FILED
United States Court of Appeals
Tenth Circuit

May 19, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JETT GARRIOTT ADAMS,

Petitioner - Appellant,

v.

WYOMING DEPARTMENT OF CORRECTIONS; WYOMING ATTORNEY GENERAL,

Respondents - Appellees.

No. 24-8039
(D.C. No. 1:23-CV-00197-SWS)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **MATHESON**, **EBEL**, and **CARSON**, Circuit Judges.

Jett Garriott Adams instigated two car chases and shootouts with Wyoming Highway Patrol Trooper Caleb Hobbs following a traffic stop for speeding. The State of Wyoming charged him with 10 counts, including attempted first-degree murder. Mr. Adams pled not guilty by reason of mental illness ("NGMI"). After a bench trial, the

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

state court rejected Mr. Adams's NGMI defense, found him guilty of nine counts, and sentenced him to life in prison without the possibility of parole.

Mr. Adams filed a pro se petition for habeas corpus relief under 28 U.S.C. § 2254, arguing the state trial court violated his due process rights under *Ake v. Oklahoma*, 470 U.S. 68 (1985), by refusing to appoint a mental health expert to assist in his NGMI defense. The federal district court said the state court violated his rights but found the error harmless. It issued a certificate of appealability ("COA") on whether harmless error applies to *Ake* violations. Exercising jurisdiction under 28 U.S.C. §§ 1291 and 2253(a), we affirm on the alternative ground that Mr. Adams failed to establish an *Ake* violation.[1]

I. BACKGROUND

A. *Car Chases and Shootouts*

Fearing his state probation would be revoked, Mr. Adams purchased a firearm and fled from Kansas City, Missouri. In Wyoming, Trooper Hobbs pulled Mr. Adams over for speeding. After stopping, Mr. Adams drove off because he thought Trooper Hobbs had seen his firearm or ammunition. Two high-speed chases and shootouts ensued. When Mr. Adams's car got stuck off the side of Interstate 80, he ran away but eventually surrendered to officers. Shortly thereafter, Special Agent Eric Ford, Wyoming Division of Criminal Investigation, interviewed Mr. Adams.

[1] Because Mr. Adams appears pro se, "we liberally construe his filings, but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

B. ***State Trial Court Proceedings***

The State charged Mr. Adams with attempted murder.[2] Mr. Adams pled not guilty. His attorney requested a competency evaluation. The competency evaluator, Dr. Paul D. Murdock, found Mr. Adams competent to proceed.

Mr. Adams later entered an NGMI plea. The court ordered an NGMI evaluation by Dr. Renée Wilkinson. She determined that, although Mr. Adams had depression, anxiety, and a personality disorder, he was "legally sane"—he could appreciate the wrongfulness of his conduct and conform it to the law when the shootings occurred. *See* Wyo. Stat. Ann. § 7-11-304(a).

Mr. Adams requested the public defender's office to provide a second evaluation, but it denied funding.[3] At a hearing, the court noted the absence of "an endless bucket

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[2] The State also charged two counts of aggravated assault and battery, felony interference with a peace officer, property destruction, aggravated fleeing or eluding a police officer, use of a firearm while committing a felony, reckless driving, reckless endangerment, and speeding.

[3] Mr. Adams sent the trial court a pro se letter complaining about the public defender's office's funding denial. At a hearing to discuss his letter, Mr. Adams said he needed funding for an expert to assist in his NGMI defense. *See, e.g.*, ROA, Vol. VI at 115 ("So if we were wanting another examination, it would have to be funded by the -- it's just I have a defense. I just need a way to prove that defense, and I don't have that because I'm crippled by the fact that I have no funds to do so."). Mr. Adams's letter and his hearing statements arguably requested appointment of a mental health expert under *Ake*. *See Castro v. Oklahoma*, 71 F.3d 1502, 1515 (10th Cir. 1995) (finding defense counsel's requests "were sufficient to squarely present the issues *Ake* is concerned with" when counsel "noted repeatedly before, during, and after trial, that his ability to properly defend Mr. Castro was severely limited by a lack of funds for expert psychiatric assistance").

of money to fund those evaluations" and said it was "not in control of those funds." ROA, Vol. VI at 119.

During the State's case-in-chief at trial, Trooper Hobbs and Special Agent Ford testified that, on the day of the incident, Mr. Adams did not exhibit signs of psychosis or mania and responded appropriately to their questions. Dr. Wilkinson opined that Mr. Adams did not meet the NGMI standard. Mr. Adams testified and called the jail's mental health examiner. In rebuttal, the State called Dr. Murdock, who said Mr. Adams was competent to stand trial but did not address Mr. Adams's mental state when the shootings occurred.

As noted, the court rejected Mr. Adams's NGMI defense, found him guilty on nine counts, and sentenced him to life in prison without the possibility of parole.

C. ***State Post-Trial Proceedings***

1. Pro Se Motions for a New Trial

Mr. Adams filed two pro se motions for a new trial based on newly discovered evidence, arguing (1) Dr. Murdock's testimony supported his NGMI defense, and (2) he was entitled under *Ake* to appointment of a mental health expert to assist in his NGMI defense. The court denied both motions. It said Mr. Adams did not (1) "alleg[e] that new evidence has been discovered that will prove his innocence," (2) identify a "defect at his trial that biased the finder of fact," or (3) show that a mental examination supporting "his NGMI defense was conducted prior to the trial." ROA, Vol. V at 125; *see also* ROA, Vol. VI at 10-11. The court also said his "request for a new examination expert [was]

well beyond the statutory timeframe," ROA, Vol. V at 125, and his "NGMI claims were fully explored" during trial, ROA, Vol. VI at 11.

2. Direct Appeal and Post-Conviction Relief Application

On direct appeal, Mr. Adams's attorney argued the State's use of Dr. Wilkinson's and Dr. Murdock's testimony was prosecutorial misconduct. Mr. Adams separately moved pro se to file a supplemental brief arguing an *Ake* violation.[4] The Wyoming Supreme Court denied the motion and rejected the prosecutorial misconduct claim. *Adams v. State*, 534 P.3d 469, 469-83 (Wyo. 2023).

Mr. Adams filed a petition for post-conviction relief, again arguing the trial court violated his *Ake* rights. But he withdrew it, explaining that "continu[ing] with [his] petition would be redundant, pointless and unlikely to meet with success either in District court or on appeal to the Wyoming Supreme Court considering both Court's [sic] previous rulings and stance on this issue." ROA, Vol. I at 285-86.

D. ***Federal Habeas Proceedings***

Mr. Adams filed a § 2254 habeas petition, arguing he was entitled under *Ake* to a mental health expert to assist in his defense. He requested the audio recordings from his trial and affidavits from his attorneys and Dr. Murdock regarding Dr. Murdock's trial testimony. He contended the trial transcript was "intentionally altered" to hide

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[4] He relied on Wyoming Rule of Appellate Procedure 14.05: "In any appeal where a criminal appellant is represented by counsel, the appellant may not file any pro se brief, motion, or other pleading," unless the appellant "file[s] a motion for leave to consider a pro se supplemental brief, i.e., a brief in addition to the one filed by counsel."

Dr. Murdock's testimony that "Mr. Adams could not conform his conduct to the requirement[s] of the law due to [Post-Traumatic Stress Disorder (PTSD)]." *Id.* at 404-05; *see also id.* at 32-34.[5]

The State argued Mr. Adams had not exhausted his *Ake* claim in state court and was not entitled to a mental health expert due solely to his NGMI plea. It also said Mr. Adams's discovery request was "premature" and that he had otherwise "not established good cause" for discovery because a request for mental health expert assistance under *Ake* must be based on pretrial evidence, so trial recordings were not "pertinent to analysis of his habeas claim." *Id.* at 408-09.

The district court denied habeas relief. It concluded (1) Mr. Adams exhausted his claim, (2) the trial court violated his *Ake* due process rights, (3) the *Ake* violation was subject to harmless-error review, and (4) the violation was harmless.

The district court found an *Ake* violation because Mr. Adams pled NGMI, the state trial court "entered a written order finding there was good cause for the change of plea and the NGMI examination," and the NGMI examiner had found Mr. Adams suffered

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[5] Mr. Adams submitted a Motion to Authenticate to this court asking for an investigation of the allegedly altered transcript. *See* Mot. to Authenticate, Doc. 34 at 2. He argues Dr. Murdock "gave his opinion that Mr. Adams could not conform his conduct to the requirement[s] of the law due to PTSD." *Id.* at 2-3. We deny his motion as moot. The transcript's accuracy does not affect whether he established a threshold *Ake* showing before trial. *Rogers v. Gibson*, 173 F.3d 1278, 1284 n.2 (10th Cir. 1999). We also deny Mr. Adams's motion to supplement the record as moot. *See* Mot. to Suppl., Doc. 38.

from mental illness. *Id.* at 428. The state court thus "was aware that Mr. Adams' sanity at the time of the offense was in question." *Id.*

The district court then determined the *Ake* violation was harmless. It said the "testimony from Trooper Hobbs, Special Agent Ford and Mr. Adams himself" demonstrated that Mr. Adams "was able to appreciate the wrongfulness of his conduct" and "to conform his conduct to the requirements of the law when he chose to." *Id.* at 436. It denied as moot Mr. Adams's request for audio recordings and affidavits.

Mr. Adams moved to reconsider, arguing (1) an *Ake* violation is a structural error and not subject to harmless-error review, and (2) the *Ake* violation was not harmless. The district court denied his motion, concluding that Tenth Circuit precedent required harmless-error review and the *Ake* violation was harmless.

The district court issued a COA on whether *Ake* violations are subject to harmless error. Mr. Adams timely appealed.

II. DISCUSSION

In addition to the COA on whether *Ake* violations are subject to harmless error, Mr. Adams also seeks a COA from this court to challenge the district court's harmless-error determination. After careful review, we agree with the State's suggestion to affirm on the alternative ground that Mr. Adams failed to establish an *Ake* violation. Aplee. Br. at 18-25.[6]

[6] We may consider an alternative ground to affirm denial of habeas relief on an issue not encompassed in the COA. *See Woodward v. Williams*, 263 F.3d 1135, 1139 n.2

A. *Legal Background*

1. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") governs federal habeas review of state court decisions. *See* 28 U.S.C. § 2254. It "circumscribes our review of federal habeas claims that were adjudicated on the merits in state-court proceedings." *Meek v. Martin*, 74 F.4th 1223, 1248 (10th Cir. 2023) (quotations omitted). For these claims, a federal court may grant habeas relief only if the state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1), or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," *id*. § 2254(d)(2). But when, as here, a claim was not decided on the merits, "we address the claim de novo and AEDPA deference does not apply." *Harris v. Poppell*, 411 F.3d 1189, 1195 (10th Cir. 2005).

2. NGMI Defense

Under Wyoming law, a criminal defendant "is not responsible for criminal conduct if at the time of the criminal conduct, as a result of mental illness or deficiency, he lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law." Wyo. Stat. Ann. § 7-11-304(a). A "mental illness or deficiency" must be a "severely abnormal" mental condition that

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(10th Cir. 2001). We therefore deny Mr. Adams's petition for an additional COA as moot. *See* Pet. for COA, Doc. 39.

"grossly and demonstrably impair[s] a person's perception or understanding of reality" and does not include "an abnormality manifested only by repeated criminal or otherwise antisocial conduct." *Id.* § 7-11-304(a), (b).

An NGMI plea should be made at arraignment. It may be pled later only "for good cause." *Id.* § 7-11-304(c). After accepting an NGMI plea, "the court shall order an examination of the defendant by a designated examiner." *Id.* § 7-11-304(d). The examiner must file a written report addressing (1) whether the defendant has a mental illness or deficiency and (2) "whether at the time of the alleged criminal conduct the defendant, as a result of mental illness or deficiency, lacked substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law." *Id.* § 7-11-304(f).

3. *Ake v. Oklahoma*

An indigent defendant must have "a fair opportunity to present his defense." *Ake*, 470 U.S. at 76. Due process requires that:

> when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense.

Id. at 83. "This is not to say, of course, that the indigent defendant has a constitutional right to choose a psychiatrist of his personal liking or to receive funds to hire his own," but rather must "have access to a competent psychiatrist" if the defendant makes the requisite threshold showing. *Id.*

To make this showing, a defendant must offer "more than undeveloped assertions that the requested assistance would be beneficial." *Caldwell v. Mississippi*, 472 U.S. 320, 323 n.1 (1985); *Liles v. Saffle*, 945 F.2d 333, 336 (10th Cir. 1991) ("General allegations supporting a request for court appointment of a psychiatrist expert, without substantive supporting facts, . . . will not suffice . . . ."). As we explained:

> If sanity or mental capacity defenses [are] to be defense issues, they must be established by a clear showing by the indigent defendant as genuine, real issues in the case. In order for a defendant's mental state to become a substantial threshold issue, the showing must be clear and genuine, one that constitutes a close question which may well be decided one way or the other. It must be one that is fairly debatable or in doubt.

Castro v. Oklahoma, 71 F.3d 1502, 1513 (10th Cir. 1995) (quotations omitted). We assess this showing by "review[ing] the information available to the trial court at the time it denied" the defendant's request for "funds to secure a mental health expert." *Rogers v. Gibson*, 173 F.3d 1278, 1284 n.2 (10th Cir. 1999).

4. Analysis

Because the Wyoming Supreme Court did not address Mr. Adams's *Ake* claim, AEDPA deference does not apply and we review the issue de novo. *See Taylor v. Powell*, 7 F.4th 920, 932 (10th Cir. 2021); *Allen v. Mullin*, 368 F.3d 1220, 1235 (10th Cir. 2004) ("Inasmuch as the [state] courts have not previously adjudicated the merits of the *Ake* claim, we review de novo."). Unlike the district court, we conclude Mr. Adams did not satisfy the required *Ake* threshold showing.

First, the district court relied in part on Mr. Adams's NGMI plea. And on appeal, Mr. Adams argues he "has the right to the assistance of a psychiatrist upon the entrance of an NGMI plea" because it "is an affirmative defense that alerts the State and trial court that the sanity of the defendant will be a significant factor at trial." Aplt. Reply Br. at 6. But contrary to Mr. Adams's assertion, merely entering an NGMI plea is insufficient. *See Cartwright v. Maynard*, 802 F.2d 1203, 1211-12 (10th Cir. 1986); *Volson v. Blackburn*, 794 F.2d 173, 176 (5th Cir. 1986) (per curiam).

Second, the district court's reliance on the state trial court's acceptance of Mr. Adams's late NGMI plea for "good cause" was misplaced. Under Wyoming law, "good cause" for an NGMI plea after arraignment "depends upon the circumstances of each individual case and is within the discretion of the district court." *Wilkening v. State*, 120 P.3d 680, 686 (Wyo. 2005). The state court expressed misgivings about Mr. Adams's untimely request to change his plea to NGMI but granted the request without discussing whether there was good cause to accept the plea. It then appointed Dr. Wilkinson to perform an NGMI evaluation.[7] Based on this record, the "good cause" determination contributed little if any to an *Ake* threshold showing.

Third, the district court relied on Dr. Wilkinson's assessment that Mr. Adams has mental illness. But it overlooked her conclusion that Mr. Adams was "legally sane"

[7] The state court also did not explain why good cause existed in its written order appointing an NGMI evaluator but stated that "the Court being fully advised in the premises finds that good cause exist for the examination." ROA, Vol. IV at 102.

when he committed the offenses, which cuts against an *Ake* appointment. Although she found Mr. Adams had a personality disorder, anxiety, and depression, she said he did not have a mental illness that grossly impaired his perception or understanding of reality, as Wyoming law requires for an insanity defense. *See* Wyo. Stat. Ann. § 7-11-304(a). Dr. Wilkinson further found that Mr. Adams did not display signs of paranoia, delusions, or hallucinations.[8]

Fourth, the district court did not rely on Dr. Murdock, nor could it. He concluded that Mr. Adams was competent to stand trial. He did not address whether Mr. Adams was sane at the time of the offenses.

Fifth, although both evaluators determined Mr. Adams had a mental condition or illness, neither questioned his competency or sanity.[9] *See Castro*, 71 F.3d at 1514 (concluding that although "there was some evidence available to the trial court arguably

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[8] In his pro se letter to the state trial court, Mr. Adams claimed Dr. Wilkinson's evaluation was "incomplete" because she lacked access to all of his medical records. ROA, Vol. V at 41. He said the records would show he had "been hospitalized and diagnosed with bipolar and attachment disorder" and his "family has a history of mental illnesses including [his] older brother who is autistic." *Id.* at 43. But Mr. Adams never substantiated his claims after he and his attorney received the medical records. Indeed, at the hearing to discuss Mr. Adams's letter, his attorney confirmed that both the State and defense then had copies of the records. She did not argue Dr. Wilkinson's evaluation was "incomplete," nor did she provide evidence showing Mr. Adams's sanity would be a significant issue at trial.

[9] Dr. Murdock reported that Mr. Adams suffered from severe major depressive disorder and exhibited symptoms consistent with anxiety related to possible PTSD. He also provided two possible diagnoses for future clinicians to investigate, including PTSD and antisocial personality disorder.

suggestive of some mental or emotional disturbance," that "scant" evidence was "not sufficient to make the requisite [*Ake*] showing" (quotations omitted)); *see also James v. Gibson*, 211 F.3d 543, 554 & n.5 (10th Cir. 2000) (holding defendant had not shown his mental state was at issue when he committed murder despite evidence he had once suffered from a neurological dysfunction).[10]

Sixth, neither Dr. Murdock nor Dr. Wilkinson found that Mr. Adams was or had been taking antipsychotic or other medications, and neither recommended that he do so.

Seventh, during pretrial proceedings leading to the state trial court's denial of an *Ake* appointment, Mr. Adams complied with the court's instructions, drafted coherent letters to the court, and explained his thoughts coherently at court hearings.

As the foregoing shows, Mr. Adams did not come close to meeting the six factors the Supreme Court recognized in *Ake* as making it "clear that Ake's mental state at the time of the offense was a substantial factor in his defense, and that the trial court was on

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[10] Under Wyoming law, "mental illness or deficiency" is insufficient to excuse criminal responsibility unless it is a "severely abnormal mental condition[] that grossly and demonstrably impair[s] a person's perception or understanding of reality." Wyo. Stat. Ann. § 7-11-304(a). In *Delgado v. State*, 509 P.3d 913 (Wyo. 2022), the Wyoming Supreme Court found a psychological report diagnosing a defendant with mental illnesses was not "credible evidence of a NGMI defense" when it did not pertain to the "mental state at the time he committed the crime" and when "nothing in the report indicat[ed the defendant] was, as a result of his mental illness, unable to appreciate the wrongfulness of his conduct or conform his actions to the law at the time of the offense." *Id.* at 924. "[T]he presence of a mental illness, alone, is insufficient to release [a defendant] from criminal responsibility for his actions." *Id.*

notice of that fact when the request for a court-appointed psychiatrist was made." *Ake*, 470 U.S. at 86:

> (1) "Ake's sole defense was that of insanity." *Id.*
>
> Mr. Adams may have met this factor.[11]
>
> (2) "Ake's behavior at arraignment, just four months after the offense, was so bizarre as to prompt the trial judge, *sua sponte*, to have him examined for competency." *Id.*
>
> Mr. Adams's pretrial behavior, including at arraignment, was not "bizarre."
>
> (3) "A state psychiatrist shortly thereafter found Ake to be incompetent to stand trial, and suggested that he be committed." *Id.*
>
> Dr. Murdock found Mr. Adams competent to stand trial and recommended he not be committed.
>
> (4) "[W]hen he was found to be competent six weeks later, it was only on the condition that he be sedated with large doses of [an antipsychotic drug] three times a day, during trial." *Id.*
>
> Mr. Adams was not taking antipsychotic medication. Neither Dr. Murdock nor Dr. Wilkinson recommended he do so.

[11] Although the state trial court was aware Mr. Adams would raise an insanity defense at trial, it is unclear if it knew—when Mr. Adams requested an *Ake* expert—that this defense would be his *sole* defense. *See Rogers*, 173 F.3d at 1284 n.2. An NGMI plea "does not deprive the defendant of other defenses." Wyo. Stat. Ann. § 7-11-304(c).

(5) "[T]he psychiatrists who examined Ake for competency described to the trial court the severity of Ake's mental illness less than six months after the offense in question, and suggested that this mental illness might have begun many years earlier." *Id.*

Although Dr. Murdock described Mr. Adams's depression as severe, Dr. Wilkinson did not. And neither questioned his competency or sanity.

(6) "Oklahoma recognizes a defense of insanity, under which the initial burden of producing evidence falls on the defendant." *Id.*

Wyoming law also places the burden of proving the defense on the defendant. *See* Wyo. Stat. Ann. § 7-11-305(b).

Although Mr. Adams may have shown the first and sixth factors, they alone do not satisfy *Ake*'s threshold showing—otherwise any defendant having the burden to prove the sole defense of insanity would automatically qualify for an *Ake* expert. We have held that "*Ake* requires that the defendant, at a minimum, make allegations supported by a factual showing that [his] sanity is in fact at issue." *Cartwright*, 802 F.2d at 1212 (quoting *Volson*, 794 F.2d at 176). Mr. Adams has not made that showing.

Perhaps most significant, Dr. Wilkinson, the NGMI evaluator, said Mr. Adams could appreciate the wrongfulness of his conduct and conform his conduct to the law, and declared him to be "legally sane."

In sum, because the record did not show Mr. Adams's sanity would be a significant issue at trial when he asked for an *Ake* appointment, the state trial court did

not err when it denied Mr. Adams's funding request for a second NGMI evaluation. *See Rogers*, 173 F.3d at 1284.[12]

III. CONCLUSION

We affirm the district court's denial of habeas relief.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

[12] Because we affirm on this ground, we do not address whether *Ake* violations are subject to harmless error or review the district court's application of harmless error.