

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN D. YOUNG - Petitioner.

VS.

MARK S. INCH - RESPONDENT
SECRETARY DEPARTMENT OF CORRECTIONS

APPENDIX IN SUPPORT
OF
PETITION FOR WRIT OF CERTIORARI

INDEX TO APPENDIX

APPENDIX A Opinion of Eleventh Circuit dated 12/13/2018.
APPENDIX B Motion For Reconsideration dated 1/3/2019.
APPENDIX C Opinion of Eleventh Circuit dated 1/17/2019.

Steven D. Young #861067
Union Correctional
Institution
P.O. Box 1000
Raiford, Florida 32083

Petitioner pro se

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12896-A

STEVEN DENNIS YOUNG,

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

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Steven Dennis Young has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective December 13, 2018.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Denise E. O'Guin, A, Deputy Clerk

FOR THE COURT - BY DIRECTION

Appendix A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

STEVEN YOUNG,

Petitioner,

v.

Case No. 8:18-cv-867-T-17TGW

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER

This cause is before the Court on Steven Young's Rule 60(b) motion for reconsideration. (Doc. 5).

BACKGROUND

Petitioner, an inmate of the Florida penal system proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 challenging convictions for armed robbery and aggravated assault entered by the Circuit Court for the Twelfth Judicial Circuit, Manatee County, Florida in 1982.

Young's § 2241 petition challenged the criminal convictions and sentences entered by the Circuit Court of Manatee County, Florida, in 1982. Consequently, Young's petition was construed as having been filed pursuant to 28 U.S.C. § 2254.

DISCUSSION

Because Petitioner filed his request for federal habeas relief after the enactment date

of the Antiterrorism and Effective Death Penalty Act of 1996 (hereinafter "AEDPA"), the petition is governed by the provisions thereof. See *Wilcox v. Singletary*, 158 F.3d 1209, 1210 (11 th Cir. 1998), *cert. denied*, 531 U.S. 840 (2000). The AEDPA contains several habeas corpus amendments, one of which established a "gatekeeping" mechanism for the consideration of "second or successive habeas corpus applications" in the federal courts, see 28 U.S.C. § 2244(b). See *Stewart v. Martinez- Villareal*, 523 U.S. 637, 641-42 (1998). Section 2244(b) provides, in pertinent part, that before a second or successive application for habeas corpus relief is "filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A).

Petitioner had previously sought federal habeas relief in this Court regarding the convictions he challenges in this action. See *Young v. Wade*, 8:90-cv-976-T- UA (M.D. Fla. 1990) (denied December 19, 1990) and 8:13-cv-690-T-17TGW (M.D. Fla. 2013) (dismissed as successive March 25, 2013). Clearly the present petition is a successive petition.

The Court advised Young that, pursuant to 28 U.S. C. § 2244(b)(3), Petitioner must seek and obtain authorization from the Eleventh Circuit Court of Appeals prior to initiating this action. See *Medina v. Singletary*, 960 F. Supp. 275, 277-78 (M.D. Fla. 1997) (and cases cited therein). Petitioner has not shown that he has applied to the court of appeals for an order authorizing this Court to consider his application. Without such prior authorization from the Eleventh Circuit, this Court has no jurisdiction to consider the petition. See *Fugate v. Dep't. of Corrections*, 301 F. 3d 1287 (11th Cir. 2002).

Instead, Young filed this Rule 60(b) motion claiming his actual innocence claim should allow the Court to overlook the fact that the present petition is his second successive petition.

Young contends that another person committed the crime for which he was convicted. Consequently, Young claims that this Court has jurisdiction to rule on his present petition because he is actually innocent. Young offers no proof and nothing new that was not available at the time of his conviction. Young has not met the standard for proving actual innocence to overcome the successiveness of this petition.

Thus, this case will be dismissed without prejudice to allow Petitioner the opportunity to seek said authorization.

ACCORDINGLY, the Court ORDERS that:

1. Petitioner's Rule 60(b) motion is denied.

CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL IN FORMA

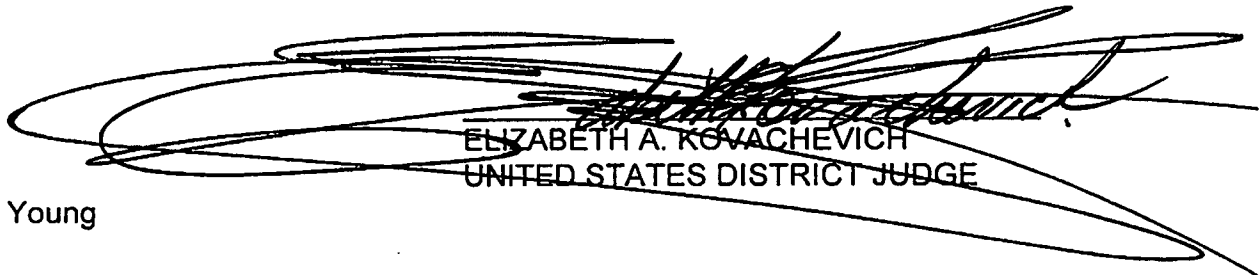
PAUPERIS DENIED

IT IS FURTHER ORDERED that Petitioner is not entitled to a certificate of appealability. A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability ("COA"). *Id.* "A [COA] may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* at § 2253(c)(2). To merit a certificate of appealability, Petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the

procedural issues he seeks to raise. See 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926,935 (11th Cir 2001). Because the petition is clearly a second or successive petition, Petitioner cannot satisfy the second prong of the *Slack* test. 529 U.S. at 484.

Finally, because Petitioner is not entitled to a certificate of appealability, he is not entitled to appeal *in forma pauperis*.

ORDERED at Tampa, Florida, on JUNE 14th, 2018.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Steven Young

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

STEVEN YOUNG,

Petitioner,

v.

Case No. 8:18-cv-867-T-17TGW

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER

Petitioner, an inmate of the Florida penal system proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 challenging convictions for armed robbery and aggravated assault entered by the Circuit Court for the Twelfth Judicial Circuit, Manatee County, Florida in 1982.

Young's present § 2241 petition challenges the criminal convictions and sentences entered by the Circuit Court of Manatee County, Florida, in 1982. Consequently, Young's petition is construed as having been filed pursuant to 28 U.S.C. § 2254.

DISCUSSION

Because Petitioner filed his request for federal habeas relief after the enactment date of the Antiterrorism and Effective Death Penalty Act of 1996 (hereinafter "AEDPA"), the petition is governed by the provisions thereof. *See Wilcox v. Singletary*, 158 F.3d 1209, 1210 (11 th Cir. 1998), *cert. denied*, 531 U.S. 840 (2000). The AEDPA contains several habeas corpus amendments, one of which established a "gatekeeping" mechanism for the consideration of "second or successive habeas corpus applications" in the federal courts,

see 28 U.S.C. § 2244(b). See *Stewart v. Martinez- Villareal*, 523 U.S. 637, 641-42 (1998). Section 2244(b) provides, in pertinent part, that before a second or successive application for habeas corpus relief is "filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A).

Petitioner has previously sought federal habeas relief in this Court regarding the convictions he challenges in this action. See *Young v. Wade*, 8:90-cv-976-T- UA (M.D. Fla. 1990) (denied December 19, 1990) and 8:13-cv-690-T-17TGW (M.D. Fla. 2013) (dismissed as successive March 25, 2013). Clearly the present petition is a second or successive petition.

Therefore, pursuant to 28 U.S. C. § 2244(b)(3), Petitioner must seek and obtain authorization from the Eleventh Circuit Court of Appeals prior to initiating this action. See *Medina v. Singletary*, 960 F. Supp. 275, 277-78 (M.D. Fla. 1997) (and cases cited therein). Petitioner has not shown that he has applied to the court of appeals for an order authorizing this Court to consider his application. Without such prior authorization from the Eleventh Circuit, this Court has no jurisdiction to consider the petition. See *Fugate v. Dep't. of Corrections*, 301 F. 3d 1287 (11th Cir. 2002). Thus, this case will be dismissed without prejudice to allow Petitioner the opportunity to seek said authorization.

ACCORDINGLY, the Court **ORDERS** that:

1. Petitioner's petition (Doc. 1) is **DISMISSED** without prejudice.
2. The Clerk is directed to send Petitioner the Eleventh Circuit's application form for

second or successive habeas corpus petitions under 28 U.S.C. § 2244(b) and to close this case.

IT IS FURTHER ORDERED that Petitioner is not entitled to a certificate of appealability. A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability ("COA"). *Id.* "A [COA] may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* at § 2253(c)(2). To merit a certificate of appealability, Petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. See 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir 2001). Because the petition is clearly a second or successive petition, Petitioner cannot satisfy the second prong of the *Slack* test. 529 U.S. at 484.

Finally, because Petitioner is not entitled to a certificate of appealability, he is not entitled to appeal *in forma pauperis*.

ORDERED at Tampa, Florida, on APRIL 13th, 2013.


ELIZABETH A. KOVAGHEVICH
UNITED STATES DISTRICT JUDGE

Steven Young

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