UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 23-80901-CV-SMITH

DUANE E. OWEN,

Petitioner,

v.

RICKY DIXON, *et al.*,

Respondents.

_____/

ORDER DENYING EMERGENCY MOTION FOR STAY OF EXECUTION

This case is currently before the Court on Petitioner, Duane E. Owen's Emergency Motion for Stay of Execution [DE 3], filed in conjunction with Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody [DE 1], and the State's Response to Emergency Motion for Stay of Execution [DE 6]. Petitioner, an inmate in state custody, is scheduled to be executed on Thursday, June 15, 2023 at 6:00 p.m. Petitioner, arguing that he is incompetent to be executed, seeks to stay his execution. Petitioner claims that he is not competent to be executed because he suffers from schizophrenia and dementia.

Inmates seeking a stay of execution must satisfy all the requirements for a stay. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Those requirements are: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009). If a petitioner fails to establish any of these requirements, a court must deny the stay. *See Valle v. Singer*, 655 F.3d 1223, 1225 (11th Cir. 2011) ("Because Valle has

failed to show a substantial likelihood of success on the merits, we need not address the other three requirements for issuance of a stay of execution."). To meet the first requirement, Petitioner must show that he is likely to succeed in establishing that he is incompetent. A petitioner claiming incompetence must show that he lacks a "'rational understanding' of the connection between [his] crimes and his execution." *Ferguson v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 1315, 1336 (11th Cir. 2013) (quoting *Panetti v. Quarterman*, 551 U.S. 930, 935, 958–59 (2007)). Because Petitioner must show he is likely to succeed on the merits, he must show that he is likely to succeed on his claim for a writ of habeas corpus based on his alleged incompetence.

A prisoner in state custody may not be granted a writ of habeas corpus for any claim that was adjudicated on the merits in state court unless 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) "based on an unreasonable determination of the facts in light of the evidence presented" to the state court. 28 U.S.C. § 2254(d)(1), (2); *see Williams v. Taylor*, 529 U.S. 362, 405-06 (2000); *Fugate v. Head*, 261 F.3d 1206, 1215-16 (11th Cir. 2001).

A state court decision is "contrary to" or an "unreasonable application of" the Supreme Court's clearly established precedent within the meaning of § 2254(d)(1) only if the state court applies a rule that contradicts the governing law as set forth in Supreme Court case law, or if the state court confronts a set of facts that are materially indistinguishable from those in a decision of the Supreme Court and nevertheless arrives at a result different from Supreme Court precedent. *Brown v. Payton*, 544 U.S. 133, 141 (2005); *Williams*, 529 U.S. at 405-06. So long as neither the reasoning nor the result of the state court decision contradicts Supreme Court decisions, the state court's decision will not be disturbed. *Early v. Packer*, 537 U.S. 3, 8 (2002).

Further, a federal court must presume the correctness of the state court's factual findings unless the petitioner overcomes them by clear and convincing evidence. *See* 28 U.S.C. § 2254(e)(1); *Putman v. Head*, 268 F.3d 1223, 1241 (11th Cir. 2001). Thus, a court "must defer to the state circuit court's credibility determination, which is a factual finding." *Rimmer v. Sec'y, Fla. Dep't of Corr.*, 876 F.3d 1039, 1055 (11th Cir. 2017). Additionally, the petitioner carries the burden of proof and the § 2254(d)(1) standard is a high hurdle to overcome. *See Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (acknowledging that § 2254(d) places a difficult burden of proof on the petitioner).

Petitioner raises two issues. First, Petitioner argues that the state court made an unreasonable determination of the facts in light of the evidence presented. Petitioner argues that the state court incorrectly weighed the evidence regarding Petitioner's mental illness. Petitioner argues that the state court gave more weight to the opinions of the three-member Commission of psychiatrists authorized by the governor than to Petitioner's doctors. However, as set out above, a federal court must presume the correctness of the state court's factual findings unless the petitioner overcomes them by clear and convincing evidence. Petitioner has not met this burden. The state trial court explained its reasoning for affording more weight to the Commission's opinions than Petitioner's witnesses and Petitioner has not shown that the state court's reasons were unreasonable. Petitioner further argues that state circuit court failed to make a finding that Petitioner had a rational understanding of the connection between his crimes and his execution. The state circuit court, however, found that Petitioner was sane, did not have any mental illness, and "there is no evidence that [] mental illness interferes, in any way, with his 'rational understanding' of the fact of his pending execution and the reason for it." *State v. Owen*, Case No. 04-2023-CA-000264 at 21 (opinion filed at DE 1-2).

Petitioner further argues that the state court improperly focused on Petitioner's mental state in the past. A review of the state court's decision, however, indicates that it considered Petitioner's past and present mental state. According to the state court opinion, a member of the Commission testified that Petitioner "specifically told the Commission that the State of Florida was going to kill him for having killed the two women; but that sadly enough that's what he did; and that he didn't know how they think it was okay to kill him for killing them." The state court then found that "[t]hese statements very clearly demonstrate Mr. Owen understands the nature and effect of the death penalty and why it is to be imposed on him." *Id.* at 10-11. Members of the Commission also testified: that Petitioner has no mental illness and is feigning psychopathology to avoid the death penalty; that Petitioner showed no signs of dementia; that Petitioner is not phychotic and knows exactly what is going on; and that Petitioner showed no signs of any mental illness during the Commissions interview. *Id.* at 14-16. All of this testimony contradicts Petitioner's argument that the state court improperly focused on Petitioner's past mental state. Thus, Petitioner has not shown by clear and convincing evidence that state circuit court's finding regarding his current mental state was incorrect.

Second, Petitioner argues that the state court's decision was contrary to, or involved an unreasonable application, of clearly established federal law because the decision was based on an unreasonable determination of the facts presented in the state court proceeding. However, because Petitioner has not shown that the state court's factual findings were incorrect, Petitioner cannot establish that the state court's decision was contrary to clearly established law.

Consequently, Petitioner has not established the first requirement for a stay — a strong showing that he is likely to succeed on the merits. Accordingly, it is

ORDERED that Petitioner, Duane E. Owen's Emergency Motion for Stay of Execution [DE 3] is **DENIED with prejudice** and the Court will not entertain a motion for reconsideration.

DONE AND ORDERED in Fort Lauderdale, Florida, this 11th day of June, 2023.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: All counsel of record