IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-15351-F

TIMOTHY HUMPHREY,

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

ORDER:

To merit a certificate of appealability, appellant 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 appellant has failed to make the requisite showing, his motion for a certificate of appealability is DENIED.

Appellant's motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.

/s/ William H. Pryor Jr.
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TIMOTHY HUMPHREY,

Petitioner,

-vs- **Case No. 8:14-cv-2362-T-27TGW**

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

ORDER

Petitioner, a Florida prisoner, filed a Second Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (Dkt. 15) challenging his conviction as principal to pre-meditated first degree murder. Respondent filed a response in opposition (Dkt. 45) urging either the dismissal of the Second Amended Petition as time-barred, or its denial. Petitioner replied (Dkt. 58). Upon consideration, the Second Amended Petition is dismissed as time-barred.

PROCEDURAL HISTORY

On February 24, 2006, Petitioner was found guilty of first-degree murder (Respondent's Ex. 1, Vol. III, p. 519). He was sentenced to life in prison on February 27, 2006 (Id., pp. 528-31). His conviction and sentence were affirmed on February 22, 2008 (Respondent's Ex. 5). His request for discretionary review in the Florida Supreme Court was denied on December 2, 2008 (Respondent's Ex. 17). His petition for certiorari review in the United States Supreme Court was denied on October 5, 2009 (Respondent's Ex. 20).

On December 23, 2009, Petitioner filed a Motion to Correct Illegal Sentence under Rule 3.800(a), Florida Rules of Criminal Procedure, in which he contended that he was entitled to an

additional 119 days of jail credit (Respondent's Ex. 34). The motion was granted in part on March 17, 2010, and Petitioner was awarded an additional 13 days of jail credit (Respondent's Ex. 35). Petitioner appealed, and on September 1, 2010, the appellate court affirmed (Respondent's Ex. 37). Petitioner's motion for rehearing was denied on November 15, 2010 (Respondent's Ex. 39), and the appellate Mandate issued December 2, 2010 (Respondent's Ex. 38).

On November 30, 2010, Petitioner filed a petition alleging ineffective assistance of appellate counsel (Respondent's Ex. 40B). He filed an amended petition on February 17, 2011 (Respondent's Ex. 43). The amended petition was denied on April 12, 2011 (Respondent's Ex. 44). His motion for rehearing was denied on August 17, 2011 (Respondent's Ex. 47).

On November 30, 2010, Petitioner also filed a post-conviction motion under Rule 3.850, Fla.R.Crim.P., alleging ineffective assistance of trial counsel (Respondent's Ex. 52). The motion was dismissed as untimely (Respondent's Ex. 53). Rehearing, however, was granted, and the order was rescinded (Respondent's Ex. 55). Nevertheless, the motion was stricken with leave to amend, since the post-conviction court determined that the 115 page motion was "excessively lengthy." (Id.). Petitioner was granted leave to file an amended motion that did not exceed fifty pages (Id.).

On December 19, 2011, he filed a fifty six page Amended Rule 3.850 motion (Respondent's Ex. 56). The amended motion was denied because it exceeded "the fifty-page benchmark" and was "typewritten in an undersized font with greatly reduced margins" in violation of Rule 3.850(c)(6), Fla.R.Crim.P. (Respondent's Ex. 57). Petitioner's motion for rehearing (Respondent's Ex. 58) was denied on February 10, 2012 (Respondent's Ex. 59). The denial of the amended motion was affirmed on appeal on April 19, 2013 (Respondent's Ex. 66). Rehearing was denied on August 15, 2013 (Respondent's Ex. 68), and the appellate Mandate issued September 11, 2013 (Respondent's Ex. 69).

On June 13, 2014, Petitioner filed a petition for a writ of habeas corpus in the United States District Court of Florida, Orlando Division (see Case No. 6:14-cv-952-Orl-31DAB at Dkt. 1). The petition was dismissed without prejudice on September 4, 2014, for his failure to file an amended petition (Id., at Dkt. 14). On September 8, 2014, Petitioner filed a new petition for a writ of habeas corpus in the Orlando Division (see Case No. 6:14-cv-1507-Orl-37KRS at Dkt. 1), which was transferred to the Tampa Division.

TIMELINESS DISCUSSION

Under the AEDPA, a federal habeas petition must be filed within one year of when a state court conviction becomes final.[1] 28 U.S.C. § 2244(d)(1)(A); *Wilcox v. Fla. Dep't of Corr.*, 158 F.3d 1209, 1211 (11th Cir. 1998). Petitioner's conviction became final for purposes of the AEDPA on December 2, 2010, when the appellate Mandate issued at the conclusion of his Rule 3.800(a) appeal.[2] His one year limitations period under § 2244(d)(1)(A) would therefore expire on December 2, 2011, unless the limitations period was tolled by a "properly filed" state court post-conviction application or equitable tolling applies. See § 2244(d)(2) ("The time during which a *properly* filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.") (emphasis added).

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[1]The Antiterrorism and Effective Death Penalty Act, April 24, 1996 ("AEDPA").

[2] Respondent and Petitioner contend that Petitioner's conviction became final on October 5, 2009, when the Supreme Court denied certiorari. The court disagrees. Petitioner's judgment was amended on March 16, 2010, when he was granted an additional 13 days of jail credit (Respondent's Ex. 35). This constituted a new judgment from which the timeliness of Petitioner's federal petition under the AEDPA is determined. *See Insignares v. Sec'y Dept of Corr.*, 755 F.2d 1273, 1278-1278 (11th Cir. 2014) (finding entry of later judgment reducing sentence resulted in a new judgment); *Brown v. Sec'y Dep't of Corr.*, 2014 U.S. Dist. LEXIS 90969, 2014 WL 2991131 (N.D. Fla. July 3, 2014) (unpublished) (adopting order finding that later amended judgment granting Rule 3.800(a) motion and awarding jail credit constituted new judgment).

Petitioner's November 30, 2010 petition alleging ineffective assistance of appellate counsel tolled the AEDPA limitations period through August 17, 2011, when the Florida Second District Court of Appeal denied Petitioner's motion for rehearing of the order denying the petition. His Rule 3.850 motion and Amended Rule 3.850 motion, however, did not toll the AEDPA limitations period.

For purposes of AEDPA tolling, "an application is '*properly* filed' when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. These usually prescribe, for example, *the form of the document*, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee." *Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (second emphasis added) (footnote omitted). Rule 3.850(c)(6), Fla.R.Crim.P. (2010), deals with the "form of the document" and specifically requires a prisoner's Rule 3.850 motion to include, among other things, "a brief statement of the facts" supporting the motion.

Petitioner's 115-page initial Rule 3.850 was stricken as "excessively lengthy," and he was directed to file an amended motion that did not exceed 50 pages (Respondent's Ex. 55). The state post-conviction court relied on *Schwenn v. State*, 958 So. 2d 531 (Fla. 4th DCA 2007), which announced a procedural rule that a trial court has authority to place reasonable page limitations on motions for post-conviction relief, and could restrict a Rule 3.850 motion to 50 pages, absent a showing of good cause. *See also Basse v. State*, 740 So. 2d 518 (Fla. 1999) (recognizing that a 50-page limit on filings, unless the applicable rule provides differently, is a reasonable limit unless good cause is shown justifying a higher limit). Accordingly, the "form" of Petitioner's initial Rule 3.850 motion did not comply with Florida's applicable law and rules. *See Price v. Sec'y Dep't of Corr.*, 489 F. App'x 354, 356 (11th Cir. 2012) (prisoner's 250-page Rule 3.850 motion did not comply with Rule 3.850's requirement that the motion include "a brief statement of the facts," and

therefore was not "properly filed" for purposes of 28 U.S.C. §2244).

His amended motion likewise failed to comply with the requirements of Rule 3.850. Effective July 1, 2011, Rule 3.850 was revised to provide, in pertinent part:

> Motions shall be typewritten or handwritten in legible printed lettering, in blue or black ink, double-spaced, with margins no less than one inch on white 8 1/2–by–11 inch paper. No motion, including any memorandum of law, shall exceed 50 pages without leave of the court upon a showing of good cause.

See In re: Amendments to Fla. Rules of Crim. Procedure 3.850 & 3.851, 72 So. 3d 735, 738-39 (Fla. 2011). The "form" of Petitioner's December 2011 amended motion did not comply with the applicable Florida rules since it failed to include a brief statement of the facts, exceeded 50 pages, and had margins that were less than one inch (Respondent's Ex. 56). *See Whitlock v. Quarterman*, 2008 U.S. App. LEXIS 17196, at *2 (5th Cir. Aug. 8, 2008) (unpublished) (defendant's state post-conviction application did not constitute a "properly filed" application for purposes of 28 U.S.C. § 2244(d)(2) because the Texas Court of Criminal Appeals determined the application failed to comply with Rule 73.2 of the Texas Rules of Appellate Procedure requiring post-conviction applications to be on the form prescribed by the Texas Court of Criminal Appeals). Moreover, the amended motion failed to comply with the state post-conviction court's order regarding page length. Accordingly, Petitioner's initial motion and amended motion were not "properly filed" and therefore did not toll the AEDPA limitations period.

The limitations period began on August 18, 2011, the day after the denial of Petitioner's motion for rehearing of the order denying his petition alleging ineffective assistance of appellate counsel. The limitations period expired one year later on August 18, 2012. Accordingly, his federal habeas petition, filed on September 8, 2014, is untimely.

Petitioner contends that his petition is timely because the "AEDPA time has not even begun to run[,]" since he "filed a collateral review motion on December 7, 2006" that "is still pending." (Dkt. 58, pp. 1-2). This contention is without merit. Petitioner has not provided a copy of the motion.[3] Nor does he describe the nature of the motion and court in which it was filed. His vague and conclusory assertion that he filed a collateral review motion and the "reply brief" is still "pending" is insufficient to demonstrate statutory tolling.

Petitioner also contends that his Rule 3.850 motion was properly filed because there was no page limit under Florida law when he filed the motion. Rule 3.850(c)(6), however, requires a Rule 3.850 motion to include "a brief statement of the facts." Moreover, the applicable case law gave courts discretion to limit post-conviction motions to 50 pages. *See Schwenn v. State*, 958 So. 2d 531 (Fla. 4th DCA 2007); *Basse v. State*, 740 So. 2d 518 (Fla. 1999). And even if the Rule 3.850 motion was "properly filed," his December 2011 Amended Rule 3.850 motion was not "properly filed," since it failed to comply with the state post-conviction court's order limiting the motion to 50 pages, and the new rule, effective July 2011, limiting 3.850 motions to 50 pages without leave of court.[4]

Petitioner also argues that "his AEDPA time period remained tolled until the appeal of his 3.850 no longer remained pending." (Dkt. 58, p. 4). He is incorrect. The limitations period was not tolled during the appeal, since no "properly filed" state post-conviction motion was pending. *See Ilarion v. Sec'y for the Dep't of Corr.*, 179 Fed. Appx. 653, 654 (11th Cir. 2006) ("the statutory tolling period [under § 2244(d)(1)] only encompasses periods during which there is a properly filed

[3]Petitioner appears to indicate that a copy of the motion was attached to his Amended Reply as "Exhibit A." (Dkt. 58, p. 2). There was no exhibit attached to the Amended Reply.

[4]Even if the initial Rule 3.850 motion was properly filed, it was no longer "pending" when the Amended Rule 3.850 motion was filed on December 17, 2011. Accordingly, the AEDPA limitations period would have expired one year later on December 17, 2012, and Petitioner's federal habeas petition would still be untimely.

application.").

Finally, Petitioner contends that his federal habeas petition was filed on June 6, 2014, rather than September 8, 2014, since he filed a petition in the Orlando Division of this court on that date (Dkt. 58, pp. 4-5). The June 6, 2014 petition, however, was dismissed for failure to comply with a court order, and the case was closed (Case No. 6:14-cv-952-Orl-31DAB at Dkt. 14). A § 2254 petition does not toll § 2244(d)'s one-year statute of limitations period. *Duncan v. Walker*, 533 U.S. 167, 181-82 (2001). Moreover, Petitioner's petition is untimely even if it is considered as having been filed on June 6, 2014.

Petitioner is not entitled to equitable tolling

Petitioner contends that his petition is timely because he is entitled to equitable tolling. The limitations period under § 2244(d) is subject to equitable tolling. *Sibley v. Culliver*, 377 F.3d 1196, 1204 (11th Cir. 2004). Section 2244 "permits equitable tolling 'when a movant untimely files because of extraordinary circumstances that are both beyond his control and unavoidable with diligence.'" *Steed v. Head*, 219 F.3d 1298, 1300 (11th Cir. 2000) (quoting *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999) (per curiam)); *Arthur v. Allen*, 452 F.3d 1234, 1252 (11th Cir. 2006) (petitioner must show both extraordinary circumstances and diligence). Equitable tolling applies, however, only in truly extraordinary circumstances, *Jones v. United States*, 304 F. 3d 1035, 1039-1040 (11th Cir. 2002), and where the litigant satisfies his burden of showing that he has been pursuing his rights diligently and that some extraordinary circumstance "stood in his way and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010).

Petitioner has not satisfied his burden of showing circumstances justifying equitable tolling. He makes no showing of extraordinary circumstances which prevented him from filing a timely

federal habeas petition. He contends that he complied with "all relevant state filing conditions" when he filed his Rule 3.850 motions (Dkt. 58, p. 6). He did not, however, comply with the rule requiring a "brief statement of the facts" when he filed his initial Rule 3.850 motion. When he filed his Amended Rule 3.850 motion, he did not comply with: 1) the state post-conviction court's order directing Petitioner to file a motion that did not exceed fifty pages, and 2) the newly effective rule which limited 3.850 motions to 50 pages without a showing of good cause to exceed the page limit, and established, among other things, an unambiguous one-inch margin requirement. And although Petitioner filed a motion requesting leave to exceed the page limit, the state post-conviction court determined that he did not make a sufficient showing of good cause (Respondent's Ex. 59).

The dismissal of the motions does not itself amount to an extraordinary circumstance justifying equitable tolling. *See Hill v. Jones*, 242 Fed. Appx. 633, 637 (11th Cir. 2007) (unpublished). Petitioner was not prevented from asserting his rights because he could have filed a protective federal habeas petition and requested a stay until his state remedies were exhausted. *See Colbert v. Head*, 146 Fed. Appx. 340, 344 n.5 (11th Cir. 2005) (unpublished) ("a 'petitioner trying in good faith to exhaust state remedies [who] may litigate in state court for years only to find out at the end that he was never 'properly filed' and thus that his federal habeas petition is time barred,' may avoid this predicament by filing a 'protective' petition in federal court. . .asking the federal court to stay and abey the federal habeas proceedings until state remedies are exhausted.") (quoting *Pace v. Diguglielmo*, 544 U.S. 408, 416 (2005)). Since he fails to show that he was prevented from filing a timely federal habeas petition, he has not demonstrated entitlement to equitable tolling.

Fundamental miscarriage of justice/actual innocence

Petitioner contends that it would be a fundamental miscarriage of justice to dismiss his

petition as time-barred because he claims that he is actually innocent. The AEDPA's one year limitations bar can be overcome if a petitioner makes a credible showing of actual innocence. *McQuiggin v. Perkins*, 133 S.Ct. 1924, 1928 (2013) ("We hold that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup* and *House*, or, as in this case, expiration of the statute of limitations."). However, that showing requires the petitioner to identify new evidence demonstrating actual innocence. *Id.* at 1935.

Petitioner has not made a credible showing of actual innocence. He identifies no new evidence of actual innocence. Rather, he asserts that he "has maintained his innocence from day one," the evidence against him was "weak," the "sheer magnitude of the constitutional violations described in his petition show that his trial could not have been more unfair. . .," and "[h]ad these constitutional violations not occurred, [he] would not be in prison as he would have never been convicted." (Dkt. 58, pp. 37-38).

"[T]he existence of a [] meritorious constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of a barred claim." *Schlup v. Delo*, 513 U.S. 298, 316 (1995). Actual innocence means factual innocence, not legal insufficiency. *See Calderon v. Thompson*, 523 U.S. 538, 559 (1998); *Johnson v. Florida Dep't Of Corr.*, 513 F.3d 1328, 1334 (11th Cir. 2008); *Hill v. United States*, 569 F. App'x 646, 648 (11th Cir. 2014) ("The actual-innocence exception is 'exceedingly narrow in scope' because it requires that the defendant establish that he was, in fact, innocent of the offense, not merely legally innocent, even in the sentencing context."). Petitioner's claim is one of legal innocence, rather than factual

innocence. Accordingly, his Second Amended Petition is untimely and subject to dismissal.[5]

Petitioner's Second Amended Petition for Writ of Habeas Corpus (Dkt. 15) is therefore **DISMISSED** as time-barred. The **Clerk** shall enter judgment against Petitioner, terminate all pending motions, and close this case.

IT IS FURTHER ORDERED that Petitioner is not entitled to a certificate of appealability (COA). A petitioner does not have absolute entitlement to appeal a district court's denial of his habeas petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a COA. Id. A petitioner is only entitled to a COA if he demonstrates that reasonable jurists would find debatable whether the Court's procedural rulings were correct and whether the § 2254 petition stated "a valid claim of the denial of a constitutional right." Id.; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To make a substantial showing of the denial of a constitutional right, a 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*, 529 U.S. at 484), 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)). Petitioner cannot make the requisite showing because even if reasonable jurists could debate whether the court's assessment that the Second Amended Petition is time-barred is correct, he cannot demonstrate that reasonable jurists would debate whether the Second Amended Petition

[5]Even if the petition was not time-barred, Petitioner would not be entitled to federal habeas relief. For the reasons stated by Respondent in the thorough and well-reasoned response to the order to show cause, Petitioner's conviction was not entered in violation of his constitutional rights (See Dkt. 45). Since Petitioner has not shown that the adjudications of the claims raised in this federal petition by the state courts were contrary to or an unreasonable application of clearly established federal law or that the rulings were based on an unreasonable determination of the facts, and has not made a showing under *Martinez v. Ryan*, 566 U.S. 1 (2012) of a "substantial" claim of ineffective assistance of trial counsel, he is not entitled to habeas corpus relief. 28 U.S.C. §2254(d)(1); *Williams v. Taylor*, 529 U.S. 362 (2000).

stated a valid claim of the denial of a constitutional right. And because Petitioner is not entitled to a certificate of appealability, he is not entitled to appeal *in forma pauperis*.

DONE and ORDERED this 30th day of August, 2017.

JAMES D. WHITTEMORE
United States District Judge

Copies to: Petitioner *pro se*
Counsel of Record

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY HUMPHREY – PETITIONER

VS.

STATE OF FLORIDA. – RESPONDENT

PROOF OF SERVICE

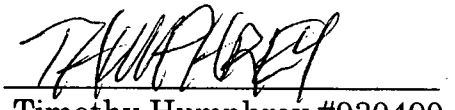
I, TIMOTHY HUMPHREY, do swear or declare that on this date, September 10, 2018, as required by Supreme Court Rule 29 I have served the enclosed **PETITION FOR A WRIT OF CERTIORARI** and **Application to proceed *In Forma Pauperis*** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The name and addresses of those served are as follows:

Office of the Attorney General, 3507 E. Frontage Rd., Suite 200, Tampa, FL 33607.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10 day of September 2018.



Timothy Humphrey #930490

APPENDIX

A

APPENDIX

B

APPENDIX

C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

July 12, 2018

Timothy Humphrey
South Bay CF - Inmate Legal Mail
PO BOX 7171
SOUTH BAY, FL 33493

Appeal Number: 17-15351-F
Case Style: Timothy Humphrey v. Secretary, DOC, et al
District Court Docket No: 8:14-cv-02362-JDW-TGW

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Dionne S. Young, F/lt
Phone #: (404) 335-6224

MOT-2 Notice of Court Action

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
Appearance of Counsel Form

Attorneys who wish to participate in an appeal must be properly admitted either to the bar of this court or for the particular proceeding pursuant to 11th Cir. R. 46-1, et seq. An attorney not yet properly admitted must file an appropriate application. In addition, all attorneys (except court-appointed counsel) who wish to participate in an appeal must file an appearance form within fourteen (14) days after notice is mailed by the clerk, or upon filing a motion or brief, whichever occurs first. Application forms and appearance forms are available on the Internet at www.ca11.uscourts.gov.

Please Type or Print

Court of Appeals No. 17-15351-F

TIMOTHY HUMPREY vs. SECRETARY, DEPARTMENT OF CORRECTIONS

The Clerk will enter my appearance for these named parties: SECRETARY, DEPARTMENT OF CORRECTIONS

In this court these parties are: ☐ appellant(s) ☐ petitioner(s) ☐ intervenor(s)
☒ appellee(s) ☒ respondent(s) ☐ amicus curiae

☐ The following related or similar cases are pending on the docket of this court:

☐ Check here if you are lead counsel.

I hereby certify that I am an active member in good standing of the state bar or the bar of the highest court of the state (including the District of Columbia) named below, and that my license to practice law in the named state is not currently lapsed for any reason, including but not limited to retirement, placement in inactive status, failure to pay bar membership fees or failure to complete continuing education requirements. I understand that I am required to notify the clerk of this court within 14 days of any changes in the status of my state bar memberships. See 11th Cir. R. 46-7.

State Bar: FLORIDA State Bar No.: 0836974

Signature: /s/ Tonja V. Rook

Name (type or print): Tonja Vickers Rook Phone: (813) 287-7900

Firm/Govt. Office: Dept of Legal Affairs-Office of Attorney General E-mail: tonja.rook@myfloridalegal.com

Street Address: 3507 East Frontage Road, Concourse 4, Suite 200 Fax: (813) 281-5500

City: Tampa State: Florida Zip: 33607

TIMOTHY HUMPHREY, Petitioner-Appellant, versus SECRETARY, DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA, Respondents-Appellees.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2018 U.S. App. LEXIS 12527
No. 17-15351-F
May 11, 2018, Decided

Editorial Information: Prior History

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

Counsel Timothy Humphrey, Petitioner - Appellant, Pro se, South Bay, FL.
For Secretary, Department of Corrections, Respondent - Appellee: Tonja Vickers Rook, Attorney General's Office, Criminal Division, Tampa, FL.
For Attorney General, State of Florida, Respondent - Appellee: Pam Bondi, Attorney General's Office, Criminal Division, Tampa, FL.

Judges: William H. Pryor Jr., UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: William H. Pryor Jr.

Opinion

ORDER:

To merit a certificate of appealability, appellant 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, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). Because appellant has failed to make the requisite showing, his motion for a certificate of appealability is DENIED.

Appellant's motion for leave to proceed *informa pauperis* is DENIED AS MOOT.

/s/ William H. Pryor Jr.

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-15351-F

TIMOTHY HUMPHREY,

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

Before: WILLIAM PRYOR and JORDAN, Circuit Judges.

BY THE COURT:

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