

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13765-H

DANIEL LEE WHITE,

Petitioner-Appellant,

versus

SEC'Y, DEP'T OF CORR., *et al.*,

Respondents-Appellees.

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

ORDER:

Daniel Lee White is a Florida prisoner serving a 22-year sentence after a jury convicted him of trafficking in illegal drugs. Florida's Fifth District Court of Appeal ("Fifth DCA"), *per curiam*, affirmed his conviction, and White subsequently filed *pro se* a Fla. R. Crim. P. 3.850 motion, which the state post-conviction court denied. White then filed a habeas petition, which the Fifth DCA denied. After that, he filed a second Rule 3.850 motion, which was denied by the state post-conviction court.

Next, White moved in the district court for appointment of counsel to file a 28 U.S.C. § 2254 petition, which the district court denied. He subsequently filed a *pro se* § 2254 petition, raising 15 grounds, including ineffective assistance of counsel and trial-court error. On March 13, 2017, the district court denied the petition and denied a certificate of appealability ("COA").

Almost five months later, on August 3, 2017, White moved for reconsideration, arguing that the district court erred in failing to revisit his motion to appoint counsel, submit the case to a magistrate judge for a report and recommendation, and conduct a *de novo* review of the state post-conviction court's decision. He then objected to the district court's findings as to each of his claims, reiterating the arguments made in his state post-conviction proceedings below and his § 2254 petition, namely, that he had a valid prescription for the oxycodone pills seized from his vehicle.

The district court denied White's motion for reconsideration, finding that it merely reargued his failed prescription-drug defense. White then filed an appeal as to the district court's denial of his motion for appointment of counsel, § 2254 petition, and motion for reconsideration. The district court denied leave to proceed *in forma pauperis* ("IFP") on appeal. White now moves in this Court for a COA as well as for IFP status on appeal.

As an initial matter, this appeal is timely as to only the district court's denial of White's motion for reconsideration. *See Rinaldo v. Corbett*, 256 F.3d 1276, 1278 (11th Cir. 2001) (holding that, in a civil case, the timely filing of a notice of appeal is a mandatory prerequisite to the exercise of appellate jurisdiction). White's motion for reconsideration did not toll the appeal period for the court's denials of his § 2254 petition or motion to appoint counsel, because it was filed more than 28 days after entry of judgment. *See Fed.R.App.P. 4(a)(4)(A); Fed.R.Civ.P. 59(e)*.

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). This Court reviews the denial of a motion for reconsideration for abuse of discretion. *See United States v. Simms*, 285 F.3d 1347, 1356 (11th Cir. 2004). As a general principle, the sole grounds for granting a motion for reconsideration are

“(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.” *Delaware Valley Floral Group, Inc., v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1383 (11th Cir. 2010) (quotation omitted).

Here, White’s motion for reconsideration failed to identify any change in the law or new evidence; rather, he reiterated the arguments made in his state post-conviction proceedings below and his § 2254 petition. *See Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (holding that “[a] motion for reconsideration cannot be used to relitigate old matters. . .”) (quotation marks omitted). White also argued that the district court erred in three instances, the first of which was that it failed to revisit his motion to appoint counsel. However, there is no constitutional right to counsel in federal habeas proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Rather, the court may appoint counsel to a person seeking collateral relief, who is financially eligible, only if it determines that the interests of justice so require. 18 U.S.C. § 3006A(a)(2); *Schultz v. Wainwright*, 701 F.2d 900, 901 (11th Cir. 1983). White has not shown that the interests of justice required appointment of counsel here.

Second, White argued that the court erred when it failed to submit his § 2254 petition to a magistrate judge, prior to entering a final order. However, there is no requirement that it do so. *See* 28 U.S.C. § 636(b)(1)(B) (providing that a court “may” designate a magistrate judge to submit recommendations for the disposition of applications for post-trial relief). Finally, White argued that the district court erred when it failed to conduct a *de novo* review of the state post-conviction court’s decision. That is not the correct standard of review. *See* 28 U.S.C. § 2254(d)(1), (2), (e)(1).

Thus, we find no clear error or manifest injustice in the court’s denial of White’s § 2254 petition or motion for appointment of counsel, *see Delaware Valley Floral Group, Inc.*, 597 F.3d

1374, 1383, and White's motion for a COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). His motion to proceed IFP is DENIED AS MOOT.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

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

Respondents-Appellees.

Appeal from the United States District Court
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Before: WILSON and ROSENBAUM, Circuit Judges.

BY THE COURT:

Daniel Lee White has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's February 5, 2018, order denying a certificate of appealability, and denying as moot his request for leave to proceed on appeal *in forma pauperis*. Upon review, White's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.
