APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPEAL NO. 17-11952-B

DANIEL K. GARCIA,

APPELLANT,

v.

UNITED STATES OF AMERICA,

APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

MOTION TO RECONSIDER ORDER DENYING CERTIFICATE OF APPEALABILITY

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Appeal No. 17-11952-B

Daniel K. Garcia v. United States of America

CERTIFICATE OF INTERESTED PERSONS

The persons listed below are interested in the outcome of this case:

Canova, Christopher, Acting United States Attorney

Davies, Robert G., Assistant United States Attorney

Garcia, Daniel K., Appellant

Hodges, Terrell William, United States District Judge

Jones, Gary R., Magistrate Judge

Murrell, Randolph P., Federal Public Defender

Saillant, Megan, Assistant Federal Public Defender

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DANIEL K. GARCIA,

Appellant,

v. **CASE NO. 17-11952-B**

UNITED STATES OF AMERICA,

Appellee.
_____/

MOTION TO RECONSIDER ORDER DENYING CERTIFICATE OF APPEALABILITY

Appellant, Daniel K. Garcia, through undersigned counsel, pursuant to 11th Cr. R. 22-1(c) and 27-2, respectfully requests this Honorable Court reconsider the Order denying his application for a certificate of appealability ("COA").

INTRODCUTION

On July 18, 2017, this Court denied Mr. Garcia's application for a COA in its entirety because he had "failed to make a substantial showing of the denial of a constitutional right." Order (11th Cir. Jul. 18, 2017) (citing 28 U.S.C. § 2253(c)(2)). Section 2253(c)(2) provides that a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." Mr. Garcia respectfully seeks reconsideration because, as shown here, he has satisfied this requirement.

STATEMENT OF ISSUES FOR WHICH A COA IS REQUESTED

Mr. Garcia respectfully requests this Court issue a COA on the issue of whether a 1994 Florida robbery conviction is a violent felony pursuant to the elements clause of the Armed Career Criminal Act ("ACCA").

COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

Mr. Garcia was convicted of possession of a firearm by a convicted felon, and on January 22, 1999, was sentenced pursuant to the ACCA to 180 months' imprisonment. (Doc 68). At the time of sentencing, Mr. Garcia had seven Florida convictions that qualified as ACCA predicate offenses – three burglary convictions and four robbery convictions. (PSR ¶¶ 37, 38, 40, 43-46). Mr. Garcia filed a timely appeal and it was denied on January 4, 2000. (Doc 107).

On September 15, 2000, Mr. Garcia moved to vacate his sentence according to 28 U.S.C. § 2255. (Doc 111). The motion was denied on June 13, 2002. (Doc 122). Mr. Garcia appealed this decision (Doc 143), and it was also denied. (Doc 161).

On June 13, 2016, after receiving permission from this Court, Mr. Garcia filed a second § 2255 motion arguing his ACCA sentence was unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015) (*Johnson II*). (Doc 237). The

motion was denied by the district court on April 14, 2017. (Doc 253). The lower court also denied a certificate of appealability. (Doc 254). On April 26, 2017, Mr. Garcia filed a timely notice of appeal. (Doc 255). A motion for certificate of appealability was filed in this Court on May 3, 2017, and denied on July 18, 2017.

COA STANDARD

The governing statute provides that a COA may be issued when the "applicant has made a substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The COA must "indicate which specific issue or issues satisfy th[is] showing." 28 U.S.C. § 2253(c)(3).

The Supreme Court has clarified that a COA "does not require a showing that the appeal will succeed." *Welch v. United States*, 136 S. Ct. 1257, 1263–64 (2016) (citing *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003)). An applicant need only show that the issues raised are debatable among jurists. *Id.* Indeed, the Supreme Court has recently confirmed that a prisoner's failure "to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable." *Buck v. Davis*, 137 S. Ct. 759, 774 (2017). Thus, a claim can be "debatable" even if "every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Cockrell*, 537 U.S. at 337.

Additionally, although a matter may be well-settled adversely to a movant in the relevant district court or court of appeals, the fact that other equal or higher courts have reached conflicting views suffices to require the certification of an appeal. *See e.g.*, *Lynce v. Mathis*, 519 U.S. 433, 436, 117 S. Ct. 891, 893 (1997).

Here, Mr. Garcia's PSR erroneously stated his prior Florida robbery convictions were violent felonies according to the ACCA. Reliance on this erroneous statement violated his due process rights. *Townsend v. Burke*, 334 U.S. 736 (1948); *United States v. Dean*, 752 F.2d 535 (11th Cir. 1985); *Shukwit v. United States*, 973 F.2d 903 (11th Cir. 1992)). Indeed, this Court has previously concluded that a "claim that [petitioner] was sentenced on the basis of false information contained in the PSI is cognizable in this [§ 2255] petition," because "due process protects the right not to be sentenced on the basis of false information." *Shukwit*, 973 F.2d at 904.

ARGUMENT

As shown below, the standard for the issuance of a COA has been met in Mr. Garcia's case. Mr. Garcia therefore respectfully requests this Court reconsider the Order denying a COA and issue a COA on the following issue.

A. The Florida robbery statute is indivisible with respect to whether a taking was committed by "force, violence, assault or putting in fear," and this Court must therefore consider the least culpable conduct required for a conviction under the statute.

To determine whether robbery qualifies as a "violent felony" under the ACCA's elements clause, this Court must employ a categorical approach, focusing on only the elements of the offense, and not the facts underlying a conviction. *See Descamps v. United States*, 133 S. Ct. 2276, 2281 (2013). However, in a narrow subset of cases, where a statute is "divisible" - meaning the statute sets forth a number of different crimes, only some of which qualify as ACCA predicate offenses - this Court may employ a modified categorical approach. *Id.* Under the modified categorical approach, this Court may review the *Shepard*[1] documents to determine which part of the state statute the defendant was convicted under. *See id.* at 2283-84. However, if a statute is indivisible, the modified categorical approach is inapplicable, and "the *Shepard* documents are irrelevant to the ACCA issue." *United States v. Howard*, 742 F.3d 1334, 1345 (11th Cir. 2014).

Florida statute § 812.13 reads now, as it did in 1994 when Mr. Garcia was convicted:

[1] *Shepard v. United States*, 544 U.S. 13 (2005).

> the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

The first question in analyzing this offense is whether the element at issue - "force, violence, assault or putting in fear" - is divisible. The key to that question is whether the jury is "required" to find one of several alternative options beyond a reasonable doubt. *United States v. Lockett*, 810 F.3d 1262, 1268 (11th Cir. 2016). If the jury is required to choose between the alternatives, the alternatives are elements, and the statute is divisible; if not, the alternatives are merely means, and the statute is indivisible. *Id.* To determine whether the alternatives are means or elements, the Court may look to a number of authoritative state sources including judicial decisions and jury instructions. *Mathis v. United States*, 136 S. Ct. 2243, 2249, 2256–57 (2016).

A review of the Florida jury instructions clarifies that "force, violence, assault, or putting in fear" are merely alternative means of accomplishing a single element. The jury must only find beyond a reasonable doubt that one of them is applicable; the jury is not required to choose among these alternatives or agree upon one. Hence, the Florida robbery statute is indivisible concerning whether a taking was accomplished by force, violence, assault, or putting in fear. And the Court must

presume Mr. Garcia's convictions rest upon the least culpable conduct required for a conviction under the robbery statute. *See Seabrooks*, 839 F.3d at 1341 (citing *Lockley*, 632 F.3d at 1244–45); *United States v. Braun*, 801 F.3d 1301, 1305 (11th Cir. 2015) (citing *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684 (2013)) ("We must presume that the conviction rested upon nothing more than the least of the acts criminalized . . .").

In *Lockley*, this Court held that the least culpable form of robbery was a robbery by "putting in fear," and that it was "inconceivable" that such a robbery did not require the use or threatened use of physical force. *See Fritts*, 841 F.3d at 941 (citing *Lockley*, 632 F.3d at 1244-45). This aspect of *Lockley*, however, has not survived *Descamps*, 133 S. Ct. at 2283-86, 2289-91, and *Moncrieffe*, 133 S. Ct. at 1684, which require a strict elements-based assessment of what the state must prove under state law and thus foreclose an analysis based on what a court may conceive an offense involves. As explained below, the least culpable form of robbery is either robbery by "force" or robbery by "putting in fear," and neither qualify as a "violent felony" under the ACCA's elements clause.

B. A pre-1997 robbery conviction "by force" or "putting in fear" does not have as an element the use, attempted use, or threatened use of physical force against the person of another.

For a conviction to be a "violent felony" under the elements clause, it must have "as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 924(e)(2)(B)(i). Not any physical force will do. The "physical force" must be "*violent* force — that is, force capable of causing physical pain or injury to another person." *Johnson I*, 559 U.S. at 140. "Even by itself, the word 'violent' in § 924(e)(2)(B) connotes a *substantial* degree of force." *Id*. (emphasis added).

1. A conviction for robbery by "force" does not qualify as a "violent felony" under the elements clause.

A conviction for Florida robbery by "force" does not qualify as a "violent felony" under the elements clause because the definition of "force" under the Florida statute is overbroad. This remains true whether the pre-1997 or post-1997 standard for evaluating "force" under the statute is applied.

a. A pre-1997 conviction for Florida robbery by "force" does not qualify as a "violent felony" under the elements clause.

Florida courts considering the pre-1997 version of the robbery statute recognized that one distinct manner of committing robbery is by "use of force," and that for a robbery by "force" the "degree of force used is immaterial." *See Montsdoca*

v. State, 93 So.157, 159 (Fla. 1922); *McCloud v. State*, 335 So. 2d 257, 258–59 (Fla. 1976) (citing and following the holding in *Montsdoca*, that "[a]ny degree of force suffices to convert larceny into a robbery"); *Johnson v. State*, 612 So. 2d 689, 690 (Fla. 1st DCA 1993) (finding force sufficient to remove a scab from a victim's finger was enough to sustain conviction for robbery, citing to *Montsdoca* and *McCloud*).

Notably, prior to 1997 — thus including when Mr. Garcia was convicted of the robberies at issue here — several intermediate appellate courts in Florida held that a conviction for robbery "by force" would be permissible even upon proof of only the slightest force, that necessary to "snatch" money from another's hands or physical possession. *See, e.g.*, *Larkins v. State*, 476 So.2d 1383, 1385 (Fla. 1st DCA 1985) ("Robbery is a taking, not only by putting in fear, but by force or violence as well. The money was in Wirth's physical possession, and Larkins grabbed it from her. . . . It was therefore reasonable for the jury to conclude that, given the circumstances, sufficient force was exercised to fulfill the requirements of the robbery statute."); *Andre v. State*, 431 So.2d 1042, 1043 (Fla. 5th DCA 1983) ("[T]he act of 'snatching' the money from another's hands is force and that force will support a robbery conviction.").

The law was not clear on this matter in Florida until 1997 when the Florida Supreme Court clarified that for a taking to amount to "robbery," it must be

"accomplished with more than the force necessary to remove the property from the person. Rather, there must be resistance by the victim that is overcome by the physical force of the offender. The snatching or grabbing of property without such resistance by the victim amounts to theft rather than robbery." *Robinson v. State*, 692 So.2d 883, 886–87 (Fla. 1997).[2] Therefore, it is clear that in 1994, "violent," pain-causing, injury-risking force was not required to commit and be convicted of Florida robbery "by force."

In *Fritts*, this Court held that there was no distinction between pre-1997 and post-1997 robberies because *Robinson* merely clarified what the law has always been—that Florida robbery always required force sufficient to overcome resistance, and never included sudden snatching. 841 F.3d at 942. Although *Robinson* may have clarified what the Florida statute means and has always meant, that clarification does not settle the issue. Rather, the determination must be made by evaluating what conduct may have resulted in Mr. Garcia's convictions, "even if Florida courts were misinterpreting the statute at that time." *Seabrooks*, 839 F.3d at 1351 (Martin, J., concurring). *See McNeill v. United States*, 563 U.S. 816, 820 (2011) ("The only way

[2] In 1999, Florida enacted a law that punished "robbery by sudden snatching," apparently in response to the decision in *Robinson*. *See* Fla. Stat. § 893.131; *Nichols v. State*, 927 So.2d 90, 90–91 (Fla. 1st DCA 2006); *United States v. Welch*, 683 F.3d 1304, 1311 (11th Cir. 2012).

to answer this backward-looking question is to consult the law that applied at the time of that conviction."). Before *Robinson*, the controlling Florida Supreme Court decision was *McCloud*, which held that "*any degree* of force" converts a larceny into a robbery. 335 So.2d at 2589 (emphasis added). That means people convicted after *McCloud*, but before *Robinson*, may have been convicted of sudden snatching. The Supreme Court's directive in *McNeill* requires this Court to consider *McCloud*'s interpretation of the robbery statute. Because Mr. Garcia's robbery convictions were presumably committed by minimal force, his convictions cannot qualify as "violent felonies" under the elements clause.

b. Florida robbery by "force" never qualifies as a "violent felony" under the elements clause.

Additionally, the force required by the statute, before and after the Florida Supreme Court's decision in *Robinson*, need not rise to the level of "physical force" contemplated by the elements clause. For example, the jury instruction for Florida robbery provides that: "It is also robbery if a person, with intent to take the property from a victim, administers any substance to another so that the victim becomes unconscious and then takes the property from the person or custody of the victim." *In re Standard Jury Instructions in Criminal Case — Report 2012-09*, 122 So.3d 263, 283–84 (Fla. 2013); *In re Standard Jury Instruction in Criminal Cases*, 543

So.2d 1205, 1216 (Fla. 1989); *Clark v. State*, 43 So.3d 814, 816 n.3 (Fla. 1st DCA 2010) ("If the robbery victim was surprised from behind and rendered unconscious by the robber unawares, taking of money or other property from the victim could be accomplished by use of force or violence, and support a conviction for robbery in violation of section 812.13 . . . ."). Indeed, all that is required is force sufficient to overcome resistance. *Robinson*, 692 So.2d 886. Thus, if the victim's resistance is slight, the "force" necessary to overcome it is also slight. *See e.g.*, *Sanders v. State*, 769 So.2d 506 (Fla. 5th DCA 2000) (affirming robbery conviction where defendant merely peeled back the victim's fingers before snatching money from his hand). This type of robbery, while qualifying as a Florida robbery by "force," would not qualify as a "violent felony" because it does not have as an element the use of violent "physical force."

Indeed, the Fourth Circuit's recent decisions in *United States v. Gardner*, 823 F.3d 793 (4th Cir. 2016), and *United States v. Winston*, 850 F.3d 677 (4th Cir. 2017), illustrate why force that must only be enough to overcome a victim's resistance can be satisfied with *de minimus* contact, which does not categorically implicate "physical force." In *Gardner*, the Fourth Circuit held that the offense of North Carolina common law robbery does not categorically require the use of "physical force." 823 F.3d at 803–04. The Fourth Circuit determined from a review of North

Carolina appellate law that North Carolina common law robbery by means of "violence" may be committed by any force "sufficient to compel a victim to part with his property." *Id.* (quoting *State v. Sawyer*, 29 S.E.2d 34, 37 (N.C. 1944)). Like Florida robbery, the degree of force used is immaterial. *Id.* (also quoting *Sawyer*). Thus, the Fourth Circuit concluded, *Sawyer*'s definition "suggests that even *de minimis* contact can constitute the 'violence' necessary for a common law robbery conviction under North Carolina law." *Id.* (emphasis in original). The Fourth Circuit also discussed two North Carolina state cases which supported that conclusion. *Id.* (discussing *State v. Chance*, 662 S.E.2d 405 (N.C. Ct. App. 2008), and *State v. Eldridge*, 677 S.E.2d 14 (N.C. Ct. App. 2009)). In *Chance*, an appellate court found sufficient "actual force" for a robbery conviction where the defendant simply pushed the victim's hand off a carton of cigarettes. And in *Eldridge*, the court upheld a robbery conviction where a defendant merely pushed the shoulder of a store clerk, causing her to fall onto shelves. Based on these decisions, the Fourth Circuit concluded that "the minimum conduct necessary to sustain a conviction for North Carolina common law robbery" does not necessarily require "physical force," and therefore the offense does not categorically qualify as a "violent felony" under the elements clause. *Id.*

In *Winston*, the Fourth Circuit used similar logic to hold that the offense of Virginia common law robbery by "violence" does not categorically require the use of "physical force." 850 F.3d at 685. Based on guidance from the Virginia Supreme Court and Virginia appellate courts, the Fourth Circuit determined that Virginia common law robbery "requires only a 'slight' degree of force, 'for *anything which calls out resistance* is sufficient,'" and concluded that Virginia common law robbery likewise "appears to encompass a range of *de minimis* contact." *Id.* (citing *Maxwell v. Commonwealth*, 183 S.E. 452, 454 (Va. 1936)) (emphasis added); *see also id* (discussing *Jones v. Commonwealth*, 496 S.E.2d 668, 670 (Va. Ct. App. 1998)). Based on the Virginia courts' decisions, the Fourth Circuit concluded that "the minimum conduct necessary to sustain a conviction for Virginia common law robbery does not necessarily include the use, attempted use, or threatened use of 'violent force.'" *Id*.

Given the similarity in the interpreted degree of force required for robbery convictions in Florida, North Carolina, and Virginia, the decisions in *Gardner* and *Winston* are in significant tension with *Fritts* and *Seabrooks*. At a minimum, the Fourth Circuit's decisions show that reasonable jurists could at least debate whether force that must only be sufficient to overcome a victim's resistance categorically

requires violent "physical force."[3]

2. A conviction for Florida robbery by "putting in fear" does not qualify as a "violent felony" under the elements clause.

Robbery by "putting in fear," like robbery by "force," does not qualify as a "violent felony" under the ACCA's elements clause because: (1) it does not require that a defendant intentionally put a victim in fear; and (2) it does not require that a defendant threaten to use physical force. Notwithstanding, in *Lockley*, this Court held that the least culpable form of robbery was a robbery by "putting in fear," that it was "inconceivable" that such a robbery did not require the use or threatened use of physical force, and that robbery was categorically a "violent felony." *See Fritts*, 841 F.3d at 941 (citing *Lockley*, 632 F.3d at 1244-45). This aspect of *Lockley*, however, has not survived *Descamps*, 133 S. Ct. at 2283-86, 2289-91, and *Moncrieffe*, 133 S. Ct. at 1684, which require a strict elements-based assessment of

[3] *See also*, *United States v. Starks*, 861 F.3d 306 (1st Cir. 2017) (Neither Massachusetts armed or unarmed robbery are violent felonies according to the ACCA because they do not require any force more than the mere touching of the victim); *United States v. Castro-Vazquez*, 802 F.3d 28 (1st Cir. 2015) (Puerto Rico's robbery statute that included a taking accomplished through "violence or intimidation" was not categorically a crime of violence for purposes of the Sentencing Guidelines); *United States v. Eason*, 829 F.3d 633, 642 (8th Cir. 2016) (Arkansas' robbery statute was not categorically a violent felony because the court could not conclude that "the degree of physical force required to commit robbery in Arkansas rises to the level of physical force required to establish a crime of violence for ACCA purposes.").

what the state must prove under state law and thus foreclose an analysis based on what a court may conceive an offense involves. Moreover, as set forth below, the *Lockley* Court overlooked the effect of the Supreme Court's decision in *Leocal v. Ashcroft*, 543 U.S. 1 (2004).

The "fear" contemplated by the Florida robbery statute is the fear of "death or great bodily harm." *Brown v. State*, 397 So.2d 1153 (Fla. 5th DCA 1981) (citing *Rolle v. State*, 268 So.2d 541 (Fla. 3d DCA 1972)). For the victim to be "put in fear" under the robbery statute, the defendant does not have to engage in conduct that is, itself, threatening or forceful. *See State v. Baldwin*, 709 So.2d 636, 637–38 (Fla. 2d DCA 1998). "Rather, a jury may conclude that, in context, the conduct would induce fear in the mind of a reasonable person notwithstanding that the conduct is not expressly threatening." *Id.* at 638. Thus, the controlling factor is not necessarily the victim's subjective state of mind, but whether a jury could conclude that a reasonable person, under like circumstances, would have felt sufficiently threatened to succumb to the robber's demands. *Magnotti v. State*, 842 So.2d 963, 965 (Fla. 4th DCA 2003).

Judge Martin wrote a concurrence in *United States v. Stokeling*, --Fed.Appx.--, 2017 WL 1279086, *2 (11th Cir. Apr. 6, 2017) (Martin, J., concurring), in which she classified prior Eleventh Circuit precedent on this very issue a "mistake." According to Judge Martin, the reasoning in *Fritts*, 841 F.3d 937, was flawed

because the court failed to give proper deference to the elements of a pre-1997 Florida robbery conviction as defined by the Florida Supreme Court. *Stokeling,* 2017 WL 1279086, *2 (citing *McCloud v. State,* 335 So.2d 257 (Fla. 1976)). The court in *McCloud* held that the Florida robbery offense encompassed robbery by sudden snatching, and could be accomplished with "any degree of force." *McCloud,* 335 So.2d at 258. According to Judge Martin:

> *Fritts* was wrong to suggest that all unarmed robbery convictions under Fla. Stat. § 812.13 are violent felonies as defined by ACCA's elements clause because use of "any degree of force" could support a § 812.13 conviction from 1976 to 1997. This mistake will continue to have enormous consequences for many criminal defendants who come before our Court. For that reason, and even though *Fritts's* mistakes do not affect [Appellant], I feel compelled to explain the error in *Fritts's* statement, relied on here by the majority, that § 812.13 "has never included a theft or taking by mere [sudden] snatching." *Fritts*, 841 F.3d at 942.

Stokeling, 2017 WL 1279086, at *5.[4] As demonstrated by Judge Martin's concurrence, the violent felony status of a Florida robbery conviction is debatable among jurists of reason. The arguments raised here deserve encouragement to proceed further. Therefore Mr. Garcia is entitled to a certificate of appealability.

[4] Judge Martin wrote a similar concurrence in *Seabrooks*, 839 F.3d 1326, 1346 (Martin, J., concurring).

CONCLUSION

Based on the foregoing, Appellant, Daniel K. Garcia, respectfully requests this Honorable Court reconsider its Order denying a certificate of appealability.

Respectfully submitted by,

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CERTIFICATE OF COMPLIANCE

I certify that this application complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 11th Cir. R. 22-2, because this application contains 3,916 words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

/s/ Megan Saillant
Megan Saillant
Counsel for Mr. Garcia

CERTIFICATE OF SERVICE

I certify that on August 3, 2017, a copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send a notice of the electronic filing to the Office of the United States Attorney. A copy has also been provided to Appellant, Daniel K. Garcia, Reg. No. 11116-017, USP Atlanta, U.S. Penitentiary, P.O. Box 150160, Atlanta, Georgia, 30315, via U.S. mail.

/s/ Megan Saillant
Megan Saillant
Counsel for Mr. Garcia

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11952-B

DANIEL K. GARCIA,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

Before: MARCUS and ROSENBAUM, Circuit Judges.

BY THE COURT:

Daniel K. Garcia has filed a counseled motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated July 18, 2017, denying his motion for a certificate of appealability, from the denial of his authorized successive 28 U.S.C. § 2255 motion to vacate. Garcia's motion is DENIED because he has presented no new evidence or arguments of merit to warrant relief.