

5/23/19

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 18-13241-C

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KELVIN MILES,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT  
OF CORRECTIONS,

Respondent-Appellee.

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

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Before: MARCUS and GRANT, Circuit Judges.

BY THE COURT:

Kelvin Miles has filed a motion for reconsideration,<sup>1</sup> pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated April 3, 2019, denying his motion for a certificate of appealability. Because Miles has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, his motion for reconsideration is DENIED.

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<sup>1</sup> We liberally construe Miles's motion titled "Motion to Modify Judgement" as a motion for reconsideration.

## **APPENDIX “B”**

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KELVIN MILES,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT  
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Respondent-Appellee.

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

---

Before: MARTIN and ROSENBAUM, Circuit Judges.

BY THE COURT:

Kelvin Miles seeks a certificate of appealability ("COA"), in order to appeal the denial of his habeas corpus petition, 28 U.S.C. § 2254. As amended by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2253 provides that an appeal from a final order in a § 2254 proceeding may not be taken without a COA certifying that "the applicant has made a substantial showing of the denial of a constitutional right" and indicating "which specific issue or issues satisfy the showing required." This Court will not make the initial determination of whether to issue a COA; the district court must rule first. *Edwards v. United States*, 114 F.3d 1083, 1084 (11th Cir. 1997).

Because the district court made no ruling with respect to a COA, this case is hereby REMANDED on a limited basis so that the court may consider whether a COA is appropriate for any of the issues that Miles seeks to raise on appeal. Should the district court determine that a COA should issue, it should so rule, setting forth the issues certified for appeal, per § 2253.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION**

**KELVIN O. MILES,**

**Petitioner,**

**v.**

**Case No. 1:15cv9-MW/GRJ**

**SECRETARY, FLORIDA  
DEPARTMENT OF CORRECTIONS,**

**Respondent.**

**ORDER DENYING CERTIFICATE OF APPEALABILITY**

This cause is on limited remand from the United States Court of Appeals for the Eleventh Circuit, No. 18-13241-C, for this Court to determine whether a Certificate of Appealability is appropriate for any of the issues that Petitioner Miles seeks to raise on appeal. ECF No. 53.

This Court has reviewed the Report and Recommendation of United States Magistrate Judge Gary R. Jones entered on February 2018, along with the Order Adopting Report and Recommendation of United States District Judge William Terrell Hodges on June 18, 2018.<sup>1</sup> ECF Nos. 44 and 46. This Court finds that while Magistrate Judge Jones recommended a Certificate of Appealability be denied, ECF

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<sup>1</sup> This case was reassigned to the undersigned on December 4, 2018.

No. 44, it appears District Judge Hodges inadvertently did not address the Certificate of Appealability in his Order Accepting Report and Recommendation. ECF No. 46.

Upon consideration of the Report and Recommendation, this Court finds the Certificate of Appealability should be denied. Accordingly,

**IT IS ORDERED:**

A Certificate of Appealability is **DENIED**.

**SO ORDERED on January 4, 2019.**

**s/ MARK E. WALKER**  
**Chief United States District Judge**