

IN THE UNITED STATES SUPREME COURT

**JOSEPH AUGUSTUS DIXON,
PETITIONER,**

vs.

Case No: _____

**FLORIDA DEPARTMENT OF
CORRECTIONS, MARK INCH AND
RESPONDENTS'**

“APPENDIX”

**Joseph A. Dixon 120132
Marion Correctional Institution
P.O. Box 158
Lowell, Florida 32663-0158**

“INDEX”

Denial Order of the (11th) Eleventh Circuit
Court of Appeals;

“PAGES”

“A”

Denial Order of the United District Court of
Tampa Florida Division

“B”

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

February 25, 2020

Joseph Augustus Dixon
Marion CI - Inmate Legal Mail
PO BOX 158
LOWELL, FL 32663-0158

Appeal Number: 19-13946-J
Case Style: Joseph Dixon v. Secretary, Department of Corr., et al
District Court Docket No: 8:16-cv-00512-TPB-JSS

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Davina C Burney-Smith, J
Phone #: (404) 335-6183

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

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A
11

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13946-J

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 25 2020

David J. Smith
Clerk

Petitioner-Appellant,

versus

JOSEPH AUGUSTUS DIXON,

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 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 satisfy both prongs of *Slack*'s test, the 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

19-13946

Joseph Augustus Dixon
#120132
Marion CI - Inmate Legal Mail
PO BOX 158
LOWELL, FL 32663-0158

Joseph Augustus Dixon
120132
Marion Correctional Institution
P.O. Box 158
Lowell, FL 32663

1.

A handwritten signature consisting of a stylized 'J' or 'L' shape on the left, a central vertical line with a horizontal stroke, and a 'B' shape on the right.

11 B 11

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Sam M. Gibbons U.S. Courthouse
Office of the Clerk
801 North Florida Avenue
Tampa, FL 33602
(813) 301-5400
www.flmd.uscourts.gov

Elizabeth M. Warren
Clerk of Court

Keshia M. Jones
Tampa Division Manager

DATE: October 4, 2019

TO: Clerk, U.S. Court of Appeals for the Eleventh Circuit

JOSEPH AUGUSTUS DIXON,

Petitioner,

v.

Case No: 8:16-cv-512-T-60JSS

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

Respondents.

U.S.C.A. Case No.:

Enclosed are documents and information relating to an appeal in the above-referenced action. Please acknowledge receipt on the enclosed copy of this letter.

- Honorable Thomas P. Barber, United States District Judge appealed from.
- Appeal filing fee was not paid. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals. If you are filing *informa pauperis*, a request for leave to appeal *in forma pauperis* needs to be filed with the district court.
- IFP has been Denied. Order enclosed.
- Certificate of Appeal ability was denied. Order enclosed.
- Certified copy of Notice of Appeal, docket entries, judgment and/or Order appealed from. Opinion was not entered orally.
- No hearing from which a transcript could be made.

ELIZABETH M. WARREN, CLERK

By: s/LDR, Deputy Clerk

APPEAL, CLOSED, HABEAS

**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:16-cv-00512-TPB-JSS**

Dixon v. Secretary, Department of Corrections et al
Assigned to: Judge Thomas P. Barber
Referred to: Magistrate Judge Julie S. Sneed
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 03/03/2016
Date Terminated: 09/19/2019
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Petitioner

Joseph Augustus Dixon

represented by **Joseph Augustus Dixon**
120132
Marion Correctional Institution
P.O. Box 158
Lowell, FL 32663
PRO SE

V.

Respondent

Secretary, Department of Corrections

represented by **Sonya Roebuck Horbelt**
Florida Attorney General's Office
Suite 200
3507 E Frontage Rd
Tampa, FL 33607-7013
813/287-7900
Email: sonya.horbelt@myfloridalegal.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Attorney General, State of Florida

Date Filed	#	Page	Docket Text
03/03/2016	1		DISMISSED AS TIME-BARRED, PURSUANT TO ORDER <u>15</u> PETITION for Writ of Habeas Corpus –State filed by Joseph Augustus Dixon. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Mailing Envelope)(DG) Modified on 2/15/2017 (DG). (Entered: 03/04/2016)
03/03/2016	2		MEMORANDUM in support re <u>1</u> Petition for writ of habeas corpus filed by Joseph Augustus Dixon. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(DG) (Entered: 03/04/2016)
03/04/2016	3		

		RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 – track 1. Notice of pendency of other actions due by 3/18/2016. Signed by Judge Mary S. Scriven on 3/4/2016. (APV) (Entered: 03/04/2016)
03/11/2016	<u>4</u>	ORDER to file proof of indigency. The clerk is directed to send to Dixon the form for a motion for leave to proceed in forma pauperis. Dixon has until MONDAY, APRIL 11, 2016, to either submit the \$5.00 filing fee or complete and file the enclosed motion for leave to proceed in forma pauperis. Signed by Judge Mary S. Scriven on 3/11/2016. (RO) (Entered: 03/11/2016)
03/14/2016	<u>5</u>	NOTICE of pendency of related cases re <u>3</u> Related case order and track 1 notice per Local Rule 1.04(d) by Joseph Augustus Dixon. Related case(s): no. (Attachments: # <u>1</u> Mailing Envelope)(DG) (Entered: 03/14/2016)
03/25/2016	<u>6</u>	MOTION for leave to proceed in forma pauperis/affidavit of indigency by Joseph Augustus Dixon. (Attachments: # <u>1</u> Mailing Envelope)(DG) Motion referred to Magistrate Judge Julie S. Sneed. (Entered: 03/25/2016)
03/25/2016	<u>7</u>	PRISONER consent form and financial certificate by Joseph Augustus Dixon. (DG) (Entered: 03/25/2016)
04/18/2016	<u>8</u>	ORDER granting <u>6</u> Motion for leave to proceed in forma pauperis. On or before MONDAY, MAY 16, 2016, Dixon must show cause why his petition is not barred. Signed by Judge Mary S. Scriven on 4/18/2016. (RO) (Entered: 04/18/2016)
05/16/2016	<u>9</u>	RESPONSE TO ORDER TO SHOW CAUSE re <u>8</u> Order on motion for leave to proceed in forma pauperis/affidavit of indigency filed by Joseph Augustus Dixon. (Attachments: # <u>1</u> Mailing Envelope)(DG) (Entered: 05/16/2016)
06/06/2016	<u>10</u>	STRICKEN, PURSUANT TO ORDER <u>15</u> MOTION to Dismiss by Joseph Augustus Dixon. (Attachments: # <u>1</u> Mailing Envelope)(DG) Motions referred to Magistrate Judge Julie S. Sneed. Modified on 2/15/2017 (DG). (Entered: 06/06/2016)
07/25/2016	<u>11</u>	NOTICE of inquiry of (6) MOTION for leave to proceed in forma pauperis/affidavit of indigency by Joseph Augustus Dixon. (Attachments: # <u>1</u> Mailing Envelope)(GLS) (Entered: 07/26/2016)
08/08/2016	<u>12</u>	SECOND RESPONSE TO ORDER TO SHOW CAUSE filed by Joseph Augustus Dixon. (duplicate of #9). (Attachments: # <u>1</u> Mailing Envelope)(DG) (Entered: 08/08/2016)
10/20/2016	<u>13</u>	AMENDED PETITION by a State prisoner for writ of habeas corpus filed by Joseph Augustus Dixon. (Attachments: # <u>1</u> Mailing Envelope)(CTR) (Entered: 10/21/2016)
10/20/2016	<u>14</u>	AMENDED MEMORANDUM in support re <u>13</u> Amended petition for writ of habeas corpus filed by Joseph Augustus Dixon. (CTR) (Entered: 10/21/2016)
02/15/2017	<u>15</u>	ORDER striking <u>10</u> un-signed motion to dismiss; Dixon's <u>1</u> petition for the writ of habeas corpus is DISMISSED AS TIME-BARRED. The CLERK is directed to CLOSE this case. Dixon may move to reopen this action within THIRTY (30) DAYS if he can show entitlement to a limitation under Section 2244(d)(1)(B). Signed by Judge Mary S. Scriven on 2/15/2017. (RO)

			(Entered: 02/15/2017)
03/10/2017	<u>16</u>		MOTION to Reopen Case by Joseph Augustus Dixon. (Attachments: # <u>1</u> Mailing Envelope)(DG) (Entered: 03/10/2017)
03/10/2017	<u>17</u>		DECLARATION of Kevin Foster-Bey re <u>16</u> MOTION to Reopen Case by Joseph Augustus Dixon. (DG) (Entered: 03/10/2017)
07/19/2017	<u>18</u>		ORDER granting <u>16</u> Motion to Reopen Case. The CLERK is directed to re-open this case and send to both the Respondent and the Attorney General of Florida a copy of this order, both the original and the amended petition and supporting memorandum (Docs. 1-2 and 13-14), the earlier orders (Docs. 8 and 15), and Dixon's responses. (Docs. 9, 16, and 17) On or before MONDAY, SEPTEMBER <u>11</u> , 2017, the Respondent must ADDRESS THE TIMELINESS OF DIXON'S PETITION AND RESPOND TO DIXON's ASSERTED ENTITLEMENT TO EITHER EQUITABLE TOLLING OR A LIMITATION UNDER SECTION 2244(d)(1)(B). Dixon may reply to the response within TWENTY-EIGHT (28) DAYS. Signed by Judge Mary S. Scriven on 7/19/2017. (RO) (Entered: 07/19/2017)
09/07/2017	<u>19</u>		<i>Limited</i> RESPONSE to <u>1</u> Petition for writ of habeas corpus, <u>13</u> Amended petition for writ of habeas corpus <i>motion to dismiss as time-barred, limited</i> RESPONSE to amended petition for writ of habeas corpus <i>motion to dismiss as time-barred</i> by Secretary, Department of Corrections.(Horbelt, Sonya) (Entered: 09/07/2017)
09/13/2017	<u>20</u>		NOTICE by Secretary, Department of Corrections re <u>19</u> Response to habeas petitionResponse to amended habeas petition <i>notice of filing exhibits</i> (Horbelt, Sonya) (Entered: 09/13/2017)
09/20/2017	<u>21</u>		APPENDIX re <u>19</u> Response to habeas petitionResponse to amended habeas petition by Secretary, Department of Corrections. Filed Separately. (One expandable folder). (DG) (Entered: 09/21/2017)
05/24/2018	<u>22</u>		NOTICE of inquiry by Joseph Augustus Dixon re <u>13</u> Amended petition for writ of habeas corpus (Attachments: # <u>1</u> Mailing Envelope)(LNR) (Entered: 05/25/2018)
08/21/2018	<u>23</u>		NOTICE of change of address by Joseph Augustus Dixon. (Docket updated to reflect current address). (LSS) (Entered: 08/21/2018)
08/09/2019	<u>24</u>		CASE Reassigned to Judge Thomas P. Barber. New case number: 8:16-cv-512-T-60JSS. Judge Mary S. Scriven no longer assigned to the case. (LRB) (Entered: 08/09/2019)
08/26/2019	<u>25</u>		STRICKEN PER <u>26</u> ORDER. AMENDED PETITION by a State prisoner for writ of habeas corpus filed by Joseph Augustus Dixon. (Attachments: # <u>1</u> Appendix, # <u>2</u> Mailing Envelope)(LD) Modified on 9/19/2019 (BSN). (Entered: 08/26/2019)
09/18/2019	<u>26</u>	5	ORDER striking as unauthorized <u>25</u> Amended petition for writ of habeas corpus filed; dismissing as time barred <u>13</u> Amended petition for writ of habeas corpus filed by Joseph Augustus Dixon. Certificate of appealability is denied and leave to appeal in forma pauperis is denied. Signed by Judge Thomas P. Barber on 9/18/2019. (SRC) (Entered: 09/18/2019)

09/19/2019	<u>27</u>	12	JUDGMENT in favor of Respondents against Petitioner. (Signed by Deputy Clerk). (BSN) (Entered: 09/19/2019)
10/04/2019	<u>28</u>	14	NOTICE OF APPEAL as to <u>26</u> Order, <u>27</u> Judgment – prisoner by Joseph Augustus Dixon. Filing fee not paid. (Attachments: # <u>1</u> Mailing Envelope)(LD) (Entered: 10/04/2019)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSEPH AUGUSTUS DIXON,

Applicant,

v.

CASE NO. 8:16-cv-512-T-60JSS

SECRETARY, Department of Corrections,

Respondent.

ORDER

Dixon applies under 28 U.S.C. § 2254 for the writ of habeas corpus (Doc. 13) and challenges his conviction for trafficking in cocaine, for which conviction Dixon is imprisoned for twenty-five years. The respondent moves (Doc. 19) to dismiss the application as time-barred. Dixon filed no reply to contest the respondent's calculation of the limitation. Having independently calculated the limitation, the court concurs with the respondent that the application is untimely.

Under the Anti-Terrorism and Effective Death Penalty Act, “[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of . . . the date on which the judgment became final by the

conclusion of direct review or the expiration of the time for seeking such review” 28 U.S.C. § 2244(d)(1)(A). Additionally, under 28 U.S.C. § 2244(d)(2), “[t]he 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.”

Dixon’s conviction became final on April 15, 2013, when the Supreme Court denied review on *certiorari*. (Respondent’s Exhibit 4) The federal limitation barred his claim one year later on April 15, 2014, absent tolling for a timely post-conviction application in state court. Dixon let 36 days elapse before he moved under state Rule 3.800(c) to modify a sentence on May 22, 2013. (Respondent’s Exhibit 5) Tolling continued until the motion was denied on July 10, 2013. (Respondent’s Exhibit 6) Dixon allowed another 74 days to elapse before he filed a state petition for the writ of habeas corpus in which he alleged that he was denied the effective assistance of appellate counsel. (Respondent’s Exhibit 7) Tolling continued until rehearing was denied on December 20, 2013. (Respondent’s Exhibit 9) Dixon allowed another 108 days to elapse before he moved under Rule 3.850 for post-conviction relief. (Respondent’s Exhibit 10) Tolling continued until the mandate issued on September 18, 2015. (Respondent’s Exhibit 13). At this point 218 days of the one-year limitation had expired (36 + 74 + 108 = 218); 147 days of the one-year limitation remained (365 - 218 = 147);

Dixon's one-year deadline was February 12, 2016 (September 18, 2015 + 147 days = February 12, 2016). Dixon filed his application under Section 2254 on March 1, 2016. Consequently, the application is two weeks late under Section 2244(d)(1)(a) for a one-year limitation based on when his conviction became final and tolling for the state post-conviction proceedings.

In his amended application in the space for addressing timeliness, Dixon appears to assert entitlement to a limitation under Section 2244(d)(1)(B), which establishes a one-year limitation based on a state-created impediment:

Petitioner was impeded and prevented to access the law library by prison officials resulting in petitioner being unable to prepare his 2254 petition for the writ of habeas corpus by a person in state custody. Further, petitioner was impeded by state from accessing pertinent records related to the case from the state attorney, court-appointed defense counsel, and state law enforcement agents creating an impediment to filing an application created by state action contrary to [28] U.S.C. 2244(d)(1)(B), justifying the granting of equitable tolling.

Section 2244(d)(1)(B) affords a limitation from "the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action." Dixon alleges that the prosecutor, his defense attorney, and some unidentified "law enforcement agents" impeded his "accessing pertinent records." First, Dixon fails to disclose both when these alleged "impediments" occurred and what records were allegedly withheld. Second — and more importantly — Dixon fails to show that these alleged

“impediments” were caused by **unlawful** conduct by a state official. Section 2244(d)(1)(B) requires the “State action [be] in violation of the Constitution or laws of the United States” *See Sanchez v. United States*, 170 F. App’x 643, 647 (11th Cir. 2006)¹ (recognizing that “an alleged governmental impediment must be unconstitutional”). Dixon fails to show entitlement to a limitation under Section 2244(d)(1)(B).

Next, Dixon appears to assert entitlement to equitable tolling of the one-year limitation based on the alleged impediment to accessing his records as discussed above. The one-year limitation established in Section 2244(d) is not jurisdictional and, as a consequence, “is subject to equitable tolling in appropriate cases.” *Holland v. Florida*, 560 U.S. 631, 645 (2010). “Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). *See Jones v. United States*, 304 F.3d 1035, 1040 (11th Cir. 2002), *cert. denied*, 538 U.S. 947 (2003). Dixon must meet both requirements, and he controls the first requirement — due diligence — but not the second requirement — extraordinary circumstances. The failure to meet either requirement precludes equitable tolling. An applicant’s “lack of diligence precludes equity’s operation.” *Pace*, 544 U.S.

¹ “Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority.” 11th Cir. Rule 36-2.

at 419. To satisfy the second requirement, Dixon must show extraordinary circumstances both beyond his control and unavoidable even with diligence. *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999). See cases collected in *Harper v. Ercole*, 648 F.3d 132, 137 (2nd Cir. 2011) (“To secure equitable tolling, it is not enough for a party to show that he experienced extraordinary circumstances. He must further demonstrate that those circumstances caused him to miss the original filing deadline.”). “[E]quitable tolling is an extraordinary remedy ‘limited to rare and exceptional circumstances and typically applied sparingly.’” *Cadet v. Fla. Dep’t of Corr.*, 853 F.3d 1216, 1221 (11th Cir. 2017) (quoting *Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009)).

First, because he provides no explanation of his efforts to acquire the allegedly withheld papers, Dixon fails to meet the “due diligence” requirement. Second, Dixon fails to show that his allegedly not having his papers qualifies as an “extraordinary circumstance.” See *Akins v. United States*, 204 F.3d 1086, 1089–90 (11th Cir.) (holding that equitable tolling is inapplicable because of a lack of access to legal papers, such as during lockdowns or when papers are misplaced by the prison), *cert. denied*, 531 U.S. 971 (2000); *Dodd v. United States*, 365 F.3d 1273, 1283 (11th Cir. 2004) (“*Akins* suggests that lockdowns and periods in which a prisoner is separated from his legal papers are not “extraordinary circumstances” in which equitable tolling is appropriate.”); *Paulcin v. McDonough*, 259 F. App’x 211, 213 (11th Cir. 2007) (“According to our prior decisions and statements in *Akins* and

Dodd, Paulcin's transfer to county jail and denial of access to his legal papers and the law library did not constitute extraordinary circumstances."), cert. denied, 555 U.S. 1086 (2008).

Lastly, Dixon has untimely filed an unauthorized amended application in which he asserts entitlement to the "actual innocence" (sometimes called "manifest injustice" or "fundamental miscarriage of justice") exception to the limitation. (Doc. 25 at 40) Simply asserting entitlement to the exception fails to prove entitlement to the exception. As currently asserted, Dixon fails to disclose a factual basis for asserting entitlement to the exception.

Dixon's amended application (Doc. 13) is **DISMISSED AS TIME-BARRED**. Dixon's amended application (Doc. 25) is **STRICKEN** as unauthorized. The clerk must enter a judgment against Dixon and close this case. Dixon has thirty days to move to re-open this case and show his entitlement to the actual innocence exception to the one-year limitation.

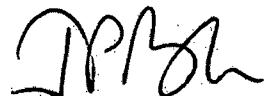
**DENIAL OF BOTH
CERTIFICATE OF APPEALABILITY
AND LEAVE TO APPEAL *IN FORMA PAUPERIS***

Dixon is not entitled to a certificate of appealability ("COA"). A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his application. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a COA. Section 2253(c)(2) permits issuing a COA "only if the

applicant has made a substantial showing of the denial of a constitutional right.” To merit a COA, Dixon must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir 2001). Because the application is clearly time-barred, Dixon is entitled to neither a COA nor leave to appeal *in forma pauperis*.

A certificate of appealability is DENIED. Leave to appeal *in forma pauperis* is DENIED. Dixon must obtain permission from the circuit court to appeal *in forma pauperis*.

ORDERED in Tampa, Florida, on September 18th, 2019.



THOMAS P. BARBER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSEPH AUGUSTUS DIXON,

Petitioner,

v.

Case No: 8:16-cv-512-T-60JSS

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

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED Judgment against Petitioner, Joseph Augustus Dixon.

ELIZABETH M. WARREN,
CLERK

s/B.Napier, Deputy Clerk

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
 - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
 - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
 - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.
 - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.
 - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
 - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
 - (b) **Fed.R.App.P. 4(a)(3):** "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."
 - (c) **Fed.R.App.P. 4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
 - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
 - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

10-1-19 FOR MAILING.

(11TH) ELEVENTH CIRCUIT COURT OF APPEALS, ATLANTA GEORGIA
AND/OR
IN THE UNITED STATES
DISTRICT COURT OF THE MIDDLE DISTRICT
TAMPA DIVISION

JOSEPH AUGUSTUS DIXON,
Defendant,

11th Circuit Case Number:
Case No.: 8:16 - cv - 512 -T - 60JSS

v.

FLORIDA DEPARTMENT OF
CORRECTIONS, SECRETARY
MARK INCH and,
Respondents

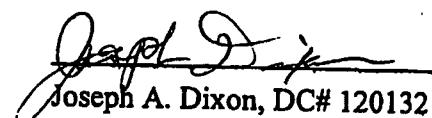
“NOTICE OF APPEAL”

COMES NOW, the Petitioner, Joseph A. Dixon, pro se, hereby timely files pursuant to federal laws, rules and procedures files this notice of appeal to the dated denial of September 18th, 2019 received by Petitioner on September 24, 2019 at Marion Correctional Institution, see, as follows:

(1). The Petitioner is appealing to the (11th) Eleventh Judicial Circuit Court of Atlanta, Georgia the attached dated denial order Exhibit “A” dated September 18th, 2019 by Federal Judge Thomas P. Barber of Petitioner’s § 2254 Federal Habeas Corpus Trial Counsel ineffectiveness, see, Marshall v. Jerrico, 100 S. Ct. 1610 (1980), is considered timely filed.

OATH

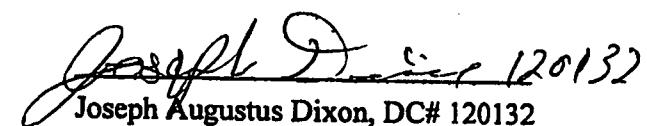
UNDER THE PENALTIES OF PERJURY, I do swear that the facts and circumstances are true and correct, see, Kafo v. U.S., 467 F.3d 1063, 1054 (7th Cir. 2005).



Joseph A. Dixon, DC# 120132

CERTIFICATE OF SERVICE

I hereby certify that this timely "Notice of Appeal" has been given to Florida DOC officials to be U.S. mailed to : United States District Court of Appeals, 56 Forsythe Street, Atlanta, Georgia 30303; Attorney General Ashley Moody, 3507 East Frontage Road, Tampa Florida 33607/7013; U.S. District Court, Middle District Florida, Sam M. Gibbons, 801 Florida Avenue, Tampa, Florida 33602/34800, filed on this 1 day of Oct., 2019, see, Ray v. Clements, 700 F.3d 993, n. [1] (7th Cir. 2012)(same).



Joseph Augustus Dixon, DC# 120132
Marion Correctional Institution
P.O. Box 158
Lowell, Florida, 32663 – 0158

Joseph Dixon #60132145
Marion Correctional Institution
P.O. Box 158
Lewell, Fla. 32663

JACKSONVILLE FL 322

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Document 28-1

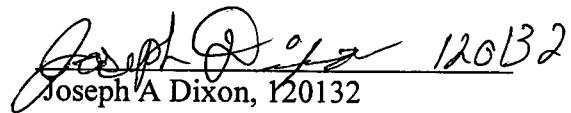
Filed 10/04/19 Page 1

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By USMS

U.S. District Court, Middle District Florida
Sam M. Gibbons
801 Florida Avenue
Tampa Fla. 33602/34800
33602-380099

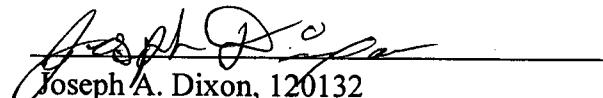
OATH

Under the penalties of perjury, I do swear that the facts' and circumstances' are true and correct, see, Kafo vs. U.S., 467 F.3d 1063, 1068 (7th Cir. 2006) executed on April,
9 of 2020.


Joseph A Dixon, 120132

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this Appendix has been given to Florida DOC officials' to be U.S. Mailed to the: U.S. Supreme Court, One First Street, N.E. Washington D.C., 20543; Attorney General Ashley Moody, 3507 East Frontage Road, Tampa, Florida, 33607, filed on this date of April, 9, 2020, see, Ray v. Clements, 700 F.3d 993, N. [1] (7th Cir. 2012)(“Mailbox rule”).


Joseph A. Dixon, 120132
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