IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 13, 2018
Lyle W. Cayce
Clerk

No. 16-30095
Summary Calendar

GENE MITCHELL OLIVIER,

Petitioner - Appellant

v.

HOWARD PRINCE, Warden,

Respondent - Appellee

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:13-CV-112

Before BARKSDALE, PRADO, and OWEN, Circuit Judges. [*]

PER CURIAM:[* *]

Pursuant to a certificate of appealability (COA) granted by this court, Gene Mitchell Olivier, Louisiana prisoner # 526717 and proceeding *pro se*, challenges the district court's denying his 28 U.S.C. § 2254 application,

[*] Judge Prado concurred in this opinion prior to his retirement from the court on 2 April 2018.

[**] Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

pursuant to the Antiterrorism and Effective Death Penalty Act (AEDPA), for *habeas* relief based on his claiming his sentence of 25 years' imprisonment is grossly disproportionate to his state-law offenses, in violation of the Eighth Amendment.

Oliver was charged with three counts of attempted-first-degree murder after shooting two St. Martin Parish Sheriff's Deputies and firing his weapon at a third officer. He pleaded guilty to two counts of aggravated-second-degree battery, which carried a statutory maximum of 15 years' imprisonment, and one count of aggravated assault of a police officer with a firearm, which carried a statutory maximum of ten years' imprisonment. He was sentenced to ten years' imprisonment for each aggravated-second-degree-battery conviction and five years' imprisonment for the aggravated-assault conviction, with the sentences to run consecutively, for a total of 25 years' imprisonment. *State v. Olivier*, No. 2008-520, 2008 WL 5423936, at *1 (La. Ct. App. 30 Dec. 2008).

The district court denied his 28 U.S.C. § 2254 application and denied him a COA, but this court granted a COA on the sole issue "whether Olivier's 25-year sentence is grossly disproportionate to his offenses and, thus, excessive".

For applications for *habeas* relief, the district court's conclusions of law are reviewed *de novo*; its factual findings, for clear error. *E.g.*, *Ortiz v. Quarterman*, 504 F.3d 492, 496 (5th Cir. 2007). Generally, Oliver's Eighth Amendment claim would be viewed through AEDPA's § 2254(d)(1) prism for reviewing the underlying state-court post-conviction decision: whether it was an unreasonable application of clearly-established federal law. But where it is unclear whether such a state court adjudication occurred, a federal court can deny habeas relief "under § 2254 by engaging in *de novo* review". *Berghuis v. Thompkins*, 560 U.S. 370, 390 (2010) (citing § 2254(a)).

Because Olivier was denied a COA for whether his sentence was excessive as a result of the trial court's failure to comply with Louisiana law in imposing consecutive sentences, we do not review that issue. *Lackey v. Johnson*, 116 F.3d 149, 151–52 (5th Cir. 1997). As for the issue for which a COA was granted—gross disproportionality under the Eighth Amendment—Oliver has not shown the court erred by concluding his statutorily-authorized sentence is not grossly disproportionate to his crimes of conviction and does not violate the Eighth Amendment. *Ewing v. California*, 538 U.S. 11, 28 (2003) ("the legislature . . . has primary responsibility for making the difficult policy choices that underlie any criminal sentencing scheme"); *United States v. Gonzales*, 121 F.3d 928, 943 (5th Cir. 1997), *abrogated on other grounds by United States v. O'Brien*, 560 U.S. 218, 234 (2010); *McGruder v. Puckett*, 954 F.2d 313, 316 (5th Cir. 1992).

AFFIRMED.