

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN-DUBUQUE DIVISION**

ANTHONY BLUM,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

No. C98-1031-MWB

**ORDER REGARDING MAGISTRATE  
JUDGE'S REPORT AND  
RECOMMENDATION CONCERNING  
PETITION FOR WRIT OF HABEAS  
CORPUS**

***I. INTRODUCTION AND BACKGROUND***

Before the court is a petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. Petitioner, Anthony Blum, is an inmate at the Newton Correctional Facility, Newton, Iowa. On October 2, 1989, following the commencement of a jury trial, petitioner Blum entered an *Alford* plea to second-degree murder. On October 10, 1989, Blum moved to withdraw his guilty plea, asserting he had been scared and was intimidated both by the judge and the jury. On November 21, 1989, after a hearing, Blum's request to withdraw his guilty plea was denied and he was sentenced to an indeterminate term of up to fifty years imprisonment.

Petitioner Blum did not directly appeal his sentence or conviction. Instead, on September 26, 1990, Blum filed an application for post-conviction relief. Following an evidentiary hearing on his post-conviction relief application, petitioner Blum's post-conviction relief application was denied, the state court finding that petitioner Blum's plea was knowingly and voluntarily made. Blum appealed and the Iowa Court of Appeals reversed, concluding that Blum did not receive a fair hearing on his motions to withdraw his guilty plea and in arrest of judgment "due to ineffective assistance of counsel and actions

and statements of the presiding judge.” *Blum v. State*, 510 N.W.2d 175, 178-80 (Iowa Ct. App. 1993). The Iowa Court of Appeals remanded the matter and ordered that Blum receive a new hearing on his motion to withdraw his guilty plea and motion in arrest of judgment before a judge who had not participated in his case. *Id.* at 179. On remand, Blum again argued his guilty plea was involuntary, asserting: (1) that the trial judge and Blum’s counsel forced him into making the plea; (2) that he was intimidated by the jurors; (3) that he was told he would not receive a fair trial; (4) that extensive confinement immediately prior to trial caused him stress affecting his judgment; (5) that a painful injury to his ankle affected his ability to think clearly and present issues at the hearing; and (6) that a time limit the trial judge placed on accepting the plea put undue pressure on him. After a second post-conviction hearing before a different judge, the Iowa District Court again denied him relief. Petitioner Blum appealed and the Iowa Supreme Court affirmed the denial of his state post-conviction petition, concluding:

The chief element of Blum’s challenge assails Judge Stigler’s time limitations on the plea discussions. During jury selection Judge Stigler indicated he would not accept a plea after the jury panel returned the following day. Blum claims this forced him to plead involuntarily. . . . As the second postconviction court noted:

[Blum’s] counsel did not feel he was under any compulsion to have defendant accept a plea bargain and indicated he was prepared and comfortable to proceed to trial. [Blum] had almost two years prior to trial in which to consider the alternatives available to him and discuss those alternatives with counsel.

\* \* \*

We find no merit in Blum’s contention that the time limit rendered his guilty plea involuntary.

[ ] Blum’s other bases for his involuntariness claim fail on the facts. He did not establish that a prospective juror

intimated three times that he was guilty. He did not establish that stress and pressure from his long confinement in jail prevented him from entering a voluntary and intelligent plea. The facts are quite the converse. As to his confinement, he had a large cell to himself and was allowed visitors and freedom to consult with his lawyer.

Blum also failed to show that pain from an ankle injury detracted from his ability to contemplate his options. The ankle injury occurred after he entered his plea.

Finally he cannot complain that worry about the likelihood of a fair trial in Clayton County robbed him of a free choice regarding a plea. On his motion venue was in fact changed to another county, and was returned to Clayton County only at his request.

*Blum v. State*, 560 N.W.2d 7, 9-10 (Iowa 1997).

Blum filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, on April 30, 1998. Blum asserts in his petition that the state court erred in refusing to permit him to withdraw his guilty plea, and that his guilty plea was involuntary. This case was referred to United States Magistrate Judge Paul A. Zoss pursuant to 28 U.S.C. § 636(b)(1)(B). On March 22, 2001, Judge Zoss filed a Report and Recommendation in which he recommends that Blum's petition be denied. Blum filed objections to Judge Zoss's Report and Recommendation on April 18, 2001. The court, therefore, undertakes the necessary review of Judge Zoss's recommended disposition of Blum's petition for a writ of habeas corpus.

## **II. ANALYSIS**

### **A. Standard Of Review**

Pursuant to statute, this court's standard of review for a magistrate judge's Report

and Recommendation is as follows:

A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made, as follows:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

The Eighth Circuit Court of Appeals has repeatedly held that it is reversible error for the district court to fail to conduct a *de novo* review of a magistrate judge's report where such review is required. *See, e.g., Hosna v. Groose*, 80 F.3d 298, 306 (8th Cir.) (citing 28 U.S.C. § 636(b)(1)), *cert. denied*, 519 U.S. 860 (1996); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (citing *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994)); *Hudson v. Gammon*, 46 F.3d 785, 786 (8th Cir. 1995) (also citing *Belk*). Because objections have been filed in this case, the court must conduct a *de novo* review. With these standards in mind, the court will briefly review the requirements of the federal habeas corpus statute, 28 U.S.C. § 2254(d)(1) and then turn to consider petitioner Blum's objections to Judge Zoss's Report and Recommendation.

### ***B. The Requirements of § 2254(d)(1)***

Section 2254(d)(1) of Title 28, as amended by the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, provides as follows:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(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[.]

28 U.S.C. § 2254(d)(1) (emphasis added). As the United States Supreme Court explained in *Williams v. Taylor*, 529 U.S. 362, 403 (2000), “[F]or [a petitioner] to obtain federal habeas relief, he must first demonstrate that his case satisfies the condition set by § 2254(d)(1).” *See id.*

In *Williams*, the Supreme Court addressed the question of precisely what the “condition set by § 2254(d)(1)” requires. *See id.* at 374-390 (Part II of the minority decision); *id.* at 402-12 (Part II of the majority decision).<sup>1</sup> In the portion of the majority decision on this point, the majority summarized its conclusions as follows:

[Section] 2254(d)(1) places a new constraint on the power of a federal habeas court to grant a state prisoner’s application for a writ of habeas corpus with respect to claims adjudicated on the merits in state court. *Under § 2254(d)(1), the writ may issue only if one of the following two conditions is satisfied*—the state-court adjudication resulted in a decision that (1) “was contrary to . . . clearly established Federal law, as determined

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<sup>1</sup>In *Williams*, the opinion of Justice Stevens obtained a 6-3 majority, except as to Part II, which is the pertinent part of the decision here. *See Williams*, 529 U.S. at 367. Justice O’Connor delivered the opinion of the Court as to Part II, in which she was joined by Chief Justice Rehnquist and Justices Kennedy, Thomas, and Scalia, thereby obtaining a 5-4 majority on this portion of the decision. *See id.*

by the Supreme Court of the United States,” or (2) “involved an unreasonable application of . . . clearly established Federal law, as determined by the Supreme Court of the United States.” *Under the “contrary to” clause*, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. *Under the “unreasonable application” clause*, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court’s decisions but unreasonably applies that principle to the facts of the prisoner’s case.

*Id.* at 413 (emphasis added); *see also Whitmore v. Kemna*, 213 F.3d 431, 433 (8th Cir. 2000) (“It seems to us that § 2254(d) as amended by the AEDPA is unambiguous as to the scope of federal court review, limiting such review (at least as compared with past practice) in order to effect the intent of Congress to expedite habeas proceedings with appropriate deference to state court determinations. *See Williams v. Taylor*, 529 U.S. 362, 403 (2000) (noting purposes of AEDPA amendments).”).

The Court also clarified two other important definitions. First, the Court concluded that “unreasonable application” of federal law under § 2254(d)(1) cannot be defined in terms of unanimity of “reasonable jurists”; instead, “the most important point is that an unreasonable application of federal law is different from an incorrect application of federal law.” *Id.* at 403. Consequently, “[u]nder § 2254(d)(1)’s ‘unreasonable application’ clause, . . . a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be [objectively] unreasonable.” *Id.* Second, the Court clarified that “clearly established Federal law, as determined by the Supreme Court of the United States” “refers to the holdings, as opposed to the dicta, of this Court’s decisions as of the time of the relevant

state-court decision,” and “the source of clearly established law [is restricted] to this Court’s jurisprudence.” *Id.* at 403.

### ***C. Discussion***

Both of petitioner Blum’s objections to Judge Zoss’s Report and Recommendation pertain to Judge Zoss’s conclusion that Blum had failed to prove that the Iowa Supreme Court’s factual determination, that Blum’s guilty plea was voluntary, was unreasonable. The court will address each of petitioner Blum’s objections to Judge Zoss’s Report and Recommendation *seriatim*.

#### ***1. Unprepared counsel***

Petitioner Blum initially objects to Judge Zoss’s finding regarding Blum’s assertion that his counsel coerced him into pleading guilty because his attorney was not prepared for trial. On this issue, Judge Zoss found that “Blum has failed to prove by clear and convincing evidence that the state court’s decision on this issue was based on an unreasonable determination of the facts. He has failed to show he based his decision to plead guilty on his attorney’s advice, or that he would have gone to trial but for his attorney’s actions.” Report and Recommendation at p. 26. Because petitioner Blum’s objection involves a question of fact, it is reviewed under 28 U.S.C. § 2254(d)(2). The Eighth Circuit Court of Appeals has instructed that:

“[O]ur review presumes that the [state] courts found the facts correctly, unless [the petitioner] rebuts that presumption with clear and convincing evidence. See 28 U.S.C. § 2254(e)(1). It bears repeating that even erroneous fact-finding by the [state] courts will not justify granting a writ if those courts erred “reasonably.” *Cf. Williams*, 120 S. Ct. at 1522, 120 S. Ct. 1495 (discussing the meaning of the word “unreasonable” as employed in § 2254(d)(1)).

*Weaver v. Bowersox*, 241 F.3d 1024, 1029 (8th Cir. 2001); see *Robinson v. LaFleur*, 225

F.3d 950, 953 (8th Cir. 2000) (“We presume the state court's factual findings to be correct; [the petitioner] has the burden of rebutting this presumption by clear and convincing evidence.”); *Dye v. Stender*, 208 F.3d 662, 665 (8th Cir. 2000) (noting that state court’s factual finding was “entitled to a presumption of correctness unless the petitioner can clearly and convincingly show otherwise.”); *see also Juarez v. Minnesota*, 217 F.3d 1014, 1016 (8th Cir. 2000) (same presumption); *Whitmore v. Kemna*, 213 F.3d 431, 432 (8th Cir. 2000) (same presumption); *Richardson v. Bowersox*, 188 F.3d 973, 977 (8th Cir. 1999) (same presumption).

In its ruling following the post-remand hearing on Blum’s motion to withdraw his guilty plea, the Iowa District Court made the following factual findings on this issue:

Defendant also alleges he felt his attorneys did not want to try his case and this led to his entering the guilty plea. Defendant had been represented by counsel from the time of his arrest up until the date the plea was entered. When he was not satisfied with the counsel appointed by the court, he retained his own counsel, Joel Bitter. Attorney Bitter has testified he was fully prepared and comfortable with going to trial. Although, the Court of Appeals, found that Defendant’s counsel rendered ineffective assistance at the posttrial hearing, *See Blum*, 510 N.W.2d at 178, there is no evidence to support Defendant’s allegations that counsel “abandoned” him during the plea agreement. In fact, at the time he entered the plea, Defendant specifically stated in reference to Attorney Bitter’s representation of him, “He’s an excellent lawyer, Your Honor.”

*State v. Blum*, No. CR1777, slip op. at 4 (Iowa Dist. Ct. Feb. 27, 1996). The Iowa Supreme Court adopted the following finding from the district court: “[Blum’s] counsel did not feel he was under any compulsion to have defendant accept a plea bargain and indicated he was prepared and comfortable to proceed to trial. [Blum] had almost two years prior to trial in which to consider the alternatives available to him and discuss those alternatives with counsel.” *Blum*, 560 N.W.2d at 9.

Upon review of the record, the court concludes that petitioner Blum has made no showing by clear and convincing evidence that the state courts' factual determination here was incorrect. Rather, the court finds that the Iowa courts' resolution of this factual issue was not clearly contrary to the evidence, and therefore, was reasonable. Petitioner Blum's belated claim that his counsel was ill prepared to proceed to trial is flatly contradicted by his contemporaneous statements at the plea hearing, where the following exchange occurred:

COURT: And are you satisfied with the quality of legal representation provided you? You have no problems with how Mr. Bitter has represented you?

BLUM: He's an excellent lawyer, Your Honor.

Tr., Oct. 2, 1989, at pp. 15-16. Petitioner's prior counsel, Joseph Bitter, testified at the original post-conviction evidentiary hearing that he had twenty-seven years of criminal trial experience and had handled a half-dozen murder cases. Tr., Nov. 14, 1991, at pp. 5-6. Bitter then related some of the actions he undertook in preparation for Blum's trial and went on to testify that he "felt he was well prepared and I felt very comfortable" to go to trial. *Id.* at 25. Bitter reiterated his belief at the continuation of the evidentiary hearing: "I felt that I was well prepared. I felt that then. I still feel that now." Tr., Apr. 16, 1992, at p. 127. He testified that he reviewed the extensive discovery conducted by Blum's prior attorney, interviewed witnesses in the case, discussed the case with Blum on several occasions, and had made arrangements for a long trial. *Id.* at 128. Bitter further testified that Blum initiated the discussion with him regarding a possible plea to second degree murder and that he had not pressured Blum to accept such a plea. *Id.* at 129. This testimony directly contradicted that of petitioner Blum, who testified that Bitter pressured him to plead guilty to second degree murder because Blum was going to be found guilty due to the fact that he could not get a fair trial in Clayton County. *Id.* at 15. Under 28 U.S.C.

§ 2254(e), state court fact findings are entitled to a presumption of correctness because resolution of such issues "depends heavily on the trial court's appraisal of witness credibility and demeanor." *Thompson v. Keohane*, 516 U.S. 99, 111 (1995). The state court had the opportunity to judge the credibility of petitioner Blum. It chose to reject his testimony on this point. As noted above, the court concludes that Blum has failed to rebut the presumption that the Iowa Courts' factual determination is correct. Therefore, this objection to the Report and Recommendation is overruled.

## **2. Judicial coercion**

Petitioner Blum also objects to Judge Zoss's finding that the Iowa state courts did not make an unreasonable determination of the facts relating to the issue of whether the trial judge coerced Blum's guilty plea by threatening him for the purpose of intimidating him into pleading guilty. Report and Recommendation at p. 28. Petitioner Blum testified the trial judge told him that: "You'll either walk or you'll go to prison for a long time. And I advise you to take this last plea bargain and there will be no more." Tr., Apr. 16, 1992, at pp. 24, 59-60. Petitioner Blum testified that this statement was made in the judge's chambers with the prosecutor and his counsel present. *Id.* at 59-60. The Iowa state court, however, found, as a matter of fact, that these statements were not made. In its ruling following the post-remand hearing on Blum's motion to withdraw his guilty plea, the Iowa District Court found Blum had "presented no evidence which would support his version of events regarding the alleged statements . . . by Judge Stigler." *State v. Blum*, No. CR1777, Slip. op. at p. 3. Upon review of the record, the court finds that the Iowa courts' resolution of this factual issue was not clearly contrary to the evidence and thus, was reasonable. The trial judge, the Hon. George L. Stigler, testified he made no such statement to Blum. Stigler Tr., Apr. 16, 1992, at pp. 14-15. Judge Stigler's testimony was buttressed by the testimony of the prosecuting attorney, James Kivi, who testified that the trial judge took no part in plea negotiations nor did he make the statement attributed to him by Blum. Tr., Apr. 16, 1992,

at pp. 77-79. Finally, Bitter also testified the trial judge did not make the statement ascribed to him by Blum. *Id.* at p. 123. Specifically, Bitter testified that “Nothing like that happened.” *Id.* Given the state of the record, the court finds that Blum has failed to prove by clear and convincing evidence that the state court’s factual finding on this matter was incorrect. Therefore, this objection to the Report and Recommendation is also denied.

#### ***D. Certificate of Appealability***

Blum must make a substantial showing of the denial of a constitutional right in order to be granted a certificate of appealability on these issues. *See Garrett v. United States*, 211 F.3d 1075, 1076-77 (8th Cir. 2000); *Mills v. Norris*, 187 F.3d 881, 882 n.1 (8th Cir. 1999); *Carter v. Hopkins*, 151 F.3d 872, 873-74 (8th Cir. 1998); *Ramsey v. Bowersox*, 149 F.3d 749 (8th Cir. 1998); *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997), *cert. denied*, 525 U.S. 834 (1998). “A substantial showing is a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” *Cox*, 133 F.3d at 569. With respect to Blum’s claims, the court shall not grant a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(3).

### **III. CONCLUSION**

For the reasons delineated above, the court **overrules** petitioner Blum’s objections to Judge Zoss’s Report and Recommendation. Therefore, pursuant to Judge Zoss’s recommendation, the petition is **dismissed**. Moreover, the court determines that the petition does not present questions of substance for appellate review. *See* 28 U.S.C. § 2253(c)(2); FED. R. APP. P. 22(b). Accordingly, a certificate of appealability will not issue as to any claim for relief.

**IT IS SO ORDERED.**

**DATED** this 30th day of July, 2001.

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MARK W. BENNETT  
CHIEF JUDGE, U. S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA