

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12387-J

JERMAINE C. WILLIAMS,

Petitioner-Appellant,

versus

GOVERNOR,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondents-Appellees.

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

ORDER:

Jermaine Williams moves for a certificate of appealability ("COA") in order to appeal the dismissal of his 28 U.S.C. § 2254 petition for writ of habeas as time-barred and denial of his Fed. R. Civ. P. 60(b) motion for reconsideration. To merit a COA, Williams must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Because Williams failed to make a substantial showing of the denial of a constitutional right, his motion for a COA is DENIED.

Williams's motion to compel the Florida Department of Correction to release his personal property into his custody is also DENIED.

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JERMAINE C. WILLIAMS,

CASE NO. 17-62146-CIV-DIMITROULEAS

Plaintiff,

vs.

JULIE JONES,

Respondent.

ORDER

THIS CAUSE is before the Court on Williams' May 14, 2018 Special Traverse in Support of Relief from Judgment [Fed. R. Civ. P. Rule 60(b)] [DE-42]. The Court has carefully considered the filing, and is otherwise fully advised in the premises. The Court construes the filing as a motion for reconsideration. The Court does not consider new issues, first raised on a Rule 60(b) motion. *See, Jenkins v. Dunn*, 2017 WL 1927861*4 (N.D. Ala. 2017).

“[R]econsideration of a previous order is an extraordinary remedy to be employed sparingly.” *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1370 (S.D. Fla. 2002) (citing *Mannings v. School Board of Hillsborough County*, 149 F.R.D. 235, 235 (M.D. Fla. 1993)). For a court to reconsider its prior judgment the moving party must present facts or law of a “strongly convincing nature” that would induce a court to reverse its prior decision. *Id.* (citing *Sussman v. Salem Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla 1994)). Three major grounds justify reconsideration: “(1) an intervening change in the controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice.” *Burger King*, 181 F. Supp. 2d at 1369. “A motion for reconsideration cannot be used to relitigate old matters, raise arguments, or present evidence that could have been raised prior to

the entry of judgment." *Smith v. Ocwen Fin.*, 488 F. App'x 426, 428 (11th Cir. 2012). Upon careful review, Plaintiff fails to meet the requirements for the extraordinary relief of reconsideration. Moreover, the December 21, 2010 order can be found on the state court trial docket; however, it was not necessary for the Court's ruling in this case. Matters of restitution are not the proper basis for a Section 2254 habeas petition. *See. Mamone v. U.S.*, 559 F. 3d 1209 (11th Cir. 2009).

Accordingly, it is **ORDERED AND ADJUDGED** that Williams' Special Traverse in Support of Relief from Judgment [Fed. R. Civ. P. Rule 60(b) [DE-42] is **DENIED**. The Court denies a Certificate of Appealability.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 22nd day of May, 2018.



WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Jermaine C. Williams, #L16215
Okaloosa Corr. Inst.
3189 Colonel Greg Mallory Road
Crestview, FL 32539

Jeanine Germanowicz, AAG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JERMAINE C. WILLIAMS,

CASE NO. 17-62146-CIV-DIMITROULEAS

Petitioner,

vs.

JULIE JONES,

Respondent.

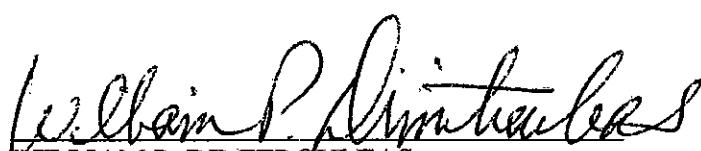
AMENDED FINAL JUDGMENT FOR RESPONDENT; ORDER DENYING CERTIFICATE OF APPEALABILITY

THIS CAUSE is before the Court upon the Final Judgment and Order Dismissing Habeas Petition signed today on April 25, 2018. Accordingly, pursuant to Rule 58(a) Fed. R. Civ. Proc. and Rule 11(a), Section 2254 Proceedings, it is

ORDERED AND ADJUDGED as follows:

1. Judgment is entered on behalf of Respondent, against the Petitioner, Jermaine C. Williams.
2. The Motion for Due Process Evidentiary Hearing [DE-34] is **DENIED**.
3. On consideration of a Certificate of Appealability, the Court will deny such certification as this Court determines that Petitioner has not shown a violation of a substantial constitutional right. The court notes that pursuant to Rule 22(b)(1), Fed. Rules App. Proc. Petitioner may now seek a certificate of appealability from the Eleventh Circuit Court of Appeals
4. The Clerk shall close this case and deny any pending motions as Moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 25th day of April, 2018.


WILLIAM P. DIMITROULEAS
United States District Judge

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Jeanine Germanowicz, AAG

Honorable Patrick A. White, U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JERMAINE C. WILLIAMS,

CASE NO. 17-62146-CIV-DIMITROULEAS

Petitioner,

vs.

JULIE JONES,

Respondent.

AMENDED¹ FINAL JUDGEMENT AND ORDER DISMISSING PETITION; WITHDRAWING REFERENCE

THIS CAUSE is before the Court on Petitioner Williams' October 26, 2017 Petition for Writ of Habeas Corpus. [DE-1]. It was filed in the Northern District of Florida and transferred to this Court on November 2, 2017. [DE-2]. The Court has considered the State's February 2, 2018 Response [DE-24] and Appendices [DE-25, 26] and Williams' March 8, 2018 Special Traverse [DE-30] and no timely reply having been filed², and finds as follows:

FEDERAL PROSECUTION (00-6312-CR)

1. On November 2, 2000 Williams, along with a co-defendant Lowen Espineuva, was indicted in the Southern District of Florida and charged with Hobbs Act Conspiracy, Attempted Hobbs Act Robbery, and Use of a Firearm during a Crime of Violence. The crimes occurred on October 20, 2000; Eshaman Ruiz and Frank Granja were shot. [DE-14 in 00-6312-CR].

2. Williams pled guilty to all three (3) counts on January 15, 2002 [DE-77 in 00-6312-CR] pursuant to a plea agreement [DE-78 in 00-6312-CR]. The government agreed not to prosecute Williams federally for a July 29, 2000 robbery of a Coral Springs Checkers restaurant. A factual basis was given for

¹ The Court has now considered Williams' April 12, 2018 Motion for Due Process Evidentiary Hearing [DE34] Williams' April 12, 2018 Special Traverse [DE-35], and Williams' April 12, 2018 Notice of Specific Objections [DE-36] which were received on April 24, 2018.

² On March 9, 2018, Magistrate Judge White granted a thirty (30) day extension to file a reply, indicating no further extensions would be granted. [DE-28].

the pleas. [DE-90, pp. 15-22 in 00-6312-CR]. Williams agreed to the factual basis and admitted he was there to commit a robbery. *Id.* at 22-23.

3. On April 3, 2002, Williams was sentenced by United States District Judge Norman Roettger to 200 months in prison. [DE-87 in 00-6312-CR]. Victim Ruiz testified that the defendants were robbers and assassins. After shooting from the car, the defendants got out and approached the ATM machine, but were rebuffed when Ruiz returned fire. [DE-91, pp. 22-23 in 00-6312-CR].

4. On August 5, 2003, the Eleventh Circuit reversed for re-sentencing. [DE-95 in 00-6312-CR]. *U.S. v. Williams*, 340 F. 3d 1231 (11th Cir. 2003). Mandate issued on October 9, 2003. The case was assigned to the undersigned. [DE-97 in 00-6312-CR].

5. On December 4, 2003, the undersigned sentenced Williams to 185 months in prison. [DE-99 in 00-6312-CR].

6. On October 6, 2006, Williams filed a habeas petition in this federal court. [DE-1 in 06-61536-CIV]. This Court dismissed the petition on October 18, 2006. [DE-3 in 06-61536-CIV]. On September 4, 2007, the Eleventh Circuit granted Williams' motion for a voluntary dismissal. [DE-16 in 06-61536-CIV].

7. On March 12, 2007, Williams filed a Motion to Vacate [DE-1 in 07-60372-CIV]. Williams argued ineffective assistance of counsel: telling him he could not be prosecuted for the same crime in state court. On March 26, 2007, this Court dismissed the motion as time-barred. [DE-5 in 07-60372-CIV]. Other notices were dismissed as frivolous on June 20, 2008, March 26, 2009 and April 8, 2009. [DE-18, 21, 22 in 07-60372-CIV]. On October 11, 2007, the Eleventh Circuit Court of appeals denied a certificate of appealability. [DE-16 in 07-60372-CIV].

8. On August 24, 2010, Williams filed a habeas petition in the Southern District of Mississippi. It was dismissed on November 1, 2010. *Williams v. U.S.*, 2010 WL 4483802 (S.D. Miss. 2010).

9. On August 8, 2013, Williams filed an Emergency Motion to Vacate [DE-1 in 13-62435-CIV]. This Court dismissed the motion on November 20, 2013 [DE-6 in 13-62435-CIV]. On March 1, 2017, this

Court dismissed a Motion to Produce. [DE-114 in 00-6312-CR]. Another Motion to Produce Records [DE-115 in 00-6312-CR] was dismissed on March 14, 2017. [DE-116 in 00-6312-CR].

INSTANT STATE PROSECUTION (03-2604CF)

10. On February 5, 2003, Williams and Espineuva were charged by Information in Broward County Circuit Court with: two (2) counts of Attempted First Degree Murder, two (2) counts of Attempted Felony Murder, two (2) counts of Attempted Robbery and one (1) count of Grand Theft. [DE-1-1, pp. 11-16]. The victims were again Frank Granja and Eshaman Ruiz, the same victims as in the federal case: 00-6312-CIV. On April 13, 2005, Williams filed a Motion for Speedy Trial Discharge. [DE-25-1, pp. 24-91]. It was denied, after an evidentiary hearing on May 19, 2005. [DE-25-1, p. 94]. At that hearing, Broward Circuit Court Judge Charles Greene heard seven (7) witnesses testify. The 150 page transcript recites the facts involving the investigation and arrest of Williams and Espineuva. A factual basis for a later plea was clearly demonstrated at that hearing.

11. On June 17, 2005, Williams pled no contest to all seven (7) counts, reserving his right to appeal the denial of the motion to dismiss (speedy trial). [DE-1-1, pp. 17-18, 26-43]. It was an open plea; the plea offer from the state was to go to trial. [DE-26-2, p. 3]. However, because Florida law prohibits convictions for both attempted first degree murder (premeditation) and attempted felony murder, the state decided to nolle pros the attempted first degree premeditated murder charges in Counts I and II, after the plea. They just as easily could have decided to nolle pros the attempted felony murder charges in Counts III and IV. [CR-DE-26-2, p. 5]. Williams understood that he was facing twenty (20) years to life. [DE-26-2, p. 7]. Williams signed a plea form. [DE-25-1, pp. 96-97], [DE-26-2, p. 10]. There was a stipulated factual basis, partially relying both upon the probable cause affidavit [DE-25-1, pp. 12-15] and upon the motion to dismiss hearing. [DE-26-2, pp. 13-14]; [DE-26-1, pp. 2-194].

Moreover, Judge Greene related the basic facts of the attempted armored car robbery. [DE-1-1, p. 38]; [DE-26-2, p. 14].

12. On August 19, 2005, Williams was sentenced to Life in Prison, concurrent to the federal sentence in 00-6312-CIV, but not co-terminous. [DE-26-4, p. 71]. Counts One and Two were nolle prossed. [DE-25-1, pp. 102, 107-121].

13. On December 27, 2006, the Fourth District Court of Appeal affirmed the denial of Williams' motion to dismiss for a speedy trial violation. [DE-25-1, pp. 194-198]. *Williams v. State*, 946 So. 2d 1191 (Fla. 4th DCA 2006). Mandate issued on January 12, 2007. [DE-25-1, p. 200]. Williams' convictions became final on March 27, 2007 when he failed to seek certiorari in the U.S. Supreme Court.

14. On November 27, 2007, after 244 days of non-tolled time had elapsed, Williams filed a Motion for Post Conviction Relief. [DE-25-1, pp. 209-222]. On December 17, 2008, the Court reduced the two attempted robbery sentences (Counts I and VI) to twenty (20) years; the other issues were denied. [DE-25-1, pp. 258-260]. On January 6, 2009, a Petition for Rehearing was received. [DE-25-1, p. 275]. There was a time that this resentencing would have re-started Williams' AEDPA statute of limitations, *but see, Zack v. Turner*, 704 F. 3d 917 (11th Cir.) cert. denied, 134 S. Ct. 156 (2013). On Counts V and VI, Williams was resentenced to twenty (20) years in prison. [DE-25-1, pp. 262-263]. Meanwhile, as he had done in federal court, Williams filed frivolous "tax protestor" documents. [DE-25-1, pp. 223-236]; [DE-25-1, pp. 223-236, 265-273]. Other such documents were stricken on March 30, 2009. [DE-25-2, p. 2].

15. On September 15, 2010, the Fourth District Court of Appeal reversed and gave Williams an opportunity to raise an ineffective assistance of counsel claim. [DE-25-2, pp. 39-41]. *Williams v. State*, 43 So.3d 950 (Fla. 4th DCA 2010). Williams had not alleged that but for the "faulty" advice that he would have gone to trial. Mandate issued on October 1, 2010. [DE-25-2, p. 43]. Even if the one (1) year statute AEDPA statute of limitations began anew on September 15, 2010, this motion is still time-barred.

16. On December 21, 2010, the trial court gave Williams ninety (90) days to file an amended petition. After that time expired (March 21, 2011) and Two Hundred Eighty One (281) days later, on December 28, 2011, Williams filed a Motion to Vacate. [DE-25-2, pp. 71-76]. On January 28, 2013 the Motion to Vacate was denied as untimely³. [DE-25-2, pp. 66-67]. Rehearing was denied on February 21, 2013 [DE-25-2, pp. 90-91], but Williams was given another ninety (90) days to file an amended post-conviction motion. Meanwhile, Williams filed a prohibition writ in the Fourth District Court of Appeal on February 6, 2013. [DE-25-2, pp. 47-67]. It was denied on March 4, 2013. [DE-25-2, pp. 45, 69]. Therefore, six hundred eighty-nine (689) days of un-tolled time elapsed from March 21, 2011 until February 6, 2013. The Fourth District Court of Appeal dismissed a Writ of Prohibition on March 4, 2013 [4D13-463]. On May 3, 2013, the Fourth District Court of Appeal dismissed the appeal, as premature. [4D13-1031] [DE-25-2, pp. 93, 97].

17. On March 7, 2013, Williams filed an Amended Motion for Post Conviction Relief. [DE-25-2, pp. 99-114]. On January 9, 2014, Williams requested an evidentiary hearing. [DE-25-2, pp. 125-130]. On September 22, 2015, the trial court denied relief. [DE-25-3, p. 210-211]. Rehearing was denied on October 29, 2015. [DE-25-3, pp. 219-220]. The Fourth District Court of Appeal affirmed on October 5, 2016. *Williams v. State*, 203 So. 3d 172 (Fla. 4th DCA 2016). Rehearing was denied on November 22, 2016. [DE-25-4, p. 71]. Mandate issued on December 9, 2016. [4D15-4332]. [DE-25-3, p. 282]. The Florida Supreme Court dismissed an appeal on December 7, 2016. [SC16-2025]. *Williams v State*, 2016 WL 6902778 (Fla. 2016).

18. On January 6, 2014, Williams filed an Emergency Petition for Writ of Mandamus in the Florida Supreme Court. It was transferred to Broward County Circuit Court on April 7, 2014. [SC14-112].

³ That untimely motion was not properly filed and did not toll the AEDPA one year statute of limitations under 28 U.S.C. Section 2244(d)(2). *Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005). The trial court adopted the state's response on timeliness. [DE-25-2, pp. 80-85]. Consequently, 680 days of un-tolled time elapsed between March 21, 2011 and January 28, 2013. Another nine (9) days of un-tolled time elapsed until Williams filed his prohibition writ on February 6, 2013.

[DE-25-7, pp. 134, 157]. Another habeas petition was filed in the Fourth District Court of Appeal on March 7, 2014. [DE-25-2, pp. 161-173]. It was dismissed on April 8, 2014. [4D14-1083]. [DE-25-2, p. 159]. Williams was warned that further frivolous filings would result in sanctions. [DE-25-2, p. 175].

19. On September 12, 2014, Williams filed an Emergency Petition for Writ of Habeas Corpus in the trial court. [DE-25-2, pp. 179-189]. The Court denied relief on October 29, 2015. On December 11, 2015, rehearing was denied. [DE-25-4, p. 84]. On October 13, 2016 the Fourth District Court affirmed. [DE-25-4, p. 131]. *Williams v. State*, 203 So. 3d 173 (Fla. 4th DCA 2016). [4D15-4633]. Mandate issued on November 18, 2016. [DE-25-4, p. 133]. On November 23, 2016, the Florida Supreme Court denied certiorari. [DE-25-4, p. 156]. On December 7, 2016, the Florida Supreme Court denied an all writs petition. [DE-25-4, p. 167].

20. On June 8, 2015, Williams filed a Mandamus Petition in the Fourth District Court of Appeal. [4D15-2298]. [DE-25-3, pp. 241-245]. It was dismissed on September 30, 2015. [DE-25-3, p. 263].

21. On September 3, 2015, Williams filed a Petition for Writ of Mandamus in the Fourth District Court of Appeals [4D15-3751]. It was dismissed on November 5, 2015. On October 1, 2015, Williams filed a habeas petition in the Fourth District Court of Appeals. [DE-25-3, pp. 267-268]. It was dismissed on November 5, 2015. [DE-25-3, p. 278]. On November 30, 2016, Williams filed a petition in the Florida Supreme Court. It was dismissed on December 7, 2016. *Williams v. State*, 2016 WL 7132010 (Fla. 2016).

22. On December 14, 2016, after another seven (7) days of non-tolled time had elapsed, Williams filed a habeas petition in the Fourth District Court of Appeals. [4D16-4273]. [DE-25-4, pp. 172-182]. It was dismissed on January 23, 2017. [DE-25-4, p. 223]. Williams was again warned about frivolous filings. Rehearing was denied on July 6, 2017. [DE-25-4, p. 250].

23. On January 25, 2017, Williams filed a Successive Motion for Post Conviction Relief in the trial court. [DE-25-4, pp. 252-300, DE-25-5, pp. 1-6]. On April 12, 2017, the trial court denied relief. [DE-25-5, p. 22]. On October 5, 2017, the Fourth District Court of Appeals dismissed the appeal as

frivolous and forwarded a copy of the order to Williams' prison for consideration of disciplinary procedures against Williams. [4D17-2163], [DE-25-5, pp. 82, 92]. Mandate issued on November 15, 2017. [DE-25-5, p. 94]. Rehearing was denied on December 12, 2017. [DE-25-5, p. 103].

24. In this untimely habeas petition, Williams complains that:

- (1) Ineffective assistance of counsel – Plea. Counsel did not explain defenses and failed to raise a double jeopardy objection
- (2) Ineffective assistance of counsel – Double Jeopardy
- (3) Ineffective assistance of Appellate Counsel – Failure to raise double jeopardy issue
- (4) Insufficient Factual Basis – trial court did not explain the nature of the charges
- (5) Insufficient evidence of Attempted Felony Murder
- (6) Double jeopardy – Attempted Felony Murder must include an intentional act that is not an essential element of the underlying predicate felony.
- (7) No Contest Plea – misrepresented facts by stating he was not admitting that he did anything.
- (8) Ineffective Assistance of Counsel – stipulated to factual basis without raising any challenges

25. The petition is time-barred. No equitable tolling has been alleged. Being in federal prison in another state is not a basis for equitable tolling.

26. On the merits, Williams is not entitled to any relief.

A. Williams' conclusory allegation about ineffective assistance of counsel at his plea does not merit any relief. He has not explained what defenses should have been pursued when he was shot fleeing the crime, left part of his scalp in the get-a-way car and was found afterwards at a nearby hospital. Moreover, there is no double jeopardy violation where different sovereigns prosecuted Williams. Had counsel objected to the attempted felony murder conviction, the state would likely have

nolle prossed the attempted felony murder counts and not the attempted first degree (premeditation) murder counts. No prejudice has been shown.

B. The only issue reserved for appeal was the speedy trial issue. A double jeopardy claim would not have been entertained. If entertained, it would not have been found to have merit.

C. A Factual Basis existed both before the Federal and State Court Judges.

D. The Attempted Felony Murder counts alleged an element (discharging a firearm) which is not an element of attempted robbery. No violation of state law occurred. *See Williams v. State*, 182 So. 2d 11 (Fla. 3d DCA 2015) *rev. denied* 2016 WL 2986087 (Fla. 2016). No violation of the federal *Blockburger* test occurred. *Longoria v. Fla., D.O.C.*, 2017 WL 7107455 *13 (N.D. Fla. 2017); *see also, Walker v. Sec'y, D.O.C.*, 495 Fed. Appx. 13, 18 (11th Cir. 2012). Additionally, each victim was shot multiple times. [DE-25-1, pp. 12-15]. Moreover, resentencing would only have been on the attempted robbery counts, not on the life sentence on the attempted felony murder counts. *See, Espinueva v. State*, 946 So. 2d 624 (Fla. 4th DCA 2007).

E. There was no mis-representation. A no contest plea does not admit guilt; it only represents an unwillingness to contest the charges and does not constitute an admission of guilt. *Kelly v. Dep't, HRS*, 610 So. 2d 1375, 1377 (Fla. 2d DCA 1992). Warning number 1 on the Plea of Guilty or No Contest form was accurate. [DE-1-1, p. 17].

F. There was a factual basis.

Wherefore, Williams habeas petition [DE-1] is Dismissed, as time-barred and alternatively, Denied on the merits. The Motion for Evidentiary Hearing [DE-34] is Denied. The "tax protester" claims are dismissed.

The Reference to Magistrate [DE-5] is Withdrawn.

The Clerk shall close this case and deny any pending motions as Moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 25th day of April, 2018.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

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Honorable Patrick A. White, US Magistrate Judge

Jeanine M. Germanowicz, Esquire

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