NOT FOR PUBLICATION

FILED

OCT 24 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PRENTICE D. MARSHALL, Jr., Petitioner - Appellant, v. BRIAN WILLIAMS, Respondent - Appellee, and CALVIN JOHNSON, ATTORNEY GENERAL OF THE STATE OF NEVADA, Respondents.	No. 23-2559 D.C. No. 2:21-cv-02046-APG-BNW MEMORANDUM*

Appeal from the United States District Court for the
District of Nevada
Andrew P. Gordon, District Judge, Presiding

Argued and Submitted October 9, 2024
Las Vegas, Nevada

Before: CHRISTEN, BENNETT, and MILLER, Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Petitioner Prentice Marshall appeals the district court's order denying his 28 U.S.C. § 2254 habeas corpus petition challenging his convictions for multiple charges, including murder, for which he received a life sentence without parole. Because the parties are familiar with the facts, we do not recount them here. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 2253, and we affirm the district court's judgment.[1]

The court reviews *de novo* the denial of a petition for writ of habeas corpus. *Earp v. Davis*, 881 F.3d 1135, 1142 (9th Cir. 2018). Under the Antiterrorism and Effective Death Penalty Act (AEDPA), which governs this appeal, we cannot grant habeas relief unless the state court proceedings 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 "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. The Nevada Court of Appeals did not make unreasonable

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[1] Marshall raises two uncertified claims: (1) whether he was "in custody" pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966) when questioned by detectives at the hospital; and (2) whether defense counsel was ineffective for not presenting a *Missouri v. Seibert*, 542 U.S. 600 (2004) argument in the motion to suppress. The district court did not issue a certificate of appealability on these issues. While Marshall does not explicitly ask the panel to issue a certificate of appealability, the panel considers whether to issue one, and finds Marshall has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C § 2253(c)(2). Thus, the panel does not reach these uncertified claims. *See* 28 U.S.C. § 2253(c)(1).

determinations of fact by neglecting or overlooking inferences suggesting that Marshall's will was overborne.[2] 28 U.S.C § 2254(d)(2). The Nevada Court of Appeals' statement that Marshall voluntarily took himself to North Vista hospital for treatment of gunshot wounds did not improperly imply that Marshall had some other option; the court recounted this fact when deciding if Marshall was in custody, finding that although Marshall may not have been free to leave, this was because he was in the hospital, and not because police detained him.

The Nevada Court of Appeals' finding that Officer Smith followed Marshall to the second hospital and remained there only to forward information to detectives was not unreasonable. Smith testified that she was not under the impression Marshall was free to leave, but given her testimony that she was unaware of any police hold on Marshall, the record also supports the conclusion that she did not have an impression that Marshall was ready to be discharged. The evidence showed that Smith was in and out of Marshall's room for several hours, but there is no evidence Marshall knew Smith remained outside his room when she stepped

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[2] Respondents argue that Marshall forfeited two arguments by failing to present them prior to this appeal: (1) that his friends and family were prevented from visiting him in the hospital and (2) that the detectives mistakenly believed Marshall was a minor and questioned him without a parent present. We disagree. Given that Marshall's habeas petition challenged the voluntariness of his confession, which necessarily involves all of the surrounding circumstances, these facts are not "additional claims" but are merely factual support for the claim Marshall advanced below. *See Cacoperdo v. Demosthenes*, 37 F.3d 504, 507 (9th Cir. 1994).

out, or that her uninterrupted presence had a coercive effect on him. That the Nevada Court of Appeals' opinion did not mention the potential coercive nature of Smith's presence outside the hospital room was not an unreasonable oversight in light of the record evidence.

2. The Nevada Court of Appeals' conclusion that Marshall's confession was voluntary was not an unreasonable application of clearly established law. 28 U.S.C § 2254(d)(1). Whether a confession is voluntary "takes into consideration the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Dickerson v. United States*, 530 U.S. 428, 434 (2000) (citations and internal quotation marks omitted). Relevant factors include the defendant's age; his level of education and sophistication; the lack of any advice to the defendant concerning his constitutional rights; the length of his detention; the repeated and prolonged nature of the questioning; and the use of physical punishment, such as the deprivation of food or sleep. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

Marshall was still in high school and had turned 18 only months before the detectives questioned him, but there is no evidence indicating Marshall's age or intelligence kept him from appraising the significance of his responses to the detectives' questions. Marshall had been given half a dose of morphine, but when detectives asked the nurse about his condition, she told them he was "coherent[,]"

"would understand everything [the detectives] said[,]" and "would be able to talk to [the detectives] fine." The record also shows that Marshall was capable of misrepresenting his age to hospital personnel and describing a false narrative to Officer Smith, in which he maintained that he was a gunshot victim and that he had been robbed. Nor was Marshall subject to extended or oppressive questioning. Smith took Marshall's statement for thirty to forty minutes, and the two conversations with detectives lasted no more than an hour combined. *See Berghuis v. Thompkins*, 560 U.S. 370, 387 (2010) ("[T]here is no authority for the proposition that an interrogation of [three hours] is inherently coercive[.]"). Marshall initiated the final conversation with the detectives, asking that they return to discuss the consequences of his admissions just ten minutes after they had left his room.

An inability to speak with friends, family, or a lawyer is especially pertinent in cases where the defendant is young or subjected to prolonged or intense questioning. *See Haley v. Ohio*, 332 U.S. 596, 600 (1948); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) ("A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not."); *Blackburn v. Alabama*, 361 U.S. 199, 206, 207–08 (1960); *Harris v. South Carolina*, 338 U.S. 68, 70 (1949). There is some evidence that police may have prevented Marshall's family and attorney from speaking with him, but there is no evidence that Marshall

was aware his family and friends had been prevented from speaking with him.

Marshall argues the detectives' dishonest interrogation tactics render his confession involuntary.[3] With respect to promises of leniency, the court considers "direct or implied promises, however slight," but it is doubtful the offer of "help" in this case constitutes a promise at all. *Hutto v. Ross*, 429 U.S. 28, 30 (1976) (per curiam) (quoting *Bram v. United States*, 168 U.S. 532, 542–43 (1897)). In the context of the exchange, the detectives' statements that they "want[ed] to try and help [Marshall] out" were part of the prompt they gave Marshall to ask what happened to him. The Nevada Court of Appeals' conclusion that there was no indication this statement constituted a promise of leniency was not unreasonable. The detectives also lied to Marshall about having spoken with another person involved in the robbery and knowing that person's "side of the story," but the Supreme Court has recognized that interrogating officers may make false representations about their investigations without rendering an ensuing confession coerced. *See Frazier v. Cupp*, 394 U.S. 731, 739 (1969). In *Frazier*, the Supreme Court upheld the admission of a confession elicited after the questioning officer

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[3] The records before this court and the district court contain only four non-sequential pages of the transcript for this interrogation. After oral argument, the state filed a motion to supplement the record with the complete transcripts of Marshall's two conversations with detectives. Dkt. No. 34. The panel denies the motion because the full transcripts were not available to the district court. Marshall's motion to reopen briefing on the issue is likewise denied. Dkt. No. 36.

falsely told the petitioner that his friend had confessed. *Id.* at 737. Like the petitioner in *Frazier*, Marshall's questioning "was of short duration, and [Marshall] was a mature individual of normal intelligence." *Id.* at 739. And, where the officer in *Frazier* lied about a friend's confession, the officers here stated only that the "stories aren't matching up[.]"

The Nevada Supreme Court's conclusion that Marshall's confession was voluntary was not based on an unreasonable determination of the facts in light of the evidence presented. The conclusion was not contrary to, nor did it involve an unreasonable application of, clearly established federal law.

AFFIRMED.