

No. 16-6661

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FARRIS GENNER MORRIS,

Petitioner-Appellant,

v.

TONY MAYS, Warden,

Respondent-Appellee.

FILED
Mar 09, 2018
DEBORAH S. HUNT, Clerk

ORDER

Before: BOGGS, SILER, and CLAY, Circuit Judges.

Farris Morris, a Tennessee prisoner under sentence of death, appeals the district court judgment that denied his Rule 59(e) motion to alter or amend the judgment entered by the district court following this court's decision in his prior appeal, *Morris v. Carpenter*. 802 F.3d 825 (6th Cir. 2015), *cert. denied*, 137 S. Ct. 44 (2016). In his motion and amended motion, Morris argued that he was entitled to litigate claims of ineffective assistance of trial and appellate counsel under *Martinez v. Ryan*, 566 U.S. 1 (2012). The district court denied Morris's motion and denied a Certificate of Appealability (COA). In his COA application, Morris asks that he be allowed to appeal four claims and sub-claims of ineffective assistance of counsel because they are debatable and *Martinez* overcomes their default: 9N/24; 9P/27; 9K/21A, 21B, 21C, and 21D; and 10A-10D.

This litigation began when Morris filed an amended petition for a writ of habeas corpus in January 2008. The district court ruled that Morris received ineffective assistance of counsel in the sentencing phase, denied his guilt-phase claims, and granted him a conditional writ in 2011. Morris then applied to this court for a COA on the claim that trial counsel was ineffective for

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failing to investigate and present a state-of-mind defense, and “all guilt-phase claims raised in Petitioner’s Amended Petition.” This court certified Morris the one claim argued in the COA application, and ruled that Morris had waived consideration of his other guilt-phase claims by failing to argue them.

While the appeal was being briefed, Morris filed a motion to remand. He argued that he could show cause to excuse the default of substantial claims of ineffective assistance of trial counsel under *Trevino v. Thaler*, 569 U.S. 413 (2013), and *Martinez*. This court denied the motion in October 2013. In September 2015, this court affirmed the district court’s decision to deny Morris’s guilt-phase ineffective assistance of trial counsel claims, vacated the district court’s decision to grant relief on Morris’s sentencing-phase ineffective assistance of trial counsel claims, and remanded the case to the district court for denial of the writ. *Morris*, 802 F.3d at 845. The court denied en banc rehearing. The Supreme Court denied Morris’s petition for a writ of certiorari on October 4, 2016, and this court issued the mandate the same day.

The district court entered an order and judgment denying Morris’s petition on October 5, 2016. The order read as follows: “The habeas petition filed on behalf of Petitioner Farris Genner Morris is DENIED, pursuant to the order of the United State [sic] Court of Appeals for the Sixth Circuit dated September 23, 2015, and the mandate issued on October 4, 2016.” Morris filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) on November 8, 2016. He argued that he had not received application of *Martinez* to substantial claims of ineffective assistance of counsel. Morris filed a motion to amend or correct his motion to alter judgment on January 23, 2017, seeking to add procedurally defaulted claims of ineffective assistance of appellate counsel.

The district court denied Morris’s motion to alter or amend the judgment and his motion to amend by order entered March 13, 2017. The court held that this court’s mandate was to deny Morris’s writ, and that further consideration of Morris’s claims would exceed the scope of the Sixth Circuit’s mandate. The district court also held that *Martinez* and *Trevino* did not justify Rule 59(e) relief because the cases did not constitute an intervening change in the law or

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controlling authority, and Morris had the opportunity to raise them on appeal before the Sixth Circuit remanded the case for denial of the writ. Finally, the district court held that Morris was not entitled to Rule 59(e) relief for manifest injustice because the claims he wanted reviewed were not substantial. The district court denied Morris a COA.

A COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. *See 28 U.S.C. § 2253(c)(2)*. The applicant must demonstrate “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When the district court has denied a claim on a procedural ground without reaching the underlying constitutional issue, a COA may issue only if the prisoner shows both: (1) that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right; and (2) that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Kissner v. Palmer*, 826 F.3d 898, 901–02 (6th Cir. 2016), *cert. denied*, 137 S. Ct. 1081 (2017).

Upon review, we conclude that jurists of reason could not disagree with the district court’s decision. *See Miller-El*, 537 U.S. at 327; *Slack*, 529 U.S. at 484. Morris did not identify any clear error, new evidence, change in the controlling law, or manifest injustice that would justify relief under Rule 59(e) or deviation from this court’s prior mandate. *See Henderson v. Walled Lake Consol. Sch.*, 469 F.3d 479, 496 (6th Cir. 2006); *United States v. Moored*, 38 F.3d 1419, 1421 (6th Cir. 1994). First, the district court did not commit a clear error of law by entering the order in accordance with the Sixth Circuit’s remand instructions. Indeed, that was precisely what was legally required. *See Moored*, 38 F.3d at 1421 (“[T]he mandate rule . . . requires lower courts to adhere to the command of a superior court.”). Second, Morris did not present any “new evidence” that would justify relief under Rule 59(e). Morris himself acknowledges that this court has already held that the “new evidence” Morris refers to in his application was “fully adjudicated on the merits in state court.” *Morris*, 802 F.3d at 844. Third,

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Morris fails to identify an “intervening change of controlling law.” His reliance on *Martinez* and *Trevino* is misplaced because the court discussed the application of these cases in the prior proceeding; hence, they cannot represent an “intervening change of controlling law.” *See id.* Indeed, this court’s decision on Morris’s appeal expressly rejected Morris’s argument that *Martinez* and *Trevino* required review of mitigation evidence not presented in post-conviction proceedings. *Id.* Further, while Morris’s appeal was pending, this court denied his motion to remand for *Martinez* review of some of the same claims he raised in his Rule 59(e) motion. Finally, Morris cannot show that the district court’s decision was clearly erroneous and would result in manifest injustice because the claims he wants reviewed are not substantial or are otherwise barred from review. Jurists of reason would not find it debatable that the district court followed the law of the case and this court’s mandate when it denied Morris’s Rule 59(e) motion. *See Miller-El*, 537 U.S. at 327; *Slack*, 529 U.S. at 484.

For the foregoing reasons, Morris’s application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk