorney, Columbus, OH.

Judges: Before: STRANCH, Circuit Judge.

Opinion

ORDER

Myron D. Baker, a federal prisoner proceeding pro se, appeals the district court's denial of his motion to vacate, set aside, or correct his sentence, filed pursuant to *28 U.S.C. § 2255*. Currently pending are Baker's application for a certificate of appealability (COA) and motion to proceed in forma pauperis on appeal.

Based on a tip from a confidential informant that Baker regularly prepared heroin and fentanyl for sale at his home and was the source of fentanyl and heroin that caused two overdoses, one resulting in death, task force officers from the Dayton Police Department began surveilling Baker's home. *United States v. Baker, No. 21-3159, 2022 WL 1017957, at *1 (6th Cir. Apr. 5, 2022)*. During this surveillance, officers followed Baker from his home to a nearby store, where Detective Dustin Phillips confronted him. *Id.* Concerned that Baker might be armed, Phillips conducted a pat-down and discovered separate bags of suspected cocaine and suspected fentanyl. *Id.* Phillips arrested Baker for unlawful possession of controlled substances. *Id.*

Two other task force officers—Officer Patrick **[*2]** Bell and Detective Tim Braun—went to secure Baker's home. *Id.* When they knocked on the door, an individual later identified as Michael Fox answered and invited them inside. *Id.* During a protective sweep, the officers found a digital scale. *Id.* Bell then left the scene to prepare a search warrant application, and Braun stayed to interview Fox. *Id. at * 1-2*. Fox told Braun that he had been staying at the house for a few weeks and that he had seen large bags of heroin there on multiple occasions, that Baker mixed heroin and fentanyl at the home to sell, and that Baker told him about the overdose death. *Id. at *2*. Bell included this information in the search warrant. *Id.* The officers' search uncovered two firearms, a DVR camera system, and a ballistic vest. *Id.*

A federal grand jury charged Baker with being a felon in possession of a firearm; conspiracy to possess with intent to distribute carfentanil, fentanyl, and heroin; distribution of carfentanil resulting in serious bodily injury; distribution of carfentanil resulting in death; and maintaining a drug house.

Baker moved to suppress the evidence seized from his person at the time of his arrest and from his home and all statements made during his arrest. After **[*3]** an initial hearing on the motions, Baker moved to reopen the suppression proceedings to present testimony from Fox that law enforcement officers made false statements in the search warrant affidavit and at the suppression hearing. In support, Baker submitted an affidavit from Fox. In it, Fox stated that, on the day of the search, he was working at Baker's house when he heard banging at the door. When he answered, officers dressed in street clothes grabbed him, threw him against the wall, shoved him down on the

porch, threatened to kill him if he moved, and entered the house. The officers began carrying things out of the house and, after several hours, took him to their police car to write a statement. They told him about a man who had died from an overdose and threatened to charge him with murder if he did not write down what he knew. Fox, however, knew nothing about a man dying and only wrote what the officers told him to avoid going to jail.

The district court appointed counsel for Fox and continued the suppression hearing. When Baker called Fox to the stand at the continued hearing and asked him about the search, Fox asserted his Fifth Amendment right against self-incrimination. The district court **[*4]** denied Baker's motions to suppress.

In a written plea agreement, Baker pleaded guilty to the conspiracy charge and to distributing carfentanil resulting in death. The parties agreed to concurrent prison terms of 120 months and 240 to 292 months. Baker reserved his right to appeal the denial of his suppression motions but otherwise waived his right to appeal, except with respect to claims of ineffective assistance of counsel and prosecutorial misconduct. Before sentencing, Baker moved to withdraw his guilty plea. After a hearing, the district court denied the motion. The court sentenced Baker to concurrent prison terms of 120 months on the conspiracy count and 288 months on the distribution count, to be followed by five years of supervised release. This court affirmed the district court's judgment, *id. at *7*, and the Supreme Court denied Baker's petition for certiorari, *Baker v. United States, 143 S. Ct. 242 (2022)* (mem.).

In his § 2255 motion, Baker raised six claims. First, he asserted that appellate counsel was ineffective for failing to challenge the validity of the search warrant for his residence. In his second and third claims, he asserted that trial counsel performed ineffectively at the suppression hearing and should have sought to suppress **[*5]** evidence of his arrest and the evidence seized from his person during the arrest. Fourth, he asserted that the police engaged in misconduct in relation to Fox, including by pressuring him not to testify at the suppression hearing, and that trial counsel was ineffective for failing to request a *Franks*[1] hearing "despite ... evidence proving that the case agents knowingly and intentionally manufactured and used false and misleading statements in the search warrant affidavit." In his fifth claim, Baker asserted that trial counsel was ineffective for "fail[ing] to adequately explain the nature of the charges, specifically the 'but-for' cause and the element of 'death results,'" and failing to "investigate the cause of death and prepare a potential affirmative defense based on the possibility of mixed drug use." Finally, Baker asserted that trial counsel failed to promptly inform the district court that Baker wished to withdraw his guilty plea.

Along with motions for discovery, Baker moved to expand the record to include his medical records, "[t]he audio recording of [a] police interaction with Mr. Fox," Fox's affidavit, and a toxicology report. He also moved for an evidentiary hearing. The **[*6]** magistrate judge denied those motions. The magistrate judge also recommended that Baker's § 2255 motion be denied, concluding that his claim of police misconduct was procedurally defaulted and that his remaining claims lacked merit. Baker objected to the denial of his fourth and fifth claims and his requests to expand the record, and the district court recommitted the matter to the magistrate judge to consider the objections. In a supplemental report, the magistrate judge again recommended that Baker's § 2255 motion be denied. The district court adopted that recommendation and denied Baker's § 2255 motion. The court declined to issue a COA.

Baker now appeals and moves this court for a COA. The issues he raises in his COA application, as amended, relate only to his fourth and fifth claims. Baker also seeks to challenge the district court's denial of his motion to expand the record to include the audio recording of Fox's interaction with the officers and the toxicology report. Baker has forfeited his remaining claims by failing to address them. *See* *28 U.S.C. § 2253(c)(3)*; *Elzy v. United States, 205 F.3d 882, 886 (6th Cir. 2000)*; *see also* *Jackson v. United States, 45 F. App'x 382, 385 (6th Cir. 2002)* (per curiam).

This court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." *Miller-El v. Cockrell, 537 U.S. 322, 336 (2003)* (quoting **[*7]** *28 U.S.C. § 2253(c)(2)*). To obtain a COA, a movant must show that reasonable jurists would find the district court's assessment of his constitutional claims

[1] *Franks v. Delaware, 438 U.S. 154 (1978)*.

"debatable or wrong." *Slack v. McDaniel, 529 U.S. 473, 484 (2000)*. When the district court's denial is based on a procedural ruling, the movant must demonstrate that "jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

Ground Four

In his fourth claim, Baker argued that trial counsel was ineffective for failing to request a *Franks* hearing based on evidence that officers Bell and Braun falsely stated in the search warrant affidavit that Fox had invited them into Baker's residence and that they coerced Fox into making false statements that were used to establish probable cause. According to Baker, during the suppression proceedings, Fox approached defense counsel and told him that the police had forcibly entered the residence with their guns drawn, coerced him into giving a statement, and threatened him with criminal charges if he did not cooperate. After Fox signed an affidavit to this effect, defense counsel moved **[*8]** to reopen the suppression proceedings. But before Fox took the stand at the continued suppression hearing, case agents confronted him at the courthouse and dissuaded him from testifying. Baker contended that "the[] actions by the case agents, as well as the government, constituted witness intimidation and manipulation," thus violating his right to due process, and that counsel was ineffective for failing to move for a *Franks* hearing.

The magistrate judge found that Baker's claim of "police misconduct" based on the alleged intimidation of Fox was procedurally defaulted because he did not raise it on direct appeal. And the magistrate judge concluded that Baker could not show cause for the default based on appellate counsel's failure to raise the issue because, as a claim of police rather than prosecutorial misconduct, it would have been barred by the appellate waiver provision in Baker's plea agreement. As for the ineffective-assistance claim, the magistrate judge concluded that it failed because Baker did not identify any "intentionally or recklessly false" statements in the search warrant, Fox had invoked his Fifth Amendment right not to testify, and Baker's own statement about what Fox said amounted to **[*9]** double hearsay.

Turning first to Baker's claim that trial counsel was ineffective for failing to move for a *Franks* hearing, reasonable jurists could not disagree with the district court's rejection of this claim. To establish ineffective assistance of counsel, a defendant must show both that (1) counsel's performance was deficient, i.e., "that counsel's representation fell below an objective standard of reasonableness," and (2) the deficient performance resulted in prejudice to the defense. *Strickland v. Washington, 466 U.S. 668, 687-88, 692 (1984)*. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id. at 689* (quoting *Michel v. Louisiana, 350 U.S. 91, 101 (1955)*). The test for prejudice is whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id. at 694*.

"Under *Franks* ... a search warrant is invalid when the supporting affidavit contains a statement, necessary to the finding of probable cause, that is later demonstrated to be false and included by an affiant knowingly and intentionally, or with **[*10]** a reckless disregard for the truth." *United States v. Duval, 742 F.3d 246, 250 (6th Cir. 2014)*. By moving to reopen the suppression proceedings to introduce testimony that would "point to many willful 'inaccuracies' and false statements testified to by the [government witnesses at the [suppression] hearing, and the willful inaccuracies and false statements in the [search warrant affidavit]," defense counsel effectively requested a *Franks* hearing. The district court granted that motion, continued the suppression hearing, and allowed Baker to call Fox as a witness. But Fox asserted his Fifth Amendment privilege. Baker faulted counsel for not requesting a *Franks* hearing, but he failed to show that there is anything else that counsel could have done. Baker's claim that counsel was ineffective for failing to move for a *Franks* hearing does not demonstrate deficient performance or prejudice warranting the claim to proceed further.

In addition to asserting ineffective assistance, Baker raised a claim of misconduct arising from Fox's encounter with case agents at the continued suppression hearing. In his CO A application, Baker argues that the district court misconstrued this as a police misconduct claim arising out of the officers' interactions with Fox at the time of the search **[*11]** rather than the case agents' interactions with Fox at the courthouse on the day that he was to testify at the suppression hearing. Baker insists that his claim was one of prosecutorial misconduct, specifically, that the government, through its case agents, threatened Fox with criminal prosecution "to effectively silence [him], thereby obstructing the fact-finding process and violating [Baker]'s right to due process." He argues that the district court erred by failing to consider this prosecutorial misconduct claim and by denying his motion to expand the record to include the audio recording of case agents' interaction with Fox at the courthouse, which he says would prove the alleged misconduct. He further argues that any procedural default is excused by his appellate attorney's failure to investigate and present this claim on direct appeal.

Reasonable jurists could disagree with the district court's resolution of this claim. The magistrate judge did recognize that Baker's claim was based on the case agents' alleged intimidation of Fox during the suppression hearing, not solely on their contact with him on the day of the search. But even though Baker expressly requested and was granted **[*12]** permission to amend the heading of his claim to refer to "prosecutorial error" instead of just "police misconduct," and even though he expressly alleged witness tampering in connection with the interaction at the courthouse between the case agents and Fox, the magistrate judge did not treat the claim as a prosecutorial misconduct claim. Instead, the magistrate judge considered only a claim of police misconduct and concluded that Baker could not show cause for his failure to raise that claim on direct appeal because, even if appellate counsel had raised it, it would have been dismissed based on Baker's appeal waiver. But Baker's initial § 2255 motion alleged that the government engaged in "witness intimidation and manipulation," and his amended ground four heading expressly raised the issue of "prosecutorial error." Although Baker referred to "police misconduct," his claim can be fairly read as one of prosecutorial misconduct. And in his plea agreement, Baker reserved the right to raise claims of prosecutorial misconduct on direct appeal. Thus, reasonable jurists could disagree with the magistrate judge's determination that Baker's claim would have been barred by his appellate waiver on direct **[*13]** appeal.

Baker concedes, however, that his claim of prosecutorial misconduct is procedurally defaulted because he did not raise it on direct appeal. At issue, then, is whether he can show that the procedural default should be excused because appellate counsel was ineffective for failing to investigate the claim and raise it on appeal. *See Murray v. Carrier, All* U.S. 478, 492 (1986) (explaining that ineffective assistance of appellate counsel can serve as cause to excuse a procedural default).

The standard for ineffective assistance of counsel as set forth in *Strickland* applies to claims of ineffective assistance of appellate counsel. *See Willis v. Smith, 351 F.3d 741, 745 (6th Cir. 2003)*. Appellate counsel is not required "to raise every non-frivolous issue on appeal." *Caver v. Straub, 349 F.3d 340, 348 (6th Cir. 2003)*. Indeed, "'winnowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Smith v. Murray, All* U.S. 527, 536 (1986) (quoting *Jones v. Barnes, 463 U.S. 745, 751-52 (1983)*). Where, as here, appellate counsel "presents one argument on appeal rather than another ... the petitioner must demonstrate that the issue not presented 'was clearly stronger than issues that counsel did present'" to establish ineffective assistance of counsel. *Caver, 349 F.3d at 348* (quoting *Smith v. Robbins, 528 U.S. 259, 289 (2000)*). Thus, in evaluating a claim of ineffective assistance **[*14]** of appellate counsel, a court must "assess the strength of the claim[s] appellate counsel failed to raise." *Wilson v. Parker, 515 F.3d 682, 707 (6th Cir. 2008)*.

Whether appellate counsel was ineffective for failing to raise a claim of prosecutorial misconduct depends on whether there was evidence to support such a claim. Baker acknowledges that Fox asserted his Fifth Amendment right against self-incrimination and could not be compelled to testify, but he argues that the audio recording of Fox's interaction with the case agents at the courthouse before his testimony proves that the government engaged in misconduct. The recording of the interaction was played for Baker and his attorney in chambers before the start of the continued suppression hearing. At his sentencing hearing, Baker asked that the audio recording be made

available to him. The prosecutor explained that they allowed the defense to hear the recording before the continued suppression hearing "as a courtesy" but that the recording constituted Jencks Act material, which would have been given to the defense only if Baker had gone to trial. The district court advised Baker that, if he believed the recording was relevant to any challenge to the denial of his motion to suppress that he wished to raise **[*15]** on appeal, he could move this court for production of the recording.

On appeal, appellate counsel did not move for production of the recording. So, Baker attempted to have that recording added to the § 2255 record. The magistrate judge denied Baker's first motion to expand the record to include the recording because Baker "ha[d] no pending § 2255 claims of witness tampering, coercion, or manipulation by law enforcement." But as discussed above, a liberal reading of Baker's pleadings shows that he did raise these claims. The magistrate judge denied Baker's second motion to expand the record based on the determination that the police-misconduct claim was procedurally defaulted. As explained, the magistrate judge failed to consider that Baker also raised a claim of prosecutorial misconduct—a claim that Baker reserved as part of his plea agreement. Thus, reasonable jurists could disagree with the magistrate judge's reasons for denying the motion to expand the record to include the audio recording. And without the audio recording, it is unclear from the record whether appellate counsel had a viable claim of prosecutorial misconduct to raise on appeal such that the procedural default of the claim could **[*16]** be excused.

For these reasons, a CO A will be denied as to Baker's claim that trial counsel was ineffective for failing to request a *Franks* hearing but granted as to Baker's claim of prosecutorial misconduct and the denial of his motion to expand the record to include the audio recording of Fox's interaction with case agents on the day of the continued suppression hearing.

Ground Five

In his fifth ground for relief, Baker asserted that his guilty plea was not knowing and voluntary because trial counsel "failed to adequately explain the nature of the charges, specifically the 'but-for' cause and the element of 'death results.'" He further asserted that counsel was ineffective for failing to seek laboratory testing of the syringe that was found near the overdose victim, which he claimed would "likely reveal exculpatory evidence." According to Baker, "[i]ntravenous drug users are commonly known to share and reuse syringes, which may contain 'residue' from the multiple drugs preferred by the users." He argued that, without testing of the syringe, there was no way to know that the drugs distributed by him were the "but for" cause of the victim's death. He also requested that the record be expanded **[*17]** to include the victim's toxicology report.

Reasonable jurists could not disagree with the denial of Baker's claim that counsel was ineffective for failing to seek laboratory testing of the syringe. Baker's assertion that the results of the test likely would have been exculpatory was entirely speculative, as was his assertion that the victim's toxicology report would support his claimed innocence of this charge.

Reasonable jurists also could not disagree with the district court's denial of Baker's claim that counsel failed to advise him about the "but for" causation element of the carfentanil distribution charge. In order for a guilty plea to be constitutional it must be knowingly, intelligent, voluntary, and made with sufficient awareness of "the relevant circumstances and likely consequences." *Bradshaw v. Stumpf, 545 U.S. 175,183 (2005)*. Courts evaluate the voluntariness of a guilty plea in light of all relevant circumstances surrounding the plea, while also taking into consideration any threats or misrepresentations that may have induced the plea thereby making it involuntary. *Brady v. United States, 397 U.S. 742, 755 (1970)*. Ineffective assistance of counsel may render a plea involuntary. *See Hill v. Lockhart, 474 U.S. 52, 56-57 (1985)*.

The record belies Baker's claim that counsel's failure to advise him about "but **[*18]** for" causation rendered his guilty plea involuntary. As part of the plea agreement Baker agreed that "the forensic pathologist... concluded that but for 'J.V.' using the carfentanil, his death would not have occurred and that the carfentanil distributed by [Baker] was an independently sufficient cause of 'J.V.'s' death." At the plea hearing, Baker confirmed that he fully

understood the charges to which he was pleading guilty and the facts underlying the charges as set forth in the plea agreement.

These "[s]olemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison, 431 U.S. 63, 74 (1977)*. The district court conducted a thorough plea colloquy under *Federal Rule of Criminal Procedure 11*, and Baker remains bound by his statements at that proceeding. *See Ramos v. Rogers, 170 F.3d 560, 566 (6th Cir. 1999)*. Baker's claim that counsel's lack of advice regarding the distribution charge rendered his guilty plea involuntary does not warrant proceeding further.

For these reasons, Baker's application for a CO A is GRANTED in part and DENIED in part and his motion to proceed in forma pauperis is GRANTED. The Clerk's Office is directed to issue a briefing schedule on Baker's claim of prosecutorial misconduct and the district court's denial of his motion to expand the record to include the audio **[*19]** recording of Fox's encounter with case agents at the suppression hearing.

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