

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES ARTHUR BRINSON, PETITIONER

v.

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

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APPENDIX

A

OPINIONS

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11394-E

JAMES ARTHUR BRINSON,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

ORDER:

James Arthur Brinson is a Florida prisoner serving two consecutive life sentences after being convicted in 1992 of armed robbery and aggravated assault. He now appeals the district court's denial of his Fed. R. Civ. P. 60 motion for relief from the judgment denying his 28 U.S.C. § 2254 petition for writ of habeas corpus. He seeks a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP").

In order to obtain a COA, a movant 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) (quotation omitted).

This Court reviews the district court's denial of a motion for relief from judgment for an abuse of discretion. *Cox Nuclear Pharmacy, Inc. v. CTI, Inc.*, 478 F.3d 1303, 1314 (11th Cir. 2007). Where relief is sought under Rule 60(d)(3), the movant must show fraud on the court by clear and convincing evidence. *Booker v. Dugger*, 825 F.2d 281, 283 (11th Cir. 1987) (interpreting a prior version of the Rule). In order to show fraud on the court, the movant must show "an unconscionable plan or scheme which [was] designed to improperly influence the court in its decision." *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978) (citations omitted). In addition, where a movant seeks relief from the judgment of a federal habeas court, the fraud alleged must have been perpetrated on the federal court, rather than on the state court. *See Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1284 (11th Cir. 2004) (discussing fraud under section (b)(3)), *aff'd on other grounds sub nom. Gonzalez v. Crosby*, 545 U.S. 524 (2005).

The district court did not abuse its discretion in denying Brinson's Rule 60 motion. Brinson asserted that the prosecutor in his state criminal trial pursued an improper line of questioning with one of the state's witnesses. However, he does not articulate how this questioning rendered his conviction invalid, or how the state, in presenting the criminal judgment from this conviction as evidence, perpetrated fraud on the district court in his § 2254 proceeding. Accordingly, reasonable jurists would not debate the district court's denial of Brinson's Rule 60 motion, and his motion for a COA is DENIED. His motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMES ARTHUR BRINSON,

Petitioner,

-vs-

Case No. 8:14-cv-3050-T-36AEP

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER

Before the Court is Petitioner's "Rule 60(b) Motion (Under Savings Clause 60(d)(3))" (Dkt. 22). To the extent the motion is brought under Rule 60(b)(6), it was not filed within a reasonable time.¹ *See Diamond v. Bank of Am. (In re Diamond)*, 698 F. App'x 571 (11th Cir. 2017) ("Rule 60(c)(1)...provides that Rule 60(b) motions must be made within a reasonable time...."). And to the extent Petitioner brings the motion under Rule 60(d)(3), the motion fails, since the alleged fraud he identifies was perpetrated against the state court. *Cf. Gonzalez v. Secretary for Dep't of Corr.*, 366 F.3d 1253, 1284-85 (11th Cir. 2004) (the fraud exception "applies where the fraud was perpetrated on the federal court and resulted in the denial of federal habeas relief, not where the fraud was perpetrated on a state court."). Moreover, Petitioner has not established by clear and convincing evidence that a fraud was perpetrated on this court. *See Booker v. Dugger*, 825 F.2d 281, 283 (11th Cir. 1987) ("Where relief from a judgment is sought for fraud on the court, the fraud must

¹The motion was filed nearly 30 months after judgment was entered.

be established by clear and convincing evidence.”).

ACCORDINGLY, it is **ORDERED** that Petitioner’s “Rule 60(b) Motion (Under Savings Clause 60(d)(3))” (Dkt. 22) is **DENIED**.

**CERTIFICATE OF APPEALABILITY AND
LEAVE TO APPEAL IN FORMA PAUPERIS DENIED**

The Court declines to issue a certificate of appealability because Petitioner has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(2). Nor will the Court authorize the Petitioner to proceed on appeal *in forma pauperis* because such an appeal would not be taken in good faith. See 28 U.S.C. § 1915(a)(3).

DONE AND ORDERED in Tampa, Florida, on November 21, 2017.

Charlene Edwards Honeywell
Charlene Edwards Honeywell
United States District Judge

Copies to:
Petitioner *pro se*
Counsel of Record

APPENDIX

B

DECISIONS

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11394-E

JAMES ARTHUR BRINSON,

Petitioner-Appellant,

versus

SECRETARY, 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:

James Arthur Brinson has filed a motion for reconsideration of this Court's order dated August 8, 2018, denying his motions for a certificate of appealability and leave to proceed *in forma pauperis* in his appeal of the district court's denial of his Fed. R. Civ. P. 60(b) motion for relief from judgment in his 28 U.S.C. § 2254 habeas corpus proceeding. Upon review, Brinson's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMES ARTHUR BRINSON,

Petitioner,

-vs-

Case No. 8:14-cv-3050-T-36AEP

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER

Before the Court is Petitioner's Motion for Rehearing (Dkt. 24) which the Court construes as a motion to alter or amend the Court's November 21, 2017 Order denying his Rule 60(b) motion (*see* Dkt. 23). "The only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)). Petitioner has neither presented newly-discovered evidence nor demonstrated that the Court committed a manifest error of law or fact in denying his Rule 60(b) motion.

Accordingly, it is ORDERED that Petitioner's Motion for Rehearing (Dkt. 24) is DENIED.

**CERTIFICATE OF APPEALABILITY AND
LEAVE TO APPEAL IN FORMA PAUPERIS DENIED**

The Court declines to issue a certificate of appealability because Petitioner has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(2). Nor will the Court authorize the Petitioner to proceed on appeal *in forma pauperis* because such an appeal

would not be taken in good faith. See 28 U.S.C. § 1915(a)(3).

DONE AND ORDERED in Tampa, Florida, on March 9, 2018.

Charlene Edwards Honeywell
Charlene Edwards Honeywell
United States District Judge

Copies to:

Petitioner *pro se*
Counsel of Record

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