

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13485-G



GARRY COLEMAN,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

ORDER:

Garry Coleman is a Florida prisoner serving a 15-year total term of imprisonment after pleading guilty to numerous charges from multiple, consolidated cases, including: 7 counts of burglary of a dwelling, in violation of Fla. Stat. Ann. § 812.02; 4 counts of dealing in stolen property, in violation of Fla. Stat. Ann. § 810.02; grand theft, in violation of Fla. Stat. Ann. § 812.014; and possession of cocaine, in violation of Fla. Stat. Ann. § 893.147(1). He seeks a certificate of appealability ("COA") in order to appeal the district court's denial of his Fed. R. Civ. P. 60(b) motion, in which he alleged that the district court, in denying his 28 U.S.C. § 2254 habeas corpus petition, had committed a *Clisby v. Jones*, 960 F.2d 925 (11th Cir. 1992) (*en banc*), violation by recharacterizing his claim—that the state had relied on false and fraudulent reports to conclude he was competent to plead guilty—as one of ineffective assistance of counsel.

To merit a COA, a movant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

A district court's ruling on a Rule 60(b) motion is reviewed for abuse of discretion. *Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996). Under this standard, this Court leaves a district court's ruling undisturbed unless it determines that "the district court has made a clear error of judgment, or has applied the wrong legal standard." *Arthur v. Thomas*, 739 F.3d 611, 628 (11th Cir. 2014). District courts must resolve all claims raised in a § 2254 petition, regardless of whether relief is granted. *Clisby*, 960 F.2d at 936.

Here, reasonable jurists could debate whether the district court abused its discretion in denying Coleman's Rule 60(b) motion. Coleman's § 2254 petition had raised a substantive competency claim, yet the magistrate judge and district court, over his objections, mischaracterized the claim as an ineffective-assistance claim. That recharacterization was unnecessary because substantive competency claims are cognizable in federal habeas review and are not subject to procedural default. *See Medina v. Singletary*, 59 F.3d 1095, 1107 (11th Cir. 1995) (holding that a substantive competency claim is not subject to procedural default). Because the district court never addressed Coleman's substantive competency claim, reasonable jurists could debate whether the Coleman raised a meritorious *Clisby* claim in his Rule 60(b) motion.

Nevertheless, no COA is warranted because Coleman failed to state a valid substantive competency claim, as required under the second prong of *Slack*. The crux of his argument was that the trial court's finding that he had been restored to competency was invalid because it relied on legally improper reports from non-examining experts. Importantly, Coleman never alleged that he was actually incompetent at the time he pleaded guilty, which he had to do in order to state a

claim of substantive incompetency. *See Medina*, 59 F.3d at 1106 (holding that a petitioner makes a substantive competency claim by alleging that he was, in fact, tried and convicted while incompetent). As such, Coleman simply complained about the reliability of the evidentiary basis for the trial court's competency finding, but never actually claimed that he was in fact incompetent.

Because Coleman cannot satisfy both prongs of *Slack*, his motion for a COA is DENIED.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60321-CIV-ZLOCH

GARRY COLEMAN,

Petitioner,

vs.

O R D E R

JULIE L. JONES,

Respondent.

THIS MATTER is before the Court upon Petitioner's Amended Motion For Relief From Judgement Or Order (DE 33). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Petitioner's Amended Motion For Relief From Judgement Or Order (DE 33) be and the same is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 6th day of August, 2018.


WILLIAM J. ZLOCH
Sr. United States District Judge

Copies furnished:

All Counsel of Record

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-60321-CIV-ZLOCH

GARRY COLEMAN,

Petitioner,

vs.

O R D E R

JULIE L. JONES,

Respondent.

THIS MATTER is before the Court upon Petitioner Garry Coleman's Notice Of Appeal (DE 38), which has been construed as a Motion For Certificate Of Appealability. The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. Petitioner Garry Coleman's Notice Of Appeal (DE 38), which has been construed as a Motion For Certificate Of Appealability be and the same is hereby **DENIED**; and

2. Petitioner Garry Coleman's duplicative Motion For Court To Render Order (DE 42) and Amended Motion For Court To Render Valid Orders (DE 43) be and the same are **DENIED** as moot, as seeking the same relief as denied herein, above.

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



WILLIAM J. ZLOCH
Sr. United States District Judge

Copies Furnished:

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Eleventh Circuit Court of Appeals

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