

APPENDIX “A”

11th Circuit Court Order Denying COA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10863-H

TARVARES JAMES WATSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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

ORDER:

Tarvares James Watson is a Florida prisoner serving a life sentence after a jury convicted him of first-degree murder, armed burglary with battery, and attempted first-degree murder. In December 2013, Watson filed a *pro se* 28 U.S.C. § 2254 petition in the district court, raising five claims for relief. The district court denied Watson's § 2254 petition on the basis that his first two claims were procedurally barred and his other three claims were meritless because the state court adjudications of the claims were not contrary to or unreasonable applications of federal law or unreasonable applications of fact. Watson appealed the denial of his § 2254 petition to this Court, where he sought a COA only on Claims Three, Four, and Five, and sought leave to proceed on appeal IFP. A single judge of this Court denied Watson's motions because reasonable jurists would not have found debatable the denial of Watson's § 2254 petition.

Watson then filed in the district court a motion for relief from order, pursuant to Fed. R. Civ. P. 60(b)(1) and (4). Watson requested relief from the district court's order only as to Claim Five of his § 2254 petition, arguing that "the District Court's misapplication of sections (d)(1) and (2) of 28 U.S.C. § 2254 precluded a merits determination where the state court's decision was not a ruling on the merits as outlined by the relevant state law procedural principles." Watson argued that the state trial court's summary denial of his motion for a new trial in his original criminal proceeding did not constitute a decision on the merits entitled to deference on habeas review because the court did not hear evidence and arguments. Watson also raised arguments seeking to relitigate the district court's denial of his § 2254 petition. The district court denied Watson's Rule 60(b) motion, finding that Watson had failed to demonstrate any extraordinary circumstances that warranted reopening the final judgment.

Watson then filed a motion to alter or amend judgment, pursuant to Fed. R. Civ. P. 59(e), arguing that the district court had abused its discretion in denying his Rule 60(b) motion because it had not reached the merits of the motion. In his Rule 59(e) motion, Watson also repeated arguments from his Rule 60 motion and reargued the merits of his § 2254 petition. The district court denied Watson's Rule 59(e) motion on the basis that he had once again attempted to relitigate matters that already had been considered and rejected by the court.

Watson has now appealed the denial of his Rule 60 and Rule 59(e) motions. He seeks a certificate of appealability ("COA") and leave to proceed on appeal *in forma pauperis* ("IFP"). In his motion for a COA, Watson argues that the district court did not reach the merits of his motions and repeats the arguments from his Rule 60(b) and 59(e) motions.

A COA is required to appeal the denial of a Rule 60(b) motion or a Rule 59(e) arising from a § 2254 proceeding. *Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1263 (11th Cir.

2004) (*en banc*), *aff'd on other grounds sub nom. Gonzalez v. Crosby*, 545 U.S. 524 (2005); *Perez v. Sec'y, Fla. Dep't of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013). In order to obtain a COA, a petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Rule 60(b) allows a party to move a court for relief from a final judgment due to mistake, inadvertence, surprise, excusable neglect, newly-discovered evidence, misrepresentation or misconduct of an adverse party, the judgment being discharged, or any other reason justifying relief. Fed. R. Civ. P. 60(b)(1)-(6). Generally, a judgment is void under Rule 60(b)(4) if the court that rendered the judgment lacked jurisdiction, or if it acted in a manner inconsistent with due process of law. *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001).

The only grounds for granting a Rule 59(e) motion are newly discovered evidence or manifest errors of law or fact. *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010). A Rule 59(e) motion cannot be used to relitigate old matters, raise argument, or present evidence that could have been raised prior to the entry of judgment. *Id.*

If a state habeas court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the decision of the state court (1) “was contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court,” or (2) “was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding.” 28 U.S.C. § 2254(d)(1), (2). The Supreme Court has held that § 2254(d) does not require a state habeas court to give articulated reasons for a decision

to be deemed to have been “adjudicated on the merits.” *Harrington v. Richter*, 562 U.S. 86, 98 (2011). “When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.” *Id.* at 99. That presumption can only be overcome where there is “reason to think some other explanation for the state court’s decision is more likely.” *Id.* at 99-100.

In this case, reasonable jurists would not debate the district court’s denial of Watson’s motions. As a preliminary matter, the district court denied Watson’s motions on the merits. Watson’s arguments in his motions seeking to relitigate the merits of the district court’s denial of his § 2254 petition are unavailing and do not merit relief. Watson’s argument that the district court should not have given deference to the state court findings is likewise unavailing. Watson argues that the original state trial court’s order denying his motion for a new trial was not a merits decision and should not have been reviewed with deference by the district court. However, it is not the state trial court’s decision that is reviewed deferentially in a § 2254 proceeding. It is the state habeas court’s decision. In this case, the state habeas court denied without opinion Watson’s claim that his counsel was ineffective regarding the motion for a new trial. Despite the lack of articulated reasoning, that denial is presumptively an adjudication on the merits that is granted deference. *Richter*, 562 U.S. at 98-99. There is nothing on the record to indicate that there were any state-law procedural principles to the contrary or that there was reason to think that there was some other explanation for the state court’s decision. *Id.* at 99-100. Accordingly, the state habeas court’s denial of Watson’s claim was an adjudication on the merits and the district court correctly exercised deferential review over the state court determination of Watson’s claim. Watson has provided no argument supporting his contention

that the district court's judgment was void under Rule 60(b)(4), nor has he made a meritorious argument indicating that he was entitled to relief on any other basis under Rule 60(b). *See Fed. R. Civ. P. 60(b), Burke*, 252 F.3d at 1263. Furthermore, Watson was not entitled to relief on his Rule 59(e) motion because he essentially sought to relitigate his Rule 60(b) motion, which itself sought to relitigate his § 2254 petition, and failed to raise any newly discovered evidence or manifest errors of law or fact. *See Jacobs*, 626 F.3d at 1344. Accordingly, Watson has not shown the substantial denial of a constitutional right and his motion for a COA is DENIED. His motion for leave to proceed on appeal IFP is DENIED AS MOOT.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10863-H

TARVARES JAMES WATSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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

Before: NEWSOM and BRANCH, Circuit Judges.

BY THE COURT:

Tarvares James Watson has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated May 22, 2018, denying his motion for a certificate of appealability and denying as moot his motion for leave to proceed on appeal *in forma pauperis* in the appeal of the district court's denial of his Fed. R. Civ. P. 60(b) and 59(e) motions, arising from the denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. Because Watson has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, his motion for reconsideration is DENIED.

APPENDIX “B”

District Court’s Order Denying 60(b)
Relief

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

TARVARES JAMES WATSON,

Petitioner,

vs.

Case No. 3:13-cv-1570-J-39JBT

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS, et al.,

Respondents.

ORDER

This cause is before the Court on Petitioner's August 29, 2017 Motion for Relief from Order (Motion) (Doc. 35) pursuant to Rule 60(b)(1) and (4), Federal Rules of Civil Procedure. As relief, Petitioner asks the Court to grant the Motion and reinstate ground five of the Petition. Ground five is a claim asserting ineffective assistance of trial counsel for failure to timely file a motion for new trial and to properly make argument in support of the motion. On August 29, 2016, the Court entered an Order (Doc. 28), denying the Petition, dismissing the action with prejudice, and denying a certificate of appealability. On August 30, 2016, the Clerk entered judgment (Doc. 29).

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure,

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b) (1) - (6) .

Upon review, Petitioner is attempting to re-litigate matters already considered and rejected by the Court. Petitioner has not demonstrated any basis under Rule 60(b) warranting the Court's reconsideration of the Order denying the Petition and dismissing the action with prejudice.¹ Petitioner has failed to demonstrate any extraordinary circumstances to justify the reopening of final judgment. Thus, Petitioner is not entitled to the relief he has requested, and his Motion is due to be denied.

¹ The Court notes that Plaintiff moved for a certificate of appealability from the Eleventh Circuit in order to appeal the denial of his Petition. The Eleventh Circuit found that Petitioner failed to make the requisite showing to merit a certificate of appealability and denied the motion. See Order (Doc. 33) (11th Cir. Jan. 23, 2017).

Therefore, it is now

ORDERED:

1. Petitioner's Motion for Relief from Order (Doc. 35) is
DENIED.

2. This Court should grant an application for certificate of appealability only if the Petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has failed to make a substantial showing of the denial of a constitutional right. If Petitioner appeals, the Court **denies a certificate of appealability**. Because the Court has determined that a certificate of appealability is not warranted, the **Clerk** shall terminate from the pending motions report any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial of the motion.

DONE AND ORDERED at Jacksonville, Florida, this 25th day of September, 2017.



BRIAN J. DAVIS
United States District Judge

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C:

Tarvares James Watson
Counsel of Record

**Additional material
from this filing is
available in the
Clerk's Office.**