

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
OHIO, EASTERN DIVISION

Andre Lee v. Warden George Fredrick

Case No. 1:22-cv-1945 · No. 1:22-cv-1945 · Decided March 2, 2026

SUMMARY

The United States District Court for the Northern District of Ohio overruled Andre Lee’s objections to the magistrate judge’s Report and Recommendation in his 28 U.S.C. § 2254 habeas action. The court adopted the Report and Recommendation, denied habeas relief, and dismissed Grounds One through Five as procedurally defaulted because Lee failed to establish ineffective assistance of appellate counsel as cause to excuse the defaults. The court also concluded that Lee’s ineffective-assistance claim lacked merit and denied a certificate of appealability.

CASE DETAILS

COURT	United States District Court for the Northern District of Ohio, Eastern Division
WRITING FOR THE COURT	Benita Y. Pearson
JURISDICTION	United States District Court for the Northern District of Ohio, Eastern Division
DECIDED	March 2, 2026
DOCKET	1:22-cv-1945
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought federal habeas relief under 28 U.S.C. § 2254 from an Ohio conviction and sentence. After a magistrate judge recommended denial of the petition, Petitioner objected to the Report and Recommendation.
STANDARD OF REVIEW	The district court reviewed specific objections to the magistrate judge’s Report and Recommendation de novo under Federal Rule of Civil Procedure 72(b)(3). Habeas claims were reviewed under 28 U.S.C. § 2254(d), which permits relief only when the state-court decision was contrary to or involved an unreasonable application of clearly established federal law, or was based on an unreasonable determination of the facts. Procedural default required a showing of cause and prejudice, and ineffective-assistance claims were evaluated under Strickland v. Washington.

PRECEDENTIAL VALUE	nonprecedential
PARTIES	Andre Lee v. Warden George Fredrick

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QUESTIONS PRESENTED

1. Whether Grounds One through Five of Lee's § 2254 petition were procedurally defaulted because the federal claims were not fairly presented to the Ohio courts.
2. Whether ineffective assistance of appellate counsel established cause and prejudice sufficient to excuse the procedural default of the claims concerning joinder and the flight instruction.
3. Whether trial counsel was ineffective for failing to seek severance of the drug-possession charges.
4. Whether the flight instruction was unsupported or prejudicial and therefore supplied a meritorious claim that appellate counsel should have raised.
5. Whether the Ohio appellate court's rejection of Lee's ineffective-assistance-of-appellate-counsel claim was contrary to or an unreasonable application of Strickland or based on an unreasonable factual determination.
6. Whether Lee was entitled to a certificate of appealability.

HOLDINGS

1. Grounds One, Three, and Five were procedurally defaulted because Lee did not object to the magistrate judge's conclusion that those claims had not been fairly presented in state court, and he therefore did not establish a basis for de novo review or excuse the default.
2. Lee's ineffective-assistance-of-appellate-counsel claim did not establish cause sufficient to excuse the procedural default of Grounds Two and Four because he failed to show a reasonable probability that the omitted claims would have succeeded.
3. Lee failed to show that trial counsel's failure to move to sever the drug-possession charges prejudiced him because the evidence was simple and direct, the jury could separate the offenses, and the limiting instructions were adequate.
4. Lee failed to show that the flight instruction was prejudicial error or that appellate counsel was ineffective for failing to obtain relief based on the instruction.
5. The Ohio appellate court's rejection of Lee's ineffective-assistance-of-appellate-counsel claim was neither contrary to nor an unreasonable application of federal law, and was not based on an unreasonable

determination of the facts.

6. Lee was not entitled to a certificate of appealability because he failed to make a substantial showing of the denial of a constitutional right.

KEY QUOTATIONS

“The two tests are disjunctive, so that the satisfaction of one negates a defendant’s claim of prejudice without consideration of the other.” (Section III.C.1)

“The trial court explicitly told jurors that fleeing the scene of the shooting did not raise a presumption of guilt.” (Section III.C.2)

FACTUAL BACKGROUND

Lee was indicted in Cuyahoga County on murder, manslaughter, felonious assault, weapons, drug-possession, and criminal-tools charges arising from two criminal cases that were joined. A jury acquitted him of one murder count and one voluntary-manslaughter count but convicted him of the remaining jury-tried charges; the trial court separately found him guilty of having weapons under disability. He received an aggregate sentence of twenty-four years to life. His federal petition challenged the joinder of charges, evidentiary rulings, jury instructions, sufficiency of the evidence, and the effectiveness of appellate counsel.

PROCEDURAL HISTORY

Lee was convicted in the Cuyahoga County Court of Common Pleas and sentenced to an aggregate term of twenty-four years to life. The Ohio Eighth District Court of Appeals affirmed, and the Ohio Supreme Court declined jurisdiction. The Eighth District and Ohio Supreme Court later denied Lee’s application to reopen his direct appeal. In this federal habeas proceeding, the magistrate judge recommended dismissal of Grounds One through Five as procedurally defaulted and denial of Ground Six on the merits. The district court conducted de novo review of the specific objections, adopted the Report and Recommendation, dismissed Grounds One through Five, denied Ground Six, and denied a certificate of appealability.

DISPOSITION

other

CASES CITED

- State v. Lee, 8th Dist. Cuyahoga No. 109215, 2020 WL 7396520, at *6 (Ohio Ct. App. Dec. 17, 2020)
- State v. Lee, 162 Ohio St.3d 1422 (Ohio 2021)
- State v. Lee, 8th Dist. Cuyahoga No. 109215, 2021 WL 3780590 (Ohio Ct. App. Aug. 20, 2021)
- State v. Lee, 165 Ohio St.3d 1480 (Ohio 2021)
- Batson v. Kentucky, 476 U.S. 79 (1986)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Bulls v. Potter, No. 5:16-CV-02095, 2020 WL 870931, at *1 (N.D. Ohio Feb. 21, 2020)

- Spring v. Harris, No. 4:18-CV-2920, 2022 WL 854795, at *4 (N.D. Ohio Mar. 23, 2022)
- Aldrich v. Bock, 327 F. Supp. 2d 743, 747 (N.D. Ohio 2002)
- Wilson v. Sheldon, 874 F.3d 470, 474-75 (6th Cir. 2017)
- Nguyen v. Warden, N. Cent. Corr. Inst., No. 19-3308, 2019 WL 4944632, at *4 (6th Cir. July 24, 2019)
- Pulley v. Harris, 465 U.S. 37, 41 (1984)
- Mason v. Nagy, No. 21-1040, 2021 WL 6502177, at *3 (6th Cir. July 27, 2021)
- Estelle v. McGuire, 502 U.S. 62, 67-68 (1991)
- Hinton v. Frederick, No. 5:24-cv-1266, 2024 WL 4349367, at *2 (N.D. Ohio Sept. 30, 2024)
- Baldwin v. Reese, 541 U.S. 27 (2004)
- Whitman v. Gray, 104 F.4th 1235, 1238 (6th Cir. 2024)
- Wagner v. Smith, 581 F.3d 410, 414 (6th Cir. 2009)
- Guilmette v. Howes, 624 F.3d 286, 290 (6th Cir. 2010)
- Tolliver v. Sheets, 594 F.3d 900, 928 n.11 (6th Cir. 2010)
- Maupin v. Smith, 785 F.2d 135, 138 (6th Cir. 1986)
- Davis v. Jenkins, 115 F.4th 545, 564 (6th Cir. 2024)
- Randolph v. Macauley, 155 F.4th 859, 874 (6th Cir. 2025)
- Premo v. Moore, 562 U.S. 115, 124 (2011)
- Kelly v. Lazaroff, 846 F.3d 819, 829 (6th Cir. 2017)
- State v. Wilson, 51 N.E.3d 676, 682 (Ohio Ct. App. 2016)
- State v. Schaim, 65 Ohio St.3d 51, 58 (Ohio 1992)
- State v. Lott, 51 Ohio St.3d 160, 163 (Ohio 1990)
- State v. Hale, 8th Dist. Cuyahoga No. 113078, 2024 WL 1794998, at *7-8 (Ohio Ct. App. Apr. 25, 2024)
- State v. Franklin, 62 Ohio St.3d 118, 122 (Ohio 1991)
- State v. Luckie, 106 N.E.3d 289, 297 (Ohio Ct. App. 2018)
- Zafiro v. United States, 506 U.S. 534, 539 (1993)
- United States v. Xu, 114 F.4th 829, 842-43 (6th Cir. 2024)
- State v. Hartman, 161 Ohio St.3d 214, 666-67 (Ohio 2020)
- State v. Dunn, 8th Dist. Cuyahoga No. 101648, 2015 WL 4656534, at *8 (Ohio Ct. App. Aug. 6, 2015)
- State v. Guffie, 245 N.E.3d 448, 480 (Ohio Ct. App. 2024)
- State v. McKibbin, 1st Dist. Hamilton No. C-010145, 2002 WL 727009, at *4 (Ohio Ct. App. Apr. 26, 2002)
- State v. Terry, 220 N.E.3d 938, 950 (Ohio Ct. App. 2023)
- State v. Davis, 8th Dist. Cuyahoga No. 109890, 2021 WL 2838407, at *6 (Ohio Ct. App. July 8, 2021)
- State v. Jackson, 8th Dist. Cuyahoga No. 100125, 2014 WL 4100944, at *8 (Ohio Ct. App. Aug. 21, 2014)
- Bradshaw v. Richey, 546 U.S. 74, 76 (2005)
- Ross v. United States, 339 F.3d 483, 492 (6th Cir. 2003)
- Lynch v. Bradley, No. 24-6025, 2025 WL 1383785, at *1 (6th Cir. May 13, 2025)
- Miller-El v. Cockrell, 537 U.S. 322, 327 (2003)

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