

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11387-C

AL PRINCE,

Petitioner-Appellant,

versus

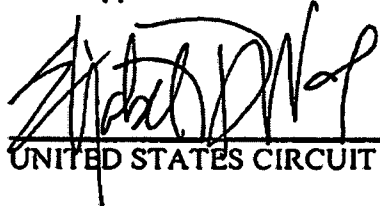
FLORIDA ATTORNEY GENERAL,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondents-Appellees.

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

ORDER:

To merit a certificate of appealability, Al Prince 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). Because Prince has failed to make the requisite showing, the motion for a certificate of appealability is DENIED. His motion for leave to proceed *in forma pauperis* on appeal is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE

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FOR THE ELEVENTH CIRCUIT

No. 19-11387-C

AL PRINCE,

Petitioner-Appellant,

versus

FLORIDA ATTORNEY GENERAL,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondents-Appellees.

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

Before: JORDAN and BRANCH, Circuit Judges.

BY THE COURT:

Al Prince has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's September 5, 2019, order denying him a certificate of appealability from the district court's order denying his Fed. R. Civ. P. 60(b) motion, and leave to proceed on appeal *in forma pauperis*. Upon review, Prince's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

AL PRINCE,

Petitioner,

v.

Case No. 3:14-cv-307-J-20MCR

SECRETARY, DOC, et al.,

Respondents.

ORDER

Petitioner Al Prince, an inmate of the Florida penal system, initiated this action on February 3, 2014, pursuant to the mailbox rule, by filing a pro se Petition for Writ of Habeas Corpus (Doc. 1) under 28 U.S.C. § 2254. The Court dismissed the petition with prejudice on March 16, 2016. See Order (Doc. 20). On July 27, 2017, the United States Court of Appeals for the Eleventh Circuit denied Petitioner's request for a certificate of appealability. See Order (Doc. 26).

Before the Court is Petitioner's Motion for Relief From Judgment (Motion) (Doc. 29), filed February 17, 2019, pursuant to the mailbox rule, under Federal Rule of Civil Procedure 60(b). Apparently, Petitioner is seeking relief pursuant to Rule 60(b)(6), the catch-all provision, as he fails to designate a particular

APPENDIX F

provision. In the Motion, Petitioner requests the Court grant him relief from its judgment denying his Petition because it "would amount to a miscarriage of justice if left uncorrected." Motion at 1. He asserts the Court's analysis "was misapprehended or overlooked pertinent facts[.]" Id. at 3-4. Finally, he complains of "plain error, which should be corrected." Id. at 6.

Rule 60(b) of the Federal Rules of Civil Procedure provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

A Rule 60(b) motion "must be made within a reasonable time - and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Rule 60(c)(1), Federal Rules of Civil Procedure. As stated

previously, apparently Petitioner filed the Motion under Rule 60(b)(6), the catchall provision of Rule 60(b). He waited almost three years after this Court's decision to present his Motion. He offers no persuasive reason, much less good cause, for the delay, and therefore, his February 17, 2019 Motion was not filed within a reasonable time.

Even assuming timely filing of the Motion, Petitioner is attempting to re-litigate matters already considered and rejected by the Court. He has not demonstrated any basis under Rule 60(b) warranting the Court's reconsideration of the Order dismissing the Petitioner with prejudice. Indeed, the Eleventh Circuit found Petitioner failed to make the requisite showing to merit a certificate of appealability.

The Eleventh Circuit set forth the standard of review:

Relief from "judgment under Rule 60(b)(6) is an extraordinary remedy." Booker v. Singletary, 90 F.3d 440, 442 (11th Cir. 1996) (citing Ritter v. Smith, 811 F.2d 1398, 1400 (11th Cir. 1987)). Consequently, relief under Rule 60(b)(6) requires showing "'extraordinary circumstances' justifying the reopening of a final judgment." Gonzalez v. Crosby, 545 U.S. 524, 535, 125 S.Ct. 2641, 2649, 162 L.Ed.2d 480 (2005) (quoting Ackermann v. United States, 340 U.S. 193, 199, 71 S.Ct. 209, 212, 95 L.Ed. 207 (1950)). "Even then, whether to grant the requested relief is . . . a matter for the district court's sound discretion." Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1317 (11th Cir. 2000) (quoting Booker, 90 F.3d at 442).

Arthur v. Thomas, 739 F.3d 611 (11th Cir. 2014), cert. denied, 135 S.Ct. 106 (2014). In Gonzalez, the Supreme Court has admonished that extraordinary circumstances warranting the reopening of a judgment "will rarely occur in the habeas context." 545 U.S. at 535. Upon review, Petitioner has failed to demonstrate any extraordinary circumstances to justify the reopening of final judgment as none of the arguments he asserts has merit.

Accordingly, Petitioner Rule 60(b) Motion is due to be denied as untimely and without merit under the applicable Rule 60(b) standard. Therefore, it is now

ORDERED:

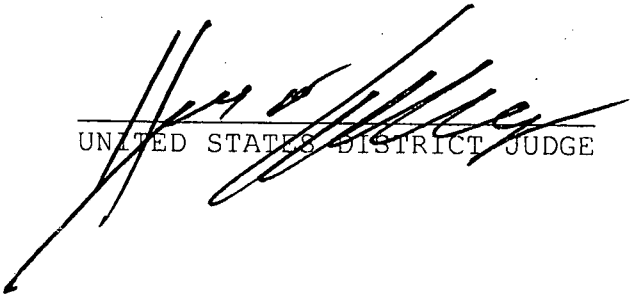
1. Petitioner's Motion for Relief From Judgment (Doc. 29) is **DENIED**.

2. If Petitioner appeals the denial of the Rule 60(b) Motion, the Court denies a certificate of appealability.¹ Because this Court has determined that a certificate of appealability is not warranted, the **Clerk** shall terminate from the pending motions

¹ This Court should issue a certificate of appealability only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this substantial showing, Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 84 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)). Upon due consideration, if Petitioner seeks issuance of a certificate of appealability, the undersigned opines that a certificate of appealability is not warranted.

report any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial of the motion.

DONE AND ORDERED at Jacksonville, Florida, this 27th day of March, 2019.


UNITED STATES DISTRICT JUDGE

sa 3/21
c:
Al Prince
Counsel of Record