UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE ALEXANDER,

Petitioner,

Case Number: 06-14223
Honorable David M. Lawson

v.

JEFF WHITE,

Respondent.
_____/

OPINION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, George Alexander, presently confined at the Cooper Street Correctional Facility in Jackson, Michigan, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 alleging that he is incarcerated in violation of his constitutional rights. The petitioner pleaded guilty to operating a motor vehicle under the influence of liquor causing death, in violation of Michigan Compiled Laws § 257.625(4), and leaving the scene of an accident, in violation of Michigan Compiled Laws § 257.617(a). He was sentenced to seven to fifteen years imprisonment. The petitioner contends that he is in custody in violation of federal law because his trial counsel was ineffective and because the trial court abused its discretion by not allowing him to withdraw his guilty plea. The respondent filed an answer to the petition asserting that the claims either lack merit or are procedurally defaulted. The Court finds that the petitioner's claims lack merit. Therefore, the petition will be denied.

I.

The automobile accident in this case occurred on January 11, 2001. Prior to the car crash, the petitioner drank about a fifth of Cognac, along with some beer. He drove his car to the intersection of Mt. Elliott and East Palmer Streets in the City of Detroit, Michigan. The

petitioner's girlfriend was a passenger in the vehicle at the time. The petitioner ran a light at the intersection and hit another vehicle. Apparently, he stopped briefly because his girlfriend got out of the car. The petitioner then left the scene of the accident; his girlfriend remained at the scene. The driver of the other vehicle was transported to the hospital and eventually died. The police caught up with the petitioner and charged him with operating under the influence of liquor and leaving the scene of the accident.

The petitioner came before the Wayne County, Michigan circuit court on November 13, 2002, the day scheduled for trial. By then, the petitioner also had been charged with a drug offense and was on probation for another offense. The state prosecutor informed the court and the petitioner that there would be no negotiation for a plea agreement, and the discussion turned to the prospect of the petitioner pleading guilty as charged without a plea agreement. Before the petitioner pleaded guilty, he asked to address the court and requested that his trial attorney, Robert Slameka, be removed from the case. The petitioner addressed the trial judge as follows:

> I choose to fire my attorney because he has a difference of opinion. There has not been no (sic) client and attorney communication. The few times that we have had communication, which was only in the courtroom bullpen for maybe a minute or two, then he would walk off, and wouldn't listen to nothing (sic) I have to say.
>
> When I would ask him, when we stand out here, can I speak to the Court, he would get very upset and tell me no, that the Judge would be mad at you, and everything else. And, I'm just – I don't feel that he's going to represent me.

Plea Hr'g Tr., pp. 3-5, Nov. 13, 2002.

Defense counsel Slameka explained that he had been retained to represent the petitioner in an unrelated drug case and learned about the pending matter, on which the petitioner had not yet been arrested. Slameka advised the petitioner to turn himself in, but he did not and eventually was arrested on the motor vehicle case. Slameka began to represent the petitioner on

the present case after he was arrested, and he visited the petitioner at the county jail several times and gave the petitioner the necessary discovery papers. Mr. Slameka said that he advised the petitioner as follows:

> Tom told – Mr. Cameron [the state assistant prosecutor] told me he had no objection if you wanted to – and now we can't because this is trial date – a Cobbs, of giving him the bottom of the guidelines, which is three and a half years. I told that to my client. Again, he's got to talk to his relatives.
>
> You have a dope case that I presume I can get dismissed because the three and a half years would be three times greater than the guidelines on the dope case.
>
> He's got a probation matter in front of Harvey Tennen that I told him also I would take care of.
>
> I don't hear from him at all, even though he calls me and/or his girlfriend who repeatedly calls me. Today he tells me he was in the hole, so he couldn't talk to me. I didn't know that, and that's not my fault.
>
> I go back this morning, I say, "What would you like to do?" He says, "Well, we've got no defense. I don't know what to do."

Plea Hr'g Tr., pp. 6-7, Nov. 13, 2002. The mention of "Cobbs" referred to a state court case that

outlined the permissible scope of a trial judge's participation in the plea bargaining process. *See People v. Cobbs*, 443 Mich. 276, 505 N.W.2d 208 (1993). When the judge approves a so-called *Cobbs* plea, the sentencing court is not bound by the parties' agreed sentencing recommendation, but the defendant is given an absolute right to withdraw the guilty plea if his expectation is not realized. *Id.* at 283, 505 N.W.2d at 212. The trial court rejected the petitioner's request for a new attorney, finding that the request was made for the purpose of delaying trial, and ordered Mr. Slameka to try the case. The petitioner then told the trial judge, "Your Honor, I'll take the

Cobb, then, if I got to go to jury–if I got to go like that." Plea Hr'g Tr., pp. 9, Nov. 13, 2002. Mr. Slameka stated:

> May I say something to the Court, and I mean no disrespect to my client or anyone else in this world. I have gone over this discovery. I just want to make an offer of proof so you don't look at me and say I'm crazy.
>
> There's a young lady who's sitting – she's walking out the room right now, who was purportedly the passenger in the vehicle with him. He drives through an intersection. There's an accident. I'm not going to say who's at fault. There's an accident. She stays. He bails out, and he gets caught at Gratiot and Joseph Campau with blood all over his face.

Ibid. Mr. Slameka told the trial judge that he offered that narrative so that the trial court would know that he was ready for trial:

> THE COURT: But I don't know why you want to tell me.
> MR. SLAMEKA: To show you that I'm ready for trial. I've got this all together. I'm ready to go.
> THE COURT: Well, I know you're ready to go.
> MR. SLAMEKA: Thank you.
> THE COURT: You want to tell that to the Court of Appeals that you're ready for trial.
> MR. SLAMEKA: Thank you, ma'am.
> THE COURT: You've done complete discovery. You've interviewed witnesses. You're ready to go.
> MR. SLAMEKA: Absolutely. Thank you.

Id. at 9-10.

Following this discussion, the prosecution clarified again that there never was an offer to reduce the charges when the parties were negotiating a possible plea agreement in this matter. The trial judge again advised Mr. Slameka and the petitioner that the petitioner would have to go to trial that day, but the petitioner always had a right to plead guilty as charged. The following colloquy took place:

> THE COURT: If he wants to plead as charged.
> MR. SLAMEKA: Yes.

> THE COURT: But there's no deal on anything. There's no time, no nothing.
> MR. SLAMEKA: No, let me just indicate to you that there was no reduced plea ever. Am I correct, Mr. Cameron?
> MR. CAMERON: That's correct.
> MR. SLAMEKA: We were pleading – we were pleading as charged –
> THE COURT: Well, what does he think he's getting a deal on?
> MR. SLAMEKA: He was – we were going to, had we done it in a timely fashion, ask the Court for a sentence at the bottom of the guidelines, which, excuse me, were 42 months. That's all we were asking. There was no reduced plea ever offered.
> THE COURT: Well, I can't give you a Cobbs because it's the day of trial.
> MR. SLAMEKA : I understand that.

Hr'g Tr., pp. 10-11, Nov. 13, 2002. Thereafter, the petitioner pleaded guilty, and following a detailed colloquy with the court, the court accepted the guilty plea. The court described to the petitioner all the rights he was waiving by pleading guilty, made clear that he was pleading guilty with no promises as to the sentence that could be imposed, told the petitioner the maximum sentence he was facing, and elicited a factual basis for the plea.

On November 27, 2002, the trial court sentenced the petitioner to seven to fifteen years imprisonment on the conviction of operating a motor vehicle under the influence of liquor causing death, and a time-served sentence on the misdemeanor conviction of leaving the scene of an accident.

On December 9, 2002, the petitioner requested appointed appellate counsel. Because the petitioner did not hear about the status of his request for appointed counsel, he wrote to the Appellate Counsel Service in both January and February of 2003. The petitioner received no replies to those letters. Then in May 2003, the petitioner contacted the court, again asking for assigned counsel and preparation of his transcripts. In that same month, the petitioner also contacted the Michigan Appellate Assigned Counsel System ("MAACS") because he had not received appointed counsel or the court file. The Director of the MAACS, Terence Flanagan,

responded and advised the petitioner that his office contacted the Wayne County circuit court and learned that his file could not be located and that the court would not appoint counsel until the file was found.

On May 31, 2003, the petitioner wrote to then Wayne County circuit court Chief Judge Timothy Kenny, indicating that he had learned that his request for appointed appellate counsel was received in December 2002 but the court failed to provide him with a lawyer or copies of his court file, thereby depriving him of his due process rights. The petitioner did not receive a reply to his letter.

In June 2003, the petitioner contacted Mr. Flanagan, requesting assistance in learning further information about his appellate requests. In July 2003, Mr. Flanagan wrote to the petitioner after learning that his file could not be found and advised him to write to the chief judge to request that a lawyer be appointed despite the missing file. Mr. Flanagan then wrote to the chief judge himself, stating that the petitioner would not be able to pursue appellate or post-conviction relief without the appointment of counsel and the request for the preparation of transcripts.

Finally, on August 26, 2003, the State Appellate Defender's Officer was assigned the case.

Subsequently, on December 1, 2003, assigned appellate counsel filed a "Motion to Settle the Record and/or to Withdraw Guilty Plea and Request for a *Ginther* Hearing." (A *Ginther* hearing is a state procedure to develop a record in the trial court on a claim of ineffective assistance of counsel. *See People v. Ginther*, 390 Mich. 436, 443-44, 212 N.W.2d 922 (1973) (holding that "[a] defendant who wishes to advance claims that depend on matters not of record

can properly be required to seek at the trial court level an evidentiary hearing for the purpose of establishing his claims with evidence as a precondition to invoking the processes of the appellate courts.")) On February 13, 2004, the trial judge ordered the parties to work together to assemble a settled record in light of the missing court file, and she would await the results before she addressed the petitioner's claims in his motion.

A hearing was held on April 30, 2004 to address the parties' settled record for appeal. At that hearing, appellate counsel told the trial court that the petitioner's request for plea withdrawal was based on a claim of ineffective assistance of counsel. The court conducted an evidentiary hearing on these claims on June 18 and 29, 2004. After hearing testimony from Mr. Slameka and the petitioner, the trial court ruled on the motion to withdraw the guilty plea as follows:

> THE COURT: Well, it's very strange when you hear these cases, I guess if you were in a vacuum and you had never tried a case, you wouldn't understand.
>
> Mr. Slameka goes to the jail to visit [the petitioner] at the end of October, which is about 13 days before trial, almost two weeks. You have to also remember that [the petitioner] had been on bond on one case, and he wasn't incarcerated until later, and then there was a jail visit – the visits here in the courtroom.
>
> When he goes to see the [petitioner], he tells him of a plea offer, at least according to the [petitioner]. And the plea offer, whatever it was, and he was to be sentenced at the low end of the guidelines. That's not a Cobbs. That was a plea agreement. The probation violation and the dope case would be dismissed.
>
> And then Mr. Slameka tries to talk to him about the trial, and this [petitioner], instead of talking to him about the case, says, "Well, don't you think it's too late?"
>
> You know, now he's going to – and you have to remember, I had [the petitioner] here, and I've seen the way he behaves at various times. I remember how he behaved at the time of his sentence, and how he cried. He's a very emotional kind of person. And so I can imagine that when he spoke to Mr. Slameka, he wasn't real
>
> nice. And so Mr. Slamkea says, okay, we can't – you don't want to discuss the case, I'm out of here; and he leaves.

And he's supposed to get back with Mr. Slameka about whether he's going to take the plea, and he gets in trouble in the jail. He doesn't get out of the hole till [*sic*] the day of his trial.

And, the day of his trial, instead of talking to Mr. Slameka about what they're going to do, he now becomes the expert lawyer and shows him a case on negligent homicide, and then says, "Why can't I get this?"

Now, remember, Mr. Slameka is talking to him about whether he wants to take the plea deal. And Mr. Slameka tells him, "You can't get negligent homicide," meaning, that's not what the [P]eople offered.

Mr. Slameka can't make the People change the offer. That's it. That's their offer. And he never articulates – the [petitioner] never articulates, and he admits that, anything about negligent homicide being a defense.

And very frankly, based on some of the things that Mr. Slameka has had to

say here in this court, based upon what the discovery was, I don't think there was a ghost of a chance that there was ever going to be a negligent homicide verdict rendered. Especially when you've got a person who was injured in the accident saying that the [petitioner] was drunk, blew a stop sign causing the accident. They didn't even have to have a blood alcohol test to prove OUIL, death resulting. They had witnesses who would have done it; and Mr. Slameka was well aware of that.

Now, why the [petitioner] decided to take the plea, I don't understand, just as Mr. Slameka doesn't understand.

. . .

You know what he didn't say to me? "Judge, Mr. Slameka promised me you were going to give me the [*Cobbs*]; the three and a half." That was the time, if it were true, to say it. So I don't believe it.

Because the other thing was, I could not, under the law, give him a [*Cobbs*] because its outside the guidelines.

So, there was no deal. Mr. Slameka didn't tell him that. Mr. Slameka might not have done what he wanted him to do, but he's not that bad a lawyer. As a matter of fact, I think he did everything he could, and was ready to try this case.

The best advice that he could give – and see, that's the other thing, defendants don't want to hear our best advice – lawyer's best advice.

Under the circumstances, as Mr. Slameka said, the best thing that he could do was to plea in this case. But if he didn't want to plea, he was perfectly willing to take the case to trial.

Now, the question about causation, I've already told you, I've thrown it out.

The other question that this statement is, I don't think that Mr. Slameka made any error by not challenging the arrest because they didn't need the blood test results to prove drunk driving cause of death. They had witnesses. One of the witnesses was in the car with the [petitioner].

> Your motion to withdraw the plea is denied. It was a fully, voluntary plea because the truth was, he got no benefit. Nobody made him any promise. Absolutely no promise, because no promise could be made, except for the guidelines, and I gave him a sentence within the guidelines.
>
> Your motion is denied.

Hr'g Tr., pp. 96-103, June 29, 2004.

The petitioner then filed a delayed application for leave to appeal in the Michigan Court of Appeals alleging that (1) his plea was involuntary because trial counsel was ineffective in that he failed to prepare properly for trial and gave him inaccurate and ineffective legal advice regarding entering a plea in this case, and (2) the trial judge abused her discretion in denying his motion to withdraw his plea. The Michigan Court of Appeals denied the delayed application for leave to appeal. *People v. Alexander*, No. 256827 (Mich. Ct. App. Nov. 3, 2004). The petitioner then appealed that decision to the Michigan Supreme Court, raising the same claims. The Michigan Supreme Court denied leave to appeal on September 28, 2005. *People v. Alexander*, 474 Mich. 869, 703 N.W.2d 809 (2005).

Thereafter, the petitioner filed a timely *pro se* petition for a writ of habeas corpus in this Court, raising the following arguments:

> I. TRIAL COUNSEL PERFORMANCE WAS SO DEFICIENT UNDER AN OBJECTIVE STANDARD OF REASONABLENESS WHERE COUNSEL COMMITTED SERIOUS ERROR THAT PREJUDICE[D] MR. ALEXANDER['S] INSTANT CASE DENYING HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL RENDERING HIS PLEA INVOLUNTARY.
>
> II. PETITIONER WAS DENY HIS RIGHT TO A FAIR TRIAL BY JUDGE V. JONES BECAUSE OF HER ABUSE OF DISCRETION TO WITHDRAW HIS PLEA BECAUSE IT WAS BEING FORCE[D] ON HIM BY HIS TRIAL LAWYER AND THE JUDGE.

Ptn. at 2. The petitioner identifies the following specific deficiencies in his counsel's performance:

> (1). To where he decide to not argue against the reliability of the **Blood Test** taken at the hospital after the accident.
>
> (2). Also he fail to interview the state only witness to the accident in which he base his whole arguement on it the girl claim he was the driver of car he was guilty. But since he never interview her or did a investigation he fail under the standard of the Sixth Amendment to perform his duty as counsel for his client. All of this was brought up in the Ginther hearing.
>
> (3). He also fail to discuss the matter of what type of plea he was pleading to under the Cobb Agreement. So when he wanteds to fired his attorney the Judge refuse and then told him he didn't have a plea agreement and that is why he wanted to withdraw his plea and it was involuntary.
>
> (4). Trial counsel was totally unprepare for trial. He couldn't have been ready for any type of direct examination of any witness's.
>
> (5). He didn't have any **Motions** ready for the courts in regard to the evidence it a hearing on the **Blood test and the witness** that the state made their whole case on.

Ptn. at 18-19. The respondent filed an answer to the petition asserting that those additional five issues raised in the petitioner's ineffective assistance of counsel claim should be denied because they are procedurally defaulted, and the petitioner's other ineffective assistance of counsel claims lack merit. Apparently, the petitioner's state file was located, because transcripts of the guilty plea and sentencing hearings have been filed as part of the Rule 5 material in this Court.

II.

The respondent first contends that the petitioner embellished his ineffective assistance of counsel claim by including arguments that were not presented to the state courts – pointing to the details in numbered paragraphs two, three, six, seven, and eight in the petitioner's supporting brief. The respondent argues that review of those claims in this court is barred by the doctrine

of procedural default because the petitioner failed to exhaust those claims and there is no further avenue of state court relief available. The procedural default doctrine precludes habeas relief on a defaulted claim, but that doctrine is not jurisdictional. *See Trest v. Cain*, 522 U.S. 87, 89 (1997). In some instances, ineffective assistance of counsel may serve as "cause" for a procedural default if it rises to the level of a constitutional violation. *Martin v. Mitchell*, 280 F.3d 594, 605 (6th Cir. 2002). However, the petitioner has not alleged that his state appellate lawyer was ineffective, so cause cannot be proved by resort to an ineffective assistance of counsel claim. Nonetheless, because "federal courts are not required to address a procedural-default issue before deciding against the petitioner on the merits," *Hudson v. Jones*, 351 F.3d 212, 215 (6th Cir. 2003) (citing *Lambrix v. Singletary*, 520 U.S. 518, 525 (1997)), the Court will proceed directly to the merits of the petitioner's claims.

III.

The provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (Apr. 24, 1996), which govern this case, "circumscribe[d]" the standard of review federal courts must apply when considering applications for a writ of habeas corpus raising constitutional claims, including claims of ineffective assistance of counsel. *See Wiggins v. Smith*, 539 U.S. 510, 520 (2003). As amended, 28 U.S.C. § 2254(d) imposes the following standard of review for habeas cases:

> (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; or

> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented at the State court proceedings.

28 U.S.C. § 2254(d). Therefore, federal courts normally are bound by a state court's adjudication of a petitioner's claims unless the state court's decision was contrary to or involved an unreasonable application of clearly established federal law. *Franklin v. Francis*, 144 F.3d 429, 433 (6th Cir. 1998). Mere error by the state court will not justify issuance of the writ; rather, the state court's application of federal law "must have been objectively unreasonable." *Wiggins*, 539 U.S. at 520-21 (quoting *Williams v. Taylor*, 529 U.S. 362, 409 (2000) (internal quotations omitted)). Additionally, this Court must presume the correctness of state court factual determinations. 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct."); *see also West v. Sibilate*, 73 F.3d 81, 84 (6th Cir. 1996) (stating that "[t]he court gives complete deference to state court findings of historical fact unless they are clearly erroneous").

The Supreme Court has explained the proper application of the "contrary to" clause as follows:

> A state-court decision will certainly be contrary to [the Supreme Court's] clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases . . . .
> A state-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from [the Court's] precedent.

Williams, 529 U.S. at 405-06.

The Supreme Court has held that a federal court should analyze a claim for habeas corpus relief under the "unreasonable application" clause of § 2254(d)(1) "when a state-court decision unreasonably applies the law of this Court to the facts of a prisoner's case." *Id.* at 409. The Court defined "unreasonable application" as follows:

> [A] federal habeas court making the "unreasonable application" inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable . . . .
> [A]n unreasonable application of federal law is different from an incorrect application of federal law . . . . Under § 2254(d)(1)'s "unreasonable application" clause, then, 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 unreasonable.

Id. at 409-11; *see also Murphy v. Ohio*, 551 F.3d 485, 493-94 (6th Cir. 2009); *Eady v. Morgan*, 515 F.3d 587, 594-95 (6th Cir. 2008); *Davis v. Coyle*, 475 F.3d 761, 766-67 (6th Cir. 2007); *King v. Bobby*, 433 F.3d 483, 489 (6th Cir. 2006); *Rockwell v. Yukins*, 341 F.3d 507, 512 (6th Cir. 2003) (en banc).

A.

The petitioner's first claim is that his guilty plea was involuntary because he was provided ineffective assistance of counsel. A petitioner who challenges his guilty plea based on the ineffective assistance of counsel will succeed only if he meets the requirements of familiar two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). To show a violation of the Sixth Amendment right to effective assistance of counsel, a petitioner must establish that his attorney's performance was deficient and that the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687. An attorney's performance is deficient if "counsel's representation fell below an objective standard of

reasonableness." *Id*. at 688. The defendant must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id*. at 687. "Judicial scrutiny of counsel's performance must be highly deferential." *Id*. at 689. The Court has "declined to articulate specific guidelines for appropriate attorney conduct and instead [has] emphasized that the proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Wiggins*, 539 U.S. at 521 (quoting *Strickland*, 466 U.S. at 688) (internal quotation marks omitted).

An attorney's deficient performance is prejudicial if "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland*, 466 U.S. at 687. The petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. at 694. Unless the petitioner demonstrates both deficient performance and prejudice, "it cannot be said that the conviction [or sentence] . . . resulted from a breakdown in the adversary process that renders the result unreliable." *Id*. at 687.

In the context of a challenge to a guilty plea, the first component of the test remains the same. *Hill*, 474 U.S. at 58. However, the prejudice requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. *Id.* at 59. In other words, the petitioner must show "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Ibid.*; *see also Smith v. United States*, 348 F.3d 545, 551-52 (6th Cir. 2003).

Here, it appears that the petitioner contends that his guilty plea was involuntary because he was coerced by his own counsel into accepting the plea when his trial counsel was unprepared for trial. The record, however, belies the petitioner's assertions. Trial counsel outlined the extent of his trial preparation on the record of the guilty plea hearing. He insisted that he was prepared to proceed to trial after reviewing the discovery material and interviewing witnesses. In this case, the record does not support the petitioner's claim that his trial attorney was unprepared to try the case.

Nor does the record support the argument that the petitioner simply threw in the towel and pleaded guilty due to the coercive effect of an unprepared lawyer. In fact, there is no evidence of coercion of any kind. At the plea hearing, the petitioner indicated that he had not been threatened by anyone, and that it was his own decision to plead guilty. *See* Hr'g Tr., pp. 13-18, Nov. 13, 2002; Hr'g Tr., pp. 96-103, June 29, 2004. Also, the petitioner indicated that he was pleading guilty because he was guilty. *Ibid.* Those statements by the petitioner, made while under oath and in open court, carry a strong presumption of truthfulness. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977). Where, as here, "the court has scrupulously followed the required procedure, the defendant is bound by his statements in response to that court's inquiry." *Ramos v. Rogers*, 170 F.3d 560, 566 (6th Cir. 1999) (internal quotation omitted). Because the petitioner indicated under oath that his plea was not coerced, and because he has presented no evidence to contradict his assertions, his claim is without merit.

The petitioner claims that his attorney's advice to plead guilty was constitutionally deficient because the attorney was unprepared for trial in that he (1) failed to interview the passenger; (2) failed to prepare for trial; and (3) failed to conduct an investigation into the case.

He also claims that his counsel never met with him before the trial date. Once again, there is no evidence to support these claims. To the contrary, following an evidentiary hearing, the trial court rejected the petitioner's allegations that his attorney was unprepared. Hr'g Tr., June 29, 2004, at 96-103. It also found that defense counsel had met with the petitioner before the scheduled trial date. *Id.* at 97. These are factual findings that are presumed correct on habeas review, absent clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Bigelow v. Williams*, 367 F.3d 562, 571 (6th Cir. 2004). No contrary evidence has been presented in this case.

The petitioner also argues that his counsel was ineffective for not filing motions challenging the blood test performed on him after the accident. He appears to argue that he did not provide consent for the blood test nor was he arrested under the state statute allowing such blood tests in the absence of actual consent. *See* Mich. Comp. Laws § 257.625c. A decision not to file a pretrial motion can serve as the basis for a finding of ineffective assistance of counsel only if this decision was unreasonable and caused the petitioner prejudice. *Howard v. Bouchard*, 405 F.3d 459, 481 (6th Cir. 2005). The record in this case does not suggest a ground that could have supported exclusion of the evidence. Moreover, even if the blood test had been excluded, the passenger in his vehicle had indicated that she would testify that the petitioner was intoxicated. The Court concludes that counsel was not ineffective for failing to move to exclude the blood test results, and no prejudice resulted in any event.

The petitioner further complains that his counsel's performance was constitutionally deficient because he failed to explain the conditions of his guilty plea. This argument is without merit because any such defect was remedied during the lengthy colloquy between the petitioner and the trial judge at the guilty plea hearing. Here is what transpired:

THE COURT: Mr. Alexander, how are you?
DEFENDANT ALEXANDER: I'm pretty fair.
THE COURT: Why are you pleading guilty?
DEFENDANT ALEXANDER: I'm pleading guilty because I am guilty.
THE COURT: Sir, is it true that at this time you'd like to enter a plea of guilty to operating under the influence, causing death?
DEFENDANT ALEXANDER: Yes, ma'am.
THE COURT: The maximum possible penalty for that is 15 years in prison. Do you understand that?
DEFENDANT ALEXANDER: Yes.
THE COURT: Is it also true you wish to enter a plea of guilty to failure to stop at a personal injury accident?
DEFENDANT ALEXANDER: Yes.
THE COURT: The sentence for that is one year in jail. Did you understand that?
DEFENDANT ALEXANDER: Yes.
THE COURT: Now, it's my understanding that if you are convicted of the OUIL causing death, that would actually make you a fourth felony offender. Did you understand that?
DEFENDANT ALEXANDER: Yes, ma'am.
THE COURT: And that would increase the penalty, possible penalty on the OUIL causing death, up to life in prison. Did you understand that?
DEFENDANT ALEXANDER: Yes.
THE COURT: Now, it's my understanding, and the lawyers tell me the sentencing guidelines are somewhere around 44 months to something else. I don't know what they are. But there has been no promise of any sentence. Do you understand that?
DEFENDANT ALEXANDER: Yes, ma'am.
THE COURT: Did anybody promise you anything at all to get you to plead guilty?
DEFENDANT ALEXANDER: No, ma'am.
THE COURT: Did anybody threaten you in any way to get you to plead guilty?
DEFENDANT ALEXANDER: No, ma'am.
THE COURT: Are presently on probation or parole for anything anywhere?
DEFENDANT ALEXANDER: Yes, ma'am.
THE COURT: A plea of guilty in this case will automatically admit violation of the probation or parole, and you could be sentenced for the probation or parole offense. Did you understand what I said?
DEFENDANT ALEXANDER: Yes.
THE COURT: What are you on probation or parole for?
DEFENDANT ALEXANDER: Possession.
THE COURT: And is that a probation case or a parole violation?
DEFENDANT ALEXANDER: Probation.
THE COURT: Okay.

DEFENDANT ALEXANDER: Probation violation.
THE COURT: Do you understand, sir, you don't have to plead guilty to anything?
DEFENDANT ALEXANDER: Yes.
THE COURT: You have the constitutional right to have a trial by a jury or a trial by this Court sitting without a jury. Do you understand that?
DEFENDANT ALEXANDER: Yes.
THE COURT: If you were to have a trial, you'd have the right to be presumed innocent unless and until the prosecution proved your guilt beyond a reasonable doubt. Do you understand that?
DEFENDANT ALEXANDER: Yes.
THE COURT: If you had a trial, all the witnesses against you would have to come into this courtroom. We would administer an oath to them, and they'd have to testify in the open court against you. You'd have the right to hear them testify, and to confront them through your attorney's cross-examination. Do you understand what I've said?
DEFENDANT ALEXANDER: Yes.
THE COURT: And if you had a trial, you'd have the right to call witnesses to testify for you. And if they would not voluntarily come to court to testify, you'd have the right at trial to have this Court compel those witnesses to appear. We'd subpoena them and make them come to court to testify for you. Do you understand what I've said?
DEFENDANT ALEXANDER: Yes.
THE COURT: And if you had a trial, you'd have the right to remain silent, or you could testify if you wanted to.

But if you decided to remain silent, neither the Court, nor the jury, nor anyone else could use that against you in any way. Nobody could say, "Well, this man must be guilty or else he would have testified." Do you understand what I've said?
DEFENDANT ALEXANDER: Yes.
THE COURT: And if you had a trial, if you were convicted, after your sentence you'd have an automatic right to appeal your conviction and sentence to the Court of Appeals.

If you plead guilty, you will give up that right, and the only way you could go to the Court of Appeals would be through filing an Application for Leave to appeal. It would be like asking for special permission. Do you understand what I've said?
DEFENDANT ALEXANDER: Yes.
THE COURT: Do you want to ask me any questions about any of the things I've told you so far?
DEFENDANT ALEXANDER: No, ma'am.
THE COURT: Do you still wish to enter a plea of guilty to this offense?
DEFENDANT ALEXANDER: Yes.

Plea Hr'g Tr., pp. 13-18, Nov. 13, 2002. After being apprised of the details of the plea, the petitioner chose to continue with the plea. Therefore, he cannot claim with any credibility that he would have insisted on going to trial but for his counsel's actions.

Finally, the petitioner complains that he was not permitted to fire his attorney. The Sixth Circuit cites four factors to consider when assessing a trial court's exercise of discretion in denying a continuation of trial to obtain new counsel: "(1) the timeliness of the motion, (2) the adequacy of the court's inquiry into the matter, (3) the extent of the conflict between the attorney and client and whether it was so great that it resulted in a total lack of communication preventing an adequate defense, and (4) the balancing of these factors with the public's interest in the prompt and efficient administration of justice." *United States v. Mack*, 258 F.3d 548, 556 (6th Cir. 2001). The trial judge determined that the petitioner's motion was untimely. The court conducted an inquiry and made an adequate record of the history of the relationship between the petitioner and his attorney. The conflict in the case did not appear to involve trial strategy, but it appeared that it resulted from the petitioner's unresponsiveness to the attorney's request for a decision on whether the petitioner would plead guilty. The question of the public interest and balancing the other factors requires an analysis of the effectiveness of the representation the petitioner received.

The Sixth Amendment guarantees an accused in all criminal prosecutions the right to the assistance of counsel in his defense. U.S. Const. amend. VI. "[T]he purpose of providing assistance of counsel 'is simply to ensure that criminal defendants receive a fair trial.'" *Wheat v. United States*, 486 U.S. 153, 159 (1988) (quoting *Strickland*, 466 U.S. at 689). "[I]n evaluating Sixth Amendment claims, 'the appropriate inquiry focuses on the adversarial process,

not on the accused's relationship with his lawyer as such.'" *Ibid.* (quoting *United States v. Cronic*, 466 U.S. 648, 657 n. 21 (1984)). Further, "the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." *Ibid*. Therefore, "when a defendant is denied the counsel he prefers, the constitutional concern is whether he received an effective advocate." *Ray v. Curtis*, 21 F. App'x 333, 335 (6th Cir. Sept. 20, 2001) (citing *Wheat*, 486 U.S. at 159).

In this case, in response to the petitioner's request for a new attorney, the trial court inquired into the basis for the petitioner's dissatisfaction with his attorney. The trial court concluded that defense counsel was performing adequately and that the petitioner was merely attempting to delay the trial. The record does not contain a basis to contradict that conclusion. The petitioner's trial attorney represented the petitioner adequately, obtained the discovery material from the prosecutor, interviewed witnesses, and advised the petitioner accurately about his procedural rights. Habeas relief may only be granted if the state court's decision was contrary to clearly established federal law or if the state court unreasonably applied federal law. *See Williams*, 529 U.S. at 410-11. The state court's decision in this case was not contrary to or an unreasonable application of Supreme Court precedent. The Court concludes that the petitioner is not entitled to habeas relief on his claim of ineffective assistance of counsel.

B.

The petitioner also suggests that the trial court erred by not allowing him to withdraw his guilty plea. This claim does not present a cognizable basis for habeas relief. There is no federal constitutional right, or absolute right under state law, to withdraw a guilty plea. *Chene*

v. Abramajtys, 76 F.3d 378 (6th Cir. 1996); *United States ex rel Scott v. Mancusi*, 429 F.2d 104, 109 (2d Cir. 1970); *Freeman v. Muncy*, 748 F. Supp. 423, 429 (E.D. Va. 1990); *People v. Bencheck*, 360 Mich. 430, 432, 104 N.W.2d 191, 191-92 (1960); *People v. Harris*, 224 Mich. App. 130, 131, 568 N.W.2d 149, 150 (1997). The decision to permit a defendant to withdraw his guilty plea is committed to the trial court's discretion. *Scott*, 429 F.2d at 109. A trial court's abuse of discretionary authority generally is not a basis for habeas corpus relief. *See Sinistaj v. Burt*, 66 F.3d 804, 808 (6th Cir. 1995) (finding no authority for the proposition that, when a state court abuses its discretion in denying a defendant's motion to withdraw a waiver of jury trial, the result violates the United States Constitution).

To the extent the petitioner argues that the trial court should have offered him an opportunity to withdraw his plea under Michigan Court Rules 6.302(F) and 6.310(B), this claim is not cognizable on habeas review because it arises under state law. *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990). It is "not the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle v. McGuire*, 502 U.S. 62, 63 (1991). A federal court is limited on federal habeas review to deciding whether a state court conviction violates the Constitution, laws, or treaties of the United States. *Ibid.* Therefore, even if there were some merit to the petitioner's argument that the trial court should have affirmatively offered him an opportunity to withdraw his plea pursuant to Michigan Court Rules 6.310(C), such error, if indeed there was any, does not justify habeas relief. Therefore, the petitioner's challenge to the decision to deny his motion to withdraw his guilty plea will not justify issuance of the writ.

III.

The Court finds that the state courts' decisions in this case were not contrary to federal law, an unreasonable application of federal law, or an unreasonable determination of the facts. Therefore, the petitioner has not established that he is presently in custody in violation of the Constitution or laws of the United States.

Accordingly, it is **ORDERED** that his petition for a writ of habeas corpus [dkt # 1] is **DENIED**.

s/David M. Lawson

DAVID M. LAWSON
United States District Judge

Dated: July 27, 2009