

United States District Court,
S.D. Mississippi,
Jackson Division.
Luke WOODHAM, Petitioner

v.

Michael WILSON and Jim Hood, Respondents.
Civil Action No. 3:04cv48-HTW-JCS.
Nov. 3, 2006.

Luke Tims Woodham, Parchman, MS, pro se.
Paula H. Broome, Mississippi Attorney General's Office, Jackson, MS, for Defendant.

REPORT AND RECOMMENDATION

[JAMES C. SUMNER](#), United States Magistrate Judge.

I. Introduction and Procedural History

*1 This cause is before the court on the petition for writ of habeas corpus filed by Luke Woodham. Having considered the petition, the state's answer, and the state court record, the undersigned recommends that habeas relief be denied and the petition be dismissed with prejudice.

Petitioner was tried and convicted in the Circuit Court of Rankin County, Mississippi, for the murder of his mother, Mary Ann Woodham. ^{FN1} He was sentenced to a term of life imprisonment. He appealed his conviction and sentence to the Mississippi Supreme Court, which affirmed. Woodham then filed with the supreme court an application for leave to proceed in the trial court with a motion for post-conviction relief, which was denied.

^{FN1}. The venue of the trial was changed to Neshoba County, Mississippi.

Petitioner then brought the present habeas petition, asserting the following claims for relief:

1. The trial court erred by allowing Grant Boyette and Lucas Thompson to refuse to testify pursuant to the Fifth Amendment and allowing defense counsel to ask them only one question each.
2. He was denied a fair trial in that the state released inadmissible evidence to the media prior to trial.
3. He was denied effective assistance of counsel at trial.

4. The trial court erred in admitting his confessions, which were involuntary and obtained in violation of his Fifth and Sixth Amendment rights.
5. The length of his life sentence was unconstitutional, given Petitioner's young age and life expectancy.
6. His sentence was unconstitutional in that it was disproportionate to the sentences received by other defendants for similar crimes.
7. He was denied an impartial jury because three jurors should have been stricken for cause.
8. The defense was not allowed to properly cross-examine Daniel Lucas Thompson.
9. The prosecutor failed to disclose evidence favorable to Petitioner.
10. He was denied a fair trial because the court refused to give certain jury instructions on manslaughter and insanity.
11. The evidence of Petitioner's insanity was so great that no reasonable jury could have convicted him.
12. He was denied a fair trial because the prosecutor made prejudicial statements during closing argument.
13. His rights to due process were violated by the state's refusal to provide him with a transcript of the grand jury proceedings.

II. Evidence at Trial

Luke Woodham was a student at Pearl High School in Pearl, Mississippi. In his testimony at trial, he described himself as lonely and as a social outcast who was often ridiculed by other students. While in school he began dating another student at Pearl High School student. When she ended their relationship, Woodham was devastated. Around this same time he and several other boys at the school became friends with an older student by the name of Grant Boyette. Under Boyette's leadership, the group, known as the "Kroth," discussed philosophy and dabbled in the occult. Boyette represented to the other members of the group that he was a satanist and that he was capable of summoning demons do his bidding. According to Woodham, Boyette told Woodham that Satan had chosen Woodham to do great things for him.

*2 Woodham testified that on the morning of October 1, 1997, he heard Boyette's voice directing him to kill his mother. He took a knife and pillow into her room where she was in bed, closed his eyes, and following the directions he was hearing from Boyette. When he opened his eyes, his mother was dead. Woodham claimed to have had no memory of killing her. The autopsy report indicated that Mary Ann Woodham died from multiple

stab wounds. Woodham was arrested later that morning at his high school. That same day, after having been read his *Miranda* rights, he gave a written confession and a confession on videotape.

III. Analysis

A. Claims held by state court to be procedurally barred.

Several of Petitioner's habeas claims were previously raised by him in his state court application for post-conviction relief. In denying relief, the state court held that claims two (inadmissible evidence released to media), three (ineffective assistance of trial counsel); seven (failure to exclude jurors for cause), eight (denial of right to cross-examine Daniel Lucas Thompson), twelve (prosecutorial misconduct during closing argument) and thirteen (failure to produce grand jury transcripts) were barred pursuant to [Miss.Code Ann. § 99-39-21\(1\)](#) because of Woodham's failure to raise them on direct appeal.^{FN2}

[FN2](#). This section of Mississippi's post-conviction relief statute provides as follows:

Failure by a prisoner to raise objections, defenses, claims, questions, issues or errors either in fact or law which were capable of determination at trial and/or on direct appeal, regardless of whether such are based on the laws and the Constitution of the state of Mississippi or of the United States, shall constitute a waiver thereof and shall be procedurally barred, but the court may upon a showing of cause and actual prejudice grant relief from the waiver.

[Miss.Code Ann. § 99-39-21\(1\)](#).

If a state court's denial of relief is based upon a state law ground which is independent of the federal constitutional claim and adequate to support the petitioner's continued custody, federal habeas relief is generally precluded. [Coleman v. Thompson, 501 U.S. 722 \(1991\)](#). A procedural rule is "adequate" if it is regularly and consistently applied. [Johnson v. Mississippi, 486 U.S. 578, 589 \(1986\)](#). A procedural rule is presumed to be adequate if the state court expressly relies on it in denying a claim for collateral relief; however, this presumption can be rebutted by a showing by the petitioner that the rule is not strictly or regularly followed. [Lott v. Hargett, 80 F.3d 161, 165 \(5th Cir.1996\)](#). Woodham has made no argument or showing to rebut this presumption. Accordingly, the Mississippi Supreme Court's reliance upon Woodham's procedural defaults constitutes an adequate and independent basis for the its ruling.

A narrow exception to this rule precluding review exists where the petitioner can establish cause for the procedural default and actual prejudice as a result of the alleged constitutional violation. [Coleman, 501 U.S. at 750; see also Haley v. Cockrell, 306 F.3d 257, 263 \(5th Cir.2002\)](#). Woodham argues that the cause for his default of these claims on direct appeal was the ineffective assistance of his appellate counsel. Ineffective

assistance can be sufficient “cause” for a procedural default. [Murray v. Carrier, 477 U.S. 478, 488 \(1986\)](#); [Busby v. Dretke, 359 F.3d 708, 718 \(5th Cir.2004\)](#). However, this argument is not properly before the present court because Petitioner never raised ineffective assistance of appellate counsel as a separate claim in state court. See [Murray 477 U.S. at 488-489 \(1986\)](#).^{FN3} Consequently, Woodham may not rely upon ineffective assistance of counsel as cause for his default, and this court may not review the defaulted claims.

[FN3](#). As the *Murray* court stated, to allow a habeas petitioner to raise ineffective assistance of counsel as “cause” for a procedural default without having first presented an ineffective assistance claim to the state courts would undermine the principles of comity underlying the exhaustion requirement. *Id.*

B. Claims adjudicated on the merits by the state court.

*3 Remaining are claims one (court's refusal to allow questioning of Boyette and Thompson), four (involuntary confession), five (unconstitutional sentence because of Petitioner's age), six (disproportionate sentence), nine (*Brady* violation), ten (denial of manslaughter and insanity jury instructions), and eleven (overwhelming evidence of insanity) Each of these claims was considered on the merits by the state supreme court. This court's standard of review for habeas claims adjudicated on the merits by a state court derives from [28 U.S.C. § 2254\(d\)](#), as illuminated by the Supreme Court in [Williams v. Taylor, 529 U.S. 362 \(2000\)](#). [Section 2254\(d\)](#) provides as follows:

(d) 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 with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-

(1) 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; 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 two prongs of [section 2254\(d\)\(1\)](#) are to be accorded independent meaning; relief may be granted if the prisoner satisfies either prong. [Gardner v. Johnson, 247 F.3d 551 \(5th Cir.2001\)](#). Under the “contrary to” prong, relief may be granted if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams* at 412-13. Under the “unreasonable application” clause, a federal court may grant the writ if the state court identifies the correct governing legal principle set forth by the Supreme Court but unreasonably applies that principle to the facts of the prisoner's case. *Id.* at 413. “Unreasonable application” means that the state court decision was objectively unreasonable; relief cannot be granted in a case where the state court's application of

Supreme Court law was merely erroneous. *Id.* at 409-410. Under [section 2254\(d\)\(e\)\(1\)](#), factual findings by the state court are presumed to be correct. To the extent that a state court's decision is based upon a finding of fact, a habeas court is to defer to that decision unless it "was based on an unreasonable determination of the facts in light of the evidence presented" to the state court. 28 U.S.C. 22545(d)(2). Thus, the only question before this court as to those claims which were adjudicated on the merits by the state court is whether that adjudication resulted in a decision that meets the description set forth in [section 2254\(d\)](#).

Issue one: Failure of Grant Boyette and Lucas Thompson to testify. Woodham claims that the trial court committed constitutional error in allowing two witnesses to plead a "blanket" Fifth Amendment privilege. During his case in chief, Woodham called Grant Boyette, who was indicted for crimes arising out of the same occurrence, to testify. After an initial question posed by defense counsel, Boyette, upon the advice of his attorney, invoked his privilege not to testify. [415]:

*4 Q. (MR. ROUSSELL, defense counsel): Would you please state your name for the record?

A. Marshall Grant Boyette.

MR. RAINER (counsel for Boyette): Your Honor, that is the extent of which I am going to allow my client to testify. I am directing him, under these circumstances, to invoke his privilege and right-privileges and rights under the Fifth Amendment to the Constitution of the United States and Article 26 of the Mississippi Constitution. And I'm directing him not to answer any questions put to him by Defense Counsel.

Q. (Defense counsel continuing): Do you know Luke Woodham? MR. RAINER: Your Honor-

A. Due to the circumstances-

MR. RAINER:-all I can say is-all I can say is, again, I am directing my client not to answer any questions. I am directing him not to say another word.

THE COURT: Mr. Boyette-Mr. Boyette, are you invoking your right under the Fifth Amendment to answer any further questions?

WITNESS: Due to the circumstances of the situation, I've been advised by my attorney to invoke my Fifth Amendment rights.

THE COURT: Mr. Roussell, it appears that he will invoke his Fifth Amendment rights as to further questions.

Q (MR. ROUSSELL): Am I to understand that you will answer no questions based on the Fifth Amendment?

MR. RAINER: You are to understand that, and I am directing my client not to say another word.

MR. ROUSSELL: I have nothing further.

The court dismissed the witness, but Defense counsel then asked for leave to ask one more question. The court then called a bench conference, during which defense counsel informed the court that he intended to ask Boyette whether he was present at the Woodham home on the morning that Mrs. Woodham was killed. The court would not allow this, stating that since Boyette had invoked his Fifth Amendment rights, asking further questions would amount to the attorney testifying.

Woodham next called as a witness Lucas Thompson, another member of the “Kroth,” who had previously testified for the state. Thompson apparently had already made defense counsel aware that he would not testify. Defense counsel asked him why he was refusing to testify when he had agreed to testify earlier. He responded by reading the following statement:

Upon advice of retained counsel and due to the breach of Rankin County Youth Court Division Order of October 15, 1997, requiring confidentiality as to my interests and the violation of my due process of law by media disclosure through its motion filed herein, I hereby invoke my rights under the United States Constitution Fifth Amendment to decline to testify as such may tend to incriminate me.

After asking Thompson whether he was invoking his right as to any and all questions that would be asked, other than his name for the record, and receiving an affirmative response, the court ruled that defense counsel could question Thompson no further.

The state supreme court rejected this claim, finding that by failing to make a proffer of the testimony of these witnesses save as to one question to Boyette (concerning whether he was at the Woodham home on the morning of the murder), Woodham failed to properly preserve the issue and was procedurally barred from raising it on appeal. Furthermore, the court concluded that both witnesses were entitled to the protections of the Fifth Amendment and that no question was proffered which would have been outside the scope of the privilege. The state court's holding on this issue was not contrary to any clearly established law as determined by the United States Supreme Court. For this reason, Petitioner is entitled to no relief on this claim.

**5 Issue Four: Involuntary confessions.* Woodham contends the trial court should have excluded his two confessions because of his young age (sixteen) at the time they were made and because he had no guardian or attorney present. The state supreme court rejected this claim, holding that the proper analysis was of the “totality of the circumstances,” and that in view of those circumstances, his confessions were admissible.

Due process requires that the confession of a criminal defendant be voluntary and not the

result of coercion. [Self v. Collins, 973 F.2d 1198, 1205 \(5th Cir.1992\)](#) (citing [Miller v. Fenton, 474 U.S. 104, 109 \(1985\)](#)). In addition, the procedural safeguards established in [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#) protect an accused's privilege against self-incrimination during custodial interrogation. *Id.* The ultimate issue of whether a confession is voluntary is a legal one; however, it requires factual findings on subsidiary issues, and the findings made by the state court on these factual issues are entitled to deference under [section 2254\(d\)\(2\)](#) and [2254\(e\)\(1\)](#). Under *Miranda*, the determination as to whether an accused has waived his right to remain silent and to have the assistance of counsel as a confession is voluntary is to be analyzed by consideration of the “totality of the circumstances,” an approach which is applicable to juveniles as well as adults. [Gochot v. Stalder, 298 F.3d 414, 418 \(5th Cir.2002\)](#) (citing [Fare v. Michael C., 442 U.S. 707 \(1970\)](#)); [United States v. Saucedo-Valasquez, 843 F.2d 832, 835 \(5th Cir.1988\)](#)). The specific circumstances to be considered in the case of a juvenile include “the juvenile's age, experience, education, background, and intelligence, ... and whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.” [Michael C., 442 U.S. at 725.](#)

Using the “totality of the circumstances” approach, the state court concluded that Woodham's waiver of his rights was voluntary and that the confessions were therefore admissible. The evidence established that Woodham, who was sixteen years of age at the time, received Miranda warnings at least three times on the morning of October, 1997, prior to his confessions: by the arresting officer, by the officer transporting him to the police station, and by an officer at the station. Woodham stated at the time that he understood his rights. He also placed his initials on the Miranda rights form, indicating that he understood his rights and that he wanted to give a statement. The officers described Woodham's demeanor at the time as calm. As the state court also observed, the record indicates that Woodham was intelligent and read the works of Nietzsche, Aristotle, Plato and Dostoevsky. Nothing in the record indicates that Woodham did not understand the meaning of his waiver or that he was coerced into waiving his rights. This evidence was sufficient for the state court to conclude that Woodham understood his rights and voluntarily waived them when he gave his confessions. The undersigned concludes that the state court reasonably and correctly applied the “totality of the circumstances” analysis and that the court's factual findings were likewise reasonable in light of the evidence. This issue does not warrant habeas relief.

**6 Issue Five: Unconstitutional sentence in light of Woodham's age .* Petitioner was sentenced under a statute providing that he is ineligible for parole until he reaches the age of sixty-five. At the time he was sentenced, he was seventeen years of age. Petitioner contends that his life sentence is unconstitutional, given the length of time he will have to serve before he reaches the age of sixty-five. Woodham has failed to set forth any specific argument as to why this sentence violates the constitution. Furthermore, there is no Supreme Court case which clearly establishes that such a sentence is unconstitutional. Accordingly, the standard of review in [section 2254](#) requires this court to defer to the state court's holding that this claim is without merit.

Issue Six: Disproportionate sentence. Woodham argues that his sentence was

unconstitutional because it is disproportionate to the sentences of other persons convicted of school shootings in the United States. This argument is irrelevant, given that the present sentence under review is not for a school shooting, but, rather, for the murder of Woodham's mother in her home.^{FN4} Furthermore, a disproportionate sentence provides a basis for habeas relief only if it is so greatly disproportionate *to the crime* as to violate the Eighth Amendment. *McGruder v. Puckett*, 954 F.2d 313 (1992). A comparison of a habeas petitioner's sentence with other sentences is appropriate, if at all, only after a threshold determination is made that the sentence is grossly disproportionate *to the offense*. See *United States v. Gonzales*, 121 F.3d 928 (5th Cir.1997). It is beyond cavil that a life sentence is not grossly disproportionate to the crime of murder. There is no basis anywhere in clearly established United States Supreme Court law for a finding that the sentences imposed upon Woodham violates the Eighth Amendment. This claim is patently without merit.

FN4. After Woodham killed his mother, he went to his high school and shot several students, killing two and wounding several others. He was subsequently convicted of two counts of murder and seven counts of aggravated assault arising out of the school shooting.

Issue Nine: Brady claim. Woodham asserts that the prosecution failed to disclose to him exculpatory evidence as required by *Brady v. Maryland*, 373 U.S. 83 (1963). To succeed on a habeas claim for a Brady violation, Woodham must establish that the prosecution suppressed or withheld evidence which was favorable to him and which was material to his defense. *Moore v. Illinois*, 408 U.S. 786 (1972); *Wilson v. Whitley*, 28 F.3d 433, 435 (5th Cir.1994). Petitioner claims that the prosecution violated Brady by failing to disclose the existence of a document allegedly written approximately four months prior to the shootings by Donald Brooks, Jr., another member of the “Kroth.” This document is a one-page handwritten statement dated June 11, 1997 and purportedly signed by Brooks. In it, Brooks describes the nature and degree of Grant Boyette's influence and control over Brooks. Brooks indicates in the statement that he believes that Boyette exerted a satanic influence over him and, that as a result of this influence, Brooks stole credit cards from his father and money from his step-sister. Brooks also states that Boyette was plotting to kill Jack Ray III and tried to recruit Brooks and another boy to help him. Nowhere in the statement is Woodham mentioned.

*7 Woodham contends that this evidence was material in that it showed the extent to which Boyette was capable of influencing others, even to the point of convincing them that he had satanic powers. However, the defense and the prosecution entered into a written stipulation as to statements made by Brooks. In this stipulation, which was entered into evidence and read to the jury by the trial judge, the parties agreed that Brooks made the following statements: That Boyette identified himself as a leader of a satanic group, the Kroth, and told members that he answered to Satan and had satanic “generals” and demons at his command; that Boyette made the statement that “You know too much about the group. You're either with us or you're dead”; that Boyette threatened to summon demons to harass members of the group if they did not do Boyette's bidding; that Boyette encouraged Brooks to kill Brooks' father; and that Brooks believed that Boyette had the power to summon demons. This stipulation was more detailed than the

alleged written statement and established all material facts which might have been established by admission of the written statement. The statement was merely cumulative; thus the failure of the prosecution to disclose it was not a violation of *Brady*. See [United States v. Gonzales, 121 F.3d 928, 946 \(5th Cir.1997\)](#). Furthermore, Woodham admits in his petition that he is unsure as to whether the prosecution actually knew about the written statement at the time of the trial. This claim provides no basis for habeas relief.

Issue Ten: Jury instructions. Petitioner contends that the trial court committed constitutional error in refusing to give five jury instructions proposed by him. Four of these instructions concerned the crime of manslaughter. In [Beck v. Alabama, 447 U.S. 625](#), the Supreme Court held that in a death-penalty case, due process requires that the option of conviction of a lesser included offense be offered to the jury, if the evidence supports it. However, the court in *Beck* expressly stated that it was leaving open the question of whether due process would require a lesser included offense instruction in a non-capital case. *Id.* at 638 n. 14. Thus, there is no clearly established Supreme Court law to require such an instruction in Woodham's case. Furthermore, under Mississippi law, manslaughter is distinguished from murder in that the element of malice aforethought or deliberate design is absent. [Agnew v. State, 783 So.2d 699, 703 \(Miss.2001\)](#). The record does not contain evidence from which a rational fact-finder could have concluded that Petitioner killed his mother without malice aforethought or deliberate design.

Petitioner also claims constitutional error in the trial court's refusal to give jury instruction D-11, an instruction on insanity. As pointed out by the supreme court, this instruction was confusing and contradictory.^{FN5} Furthermore, Woodham's insanity defense was presented to the jury by means of other instructions defining insanity and setting out the state's burden to prove sanity beyond a reasonable doubt. The undersigned concludes that the state court's rejection of Woodham's jury instruction claims was not contrary to, nor did it involve an unreasonable application of, any clearly established law as determined by the United States Supreme Court. Woodham is entitled to no relief on this claim.

[FN5](#). The instruction as written stated that in order to return a verdict of guilty, the jury was required to find that the state had proved the defendant's *insanity* beyond a reasonable doubt.

*8 *Issue Eleven: Overwhelming evidence of insanity.* Petitioner alleges that he is entitled to habeas relief because the evidence of his insanity was overwhelming. Under Mississippi law, once Woodham came forward with evidence creating a reasonable doubt as to his sanity, the burden shifted to the prosecution to prove his sanity beyond a reasonable doubt. [Johnson v. State, 475 So.2d 1136, 1146 \(Miss.1985\)](#). Thus, the undersigned construes this claim as one alleging that there was insufficient evidence from which the jury could conclude beyond a reasonable doubt that Petitioner was sane at the time he killed Mary Ann Woodham. As applied to this particular case, the test for the granting of habeas relief due to insufficiency of evidence is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that Woodham was sane at the time of the killing. See [Jackson v. Virginia, 443 U.S. 307 \(1979\)](#). Mississippi recognizes the M'Naghten test

for insanity, which provides that a criminal defendant is legally insane if, at the time of the criminal act, he “was laboring under such defect of reason from disease of the mind as (1) not to know the nature and quality of the act he was doing or (2) if he did know it, that he did not know that what he was doing was wrong.” [Roundtree v. State, 568 So.2d 1173, 1181 \(Miss.1990\)](#). As the state supreme court has observed, this is essentially a test of whether the accused knew right from wrong at the time of committing the act. [Russell v. State, 729 So.2d 781, 784 \(Miss.1997\)](#).

In the present case, there was conflicting evidence as to Woodham's state of mind at the time of the killing. Three experts who had conducted forensic examinations of Woodham testified on this issue. The expert retained by Woodham, Dr. Mick Jepsen, a forensic psychiatrist, testified that in his opinion, Woodham suffered from a severe borderline personality disorder and a distorted sense of reality. According to Dr. Jepsen, this disorder made him helpless to resist the influence of Grant Boyette and left him without the ability to appreciate the implications of his conduct. On the other hand, the state's retained expert, Dr. Criss Lott, a psychologist, testified that Woodham's behavior was not suggestive of a person with a severe mental disturbance and that in his opinion, Woodham was malingering, *i.e.*, fabricating or exaggerating his symptoms. Dr. Lott opined that Petitioner understood the nature and quality of his acts and understood right from wrong at the time of the shooting. The court-appointed expert, Dr. Reb McMichael, a forensic psychiatrist, testified that in his opinion Woodham suffered from a personality disorder but that he did not have a major mental disorder and that he was malingering. It was Dr. McMichael's opinion that Woodham knew what he was doing and understood that it was wrong. The undersigned concludes that there was sufficient evidence for a reasonable fact-finder to conclude beyond a reasonable doubt that Woodham was sane at the time of the killing. Thus, the state court's denial of relief on this claim was not contrary to, and did not involve an unreasonable application of *Jackson v. Virginia* or any other clearly established United States Supreme Court law.

IV. Conclusion

*9 For these reasons, the undersigned recommends that habeas relief be denied and the petition be dismissed with prejudice. The parties are hereby notified that failure to file written objections to the findings and recommendations contained in this report by November 22, 2006, will bar an aggrieved party, except upon grounds of plain error, from attacking on appeal proposed factual findings and legal conclusions accepted by the district court. [28 U.S.C. § 636](#); [Douglass v. United Service Automobile Ass'n, 79 F.3d 1415 \(5th Cir.1996\)](#).

S.D.Miss.,2006.

Woodham v. Wilson

Slip Copy, 2006 WL 4009838 (S.D.Miss.)