UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

LEROY DAVIS #560590	**CIVIL ACTION NO. 3:13CV2396 SEC. P**
VERSUS	**JUDGE JAMES**
WARDEN LOUISIANA STATE PENITENTIARY	**MAGISTRATE JUDGE HAYES**

REPORT AND RECOMMENDATION

Pro se Petitioner Leroy Davis, an inmate in the custody of Louisiana's Department of Corrections, filed the instant Petition for writ of *habeas corpus* on July 8, 2013. [doc. # 1, p. 16].[1] Petitioner attacks his 2009 conviction for second degree murder and the life sentence imposed by the Sixth Judicial District Court, Tensas Parish. This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. § 636, Rule 10 of the Rules Governing Section 2254 Cases in the District Courts, and the standing orders of the Court. For the following reasons, it is recommended that the Petition be **DENIED**.

Background

The underlying facts in this case have been set forth by the Louisiana Second Circuit Court of Appeal as follows:

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[1] Petitioner presented his pleadings to the Louisiana State Penitentiary Legal Programs Department for filing on July 8, 2013. [doc. # 1, p. 16]. The Petition and exhibits were mistakenly filed in the United States District Court for the Eastern District of Louisiana on July 9, 2013. *See Davis v. Cain*, No. 2:13-cv-5044 (E.D. La.) Upon realizing the error, Petitioner again presented his pleadings and exhibits to the Legal Programs Department and filed the instant Petition in this Court on July 30, 2013. *Id.* at 18. Pursuant to the "mailbox rule," *Cooper v. Brookshire*, 70 F.3d 377, 380 (5th Cir. 1995), the pleadings should be considered filed as of the date they were initially presented to the Legal Programs Department for filing.

> In January of 2007, the defendant told police that his wife, Annette Davis, had been missing for two days. Annette's vehicle was soon discovered after a plea for help was aired on the local news. Two months after her disappearance, her body was found in a shallow grave off Newell Ridge Road, northwest of Newellton. She died from blunt force trauma to her head.

State v. Davis, 47 So. 3d 1112, 1113 (La. App. 2 Cir. 2010).

A Tensas Parish grand jury indicted Petitioner on May 31, 2007, charging him with the offense of Second Degree Murder. [doc. # 14, p. 45]. On October 29, 2009, a jury found Petitioner guilty as charged. [doc. # 14-2, p. 66]. On December 2, 2009, Petitioner was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. [doc. # 14-5, p. 33].

Petitioner appealed to the Second Circuit Court of Appeal claiming primarily that the evidence was insufficient to support the verdict. *Davis*, 47 So. 3d at 1119. Petitioner also alleged seven other assignments of error, the first six of which being described by the appellate court as meritless "stream of consciousness" arguments. *Id.* at 1120. Specifically, Petitioner alleged: (1) [Petitioner] was prejudiced that the ADA's opening statement alleged this was a crime of passion, ignited by [Petitioner's] wife having an affair; (2) A misstatement concerning "Pete" Mizell's identification of him on the bridge and the Crime Stoppers call being undisclosed *Brady* material; (3) Alleged conflicts in the testimony of the state crime lab personnel and Sheriff Jones, about whether or not his fingerprints were on the envelope of the mysterious letters received by him; (4) None of the "sign" letters could be traced to his home; (5) The state tried to prove he was on a bridge on the Monday in question; and (6) The state disclosed a handwritten note to Sheriff Ricky Jones. *Id.* at 1120-21. The seventh claim ostensibly alleged ineffective assistance of counsel. *Id.* at 1121.

On September 22, 2010, the appellate court affirmed Petitioner's conviction. *Id.* The Louisiana Supreme Court denied Petitioner's application for writ of certiorari on February 25, 2011. [doc. # 1-4, p. 2]. Petitioner did not seek further review in the United States Supreme Court.

Petitioner subsequently filed an application for post-conviction relief in the Sixth Judicial District Court. [doc. # 14-6, p. 6]. The trial court denied the application on September 18, 2012. *Id.* at 94. The Second Circuit Court of Appeal denied Petitioner's writ application on January 10, 2013. *Id.* at 98. The Louisiana Supreme Court denied writs on June 21, 2013. *Id.* at 100.

Petitioner filed the instant Petition on July 8, 2013, requesting relief for the aforementioned claims raised on direct appeal. [doc. # 1-2, p. 7].

The matter is now before the undersigned.

Law and Analysis

I. Standard of Review – 28 U.S.C. § 2254

The Antiterrorism and Effective Death Penalty Act ("AEDPA") of 1996, 28 U.S.C. § 2254, governs *habeas corpus* relief. The AEDPA limits how a federal court may consider *habeas* claims. After the state courts have "adjudicated the merits" of an inmate's complaints, federal review "is limited to the record that was before the state court[.]" *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011). An inmate must show that the adjudication of the claim in state court:

> (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)(1)-(2).

A decision is "contrary to" clearly established Federal law "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." *Dowthitt v. Johnson*, 230 F.3d 733, 740-41 (5th Cir. 2000) (quoting *Williams v. Taylor*, 529 U.S. 362 (2000)). "The 'contrary to' requirement refers to holdings, as opposed to the dicta, of . . . [the Supreme Court's] decisions as of the time of the relevant state-court decision." *Id.* at 740. Under the "unreasonable application" clause, a federal *habeas* court may grant the writ only if the state court "identifies the correct governing legal principle from . . . [the Supreme Court's] decisions but unreasonably applies the principle to the facts of the prisoner's case." *Id.* at 741.

Section 2254(d)(2) speaks to factual determinations made by the state courts. Federal courts presume such determinations to be correct; however, a petitioner can rebut this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

II. Petitioner's Claims

A. Claim One: Insufficient Evidence

In Petitioner's first claim, he contends that the circumstantial evidence adduced at trial was insufficient to prove the elements of the crime of second degree murder. [doc. # 1-2, p. 7]. He states that "in order to convict a person based on circumstantial evidence the State must negate every reasonable hypothesis of innocence" and "[i]n this case that simply did not happen." *Id.* at 14. Petitioner goes on to posit several alternative hypotheses as to how his wife could have been killed. *Id.*

When a *habeas* petitioner asserts that the evidence presented to the trial court was insufficient to support his conviction, the limited question before a federal *habeas* court is whether the state appellate court's decision to reject that claim was an objectively unreasonable application of the clearly established federal law set out in *Jackson v. Va.*, 443 U.S. 307 (1979). *Williams v. Puckett*, 283 F.3d 272, 278-79 (5th Cir. 2002). A conviction is based on sufficient evidence if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319. The *Jackson* inquiry "does not focus on whether the trier of fact made the correct guilt or innocence determination, but rather whether it made a rational decision to convict or acquit." *Herrera v. Collins*, 506 U.S. 390, 402 (1993). Thus, a conviction may rest on sufficient evidence "even though the facts also support one or more reasonable hypotheses consistent with the defendant's claim of innocence." *Gibson v. Collins*, 947 F.2d 780, 783 (5th Cir. 1991).

In the case at bar, the Louisiana appellate court invoked and applied the *Jackson* standard, and it did not do so unreasonably. *See Davis*, 47 So. 3d at 1119. To explain, second degree murder is the killing of a human being when the offender has the specific intent to kill or to inflict great bodily harm. LA. REV. STAT. ANN. § 14:30.1(A)(1). Specific intent need not be proven as a fact, but may be inferred from the circumstances surrounding the offense and the conduct of the defendant. *State v. Graham*, 420 So. 2d 1126, 1127 (La. 1982). In addition to proving specific intent, the State is also required to prove that the defendant is the perpetrator. *State v. Draughn*, 950 So. 2d 583, 593 (La. 2007). Identity with regard to second degree murder can be proved by circumstantial evidence alone. *See*, *e.g., State v. Blanks*, 86 So. 3d 56, 65 (La.

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