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

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June 11, 2019

Edward L. Collins
CFRC Main - Inmate Legal Mail
7000 H C KELLEY RD
ORLANDO, FL 32831-2518

Appeal Number: 18-12925-D
Case Style: Edward Collins v. Secretary, Department of Corr., et al
District Court Docket No: 3:15-cv-00757-BJD-PDB

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.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless you pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Scott O'Neal, D
Phone #: (404) 335-6189

MOT-2 Notice of Court Action

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12925-D

EDWARD L. COLLINS,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

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

Before: MARTIN and ROSENBAUM, Circuit Judges.

BY THE COURT:

Edward L. Collins has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated April 25, 2019, denying his motions for a certificate of appealability and leave to proceed on appeal *in forma pauperis* following the district court's dismissal of his 28 U.S.C. § 2254 habeas corpus petition as time-barred. Because Collins has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, his motion for reconsideration is DENIED.

UNITED STATES COURT OF APPEALS
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56 Forsyth Street, N.W.
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David J. Smith
Clerk of Court

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April 25, 2019

Clerk - Middle District of Florida
U.S. District Court
300 N HOGAN ST
JACKSONVILLE, FL 32202

Appeal Number: 18-12925-D
Case Style: Edward Collins v. Secretary, Department of Corr., et al
District Court Docket No: 3:15-cv-00757-BJD-PDB

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: Scott O'Neal, D
Phone #: (404) 335-6189

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12925-D

EDWARD L. COLLINS,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

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

ORDER:

Edward L. Collins is a Florida prisoner who is serving a 25-year sentence for aggravated battery, possession of a firearm by a convicted felon, and possession of cocaine. The trial court entered its final judgment and sentence on December 17, 2009. The Florida First District Court of Appeal ("1st DCA") summarily affirmed Mr. Collins's convictions and sentence without a written opinion on January 13, 2011. On March 18, 2011, Mr. Collins filed his first Rule 3.850 postconviction motion. The state postconviction court denied Mr. Collins's motion on the merits,

but without a written opinion, on February 1, 2013. The 1st DCA affirmed without a written opinion and issued its mandate on April 19, 2013.

Mr. Collins filed a second Rule 3.850 motion on March 14, 2013. The state postconviction court dismissed it as procedurally barred and untimely on August 28, 2013. The 1st DCA summarily affirmed and issued its mandate on February 18, 2014.

Mr. Collins filed a third Rule 3.850 motion on March 14, 2014. The postconviction court dismissed the motion as successive and untimely on October 9, 2014. The 1st DCA summarily affirmed and issued its mandate on April 30, 2015.

After unsuccessfully pursuing a direct appeal and state postconviction proceedings, Mr. Collins filed a pro se 28 U.S.C. § 2254 habeas corpus petition on June 19, 2015, raising six claims for relief:

1. his trial counsel was ineffective for failing to move to suppress his recorded interview with law enforcement;

2. his trial counsel was ineffective for not calling an exculpatory witness at trial;

3. his trial counsel was ineffective for not moving to sever the three charges;

4. his trial counsel was ineffective for failing to object to the prosecutor's statements during closing argument;

5. his trial counsel was ineffective for not deposing a state witness prior to trial; and

6. the trial court erred by permitting the prosecutor to mention his recorded interview, which was not in evidence, in closing argument.

Mr. Collins argued that his petition was timely because each of his three Rule 3.850 postconviction motions tolled the time for filing his § 2254 petition.

The state moved to dismiss Mr. Collins's petition as time-barred, arguing his second and third Rule 3.850 motions did not toll the federal limitation period because they were dismissed as untimely. Mr. Collins replied, arguing his second Rule 3.850 motion was properly filed based on newly discovered evidence and his third Rule 3.850 motion properly challenged the dismissal of his second motion. He argued his § 2254 petition was timely. Alternatively, Mr. Collins argued he was entitled to equitable tolling because his multiple state postconviction filings showed that he had been diligently pursuing his rights.

The District Court granted the state's motion and dismissed Mr. Collins's § 2254 petition with prejudice as time-barred. The District Court determined that Mr. Collins's convictions became final on April 13, 2011, and that the federal limitation period was tolled until February 1, 2013, while his first Rule 3.850 motion was pending. The court concluded Mr. Collins's second and third Rule 3.850 motions did not toll the federal limitation period because the state court dismissed them as successive and untimely. The District Court determined that more than a year of untolled time elapsed before the filing of Mr. Collins's June 2015 § 2254

petition. The court also determined that Mr. Collins had not alleged that any extraordinary circumstance prevented timely filing so as to warrant equitable tolling, and had not alleged that he was actually innocent. The District Court also denied a certificate of appealability ("COA") and leave to proceed in forma pauperis ("IFP") on appeal.

Mr. Collins moved for reconsideration under Fed. R. Civ. P. 59(e), reiterating his arguments that his second and third Rule 3.850 motions were properly filed under Florida law and tolled the federal limitation period. The District Court denied Mr. Collins's motion for reconsideration, noting that he "simply reassert[ed] matters he previously raised or that were already considered by the [c]ourt." The District Court also denied Mr. Collins a COA.

Mr. Collins has appealed and moves this Court for a COA with respect to the dismissal of his petition and with respect to the denial of his request for reconsideration. He also seeks leave to proceed IFP on appeal.

I.

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). Where the District Court denied habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the District Court was correct in its

procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

A.

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Section 2254 petitions are subject to a one-year statute of limitations that begins to run on the latest of four triggering events, including "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). The Supreme Court has explained that "[f]inality attaches when [it] affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires." Clay v. United States, 537 U.S. 522, 527, 123 S. Ct. 1072, 1076 (2003) (involving a 28 U.S.C. § 2255 motion).

The limitation period is statutorily tolled for "[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." 28 U.S.C. § 2244(d)(2). This Court recognizes a motion filed pursuant to Rule 3.850 as an application for State post-conviction or other collateral review under § 2244(d)(2). Day v. Crosby, 391 F.3d 1192, 1192–93 (11th Cir. 2004) (per curiam) (stating the petitioner filed a Rule 3.850 motion, "which tolled the limitation period for filing a habeas petition"). "An application is 'filed,' as that term is commonly understood, when it is delivered to,

and accepted by, the appropriate court officer for placement in the official record," and "'properly filed' when its delivery and acceptance are in compliance with the applicable laws and rules governing filings." Artuz v. Bennett, 531 U.S 4, 8, 121 S. Ct. 361, 364–65 (2000). "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." Id. at 8, 121 S. Ct. at 365. "[T]ime limits, no matter their form, are 'filing' conditions." Pace v. DiGuglielmo, 544 U.S. 408, 417, 125 S. Ct. 1807, 1814 (2005). When this Court is presented with a state court determination that a prisoner's postconviction petition was untimely under state law, we give deference to such determinations. See Webster v. Moore, 199 F.3d 1256, 1259 (11th Cir. 2000) (per curiam).

Reasonable jurists would not debate the District Court's determination that Mr. Collins's § 2254 petition was time-barred. Mr. Collins's convictions and sentences became final on April 13, 2011, which was 90 days after the 1st DCA per curiam affirmed his convictions and sentences. See Clay, 537 U.S. at 527, 123 S. Ct. at 1076. Mr. Collins filed his first Rule 3.850 motion on March 18, 2011, before his convictions and sentence became final, and the motion remained pending until the 1st DCA's mandate issued on April 19, 2013. Nyland v. Moore, 216 F.3d 1264, 1267 (11th Cir. 2000) (explaining that a post-conviction petition submitted to a

Florida court remains pending until the mandate issues). Thus, Mr. Collins had until April 21, 2014,[1] to timely file a § 2254 petition.

The state court's rejection of Mr. Collins's second and third Rule 3.850 motions as untimely conclusively established that they were not "properly filed" for purposes of § 2244(d)(2) and did not toll the limitation period. See Pace, 544 U.S. at 414, 125 S. Ct. at 1812; Webster, 199 F.3d at 1259. Mr. Collins's June 19, 2015, § 2254 petition was untimely by more than a year.

Although Mr. Collins stated he had been pursuing his rights diligently, he was not entitled to equitable tolling because he did not allege any extraordinary circumstance that prevented him from filing a timely § 2254 petition. See Holland v. Florida, 560 U.S. 631, 649, 130 S. Ct. 2549, 2562 (2010) (holding that AEDPA's limitation period may be equitably tolled, but the petitioner must show "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.") (quotation marks omitted). Similarly, he did not present any new, reliable evidence of his actual innocence of the crimes of conviction. See McQuiggin v. Perkins, 569 U.S. 383, 386, 133 S. Ct. 1924, 1928 (2013) (holding that a claim of actual innocence, if proved, overrides the AEDPA's

[1] Mr. Collins's one-year limitation period began to run on April 20, 2013. April 20, 2014, fell on a Sunday, and, consequently, the limitation period expired one day later on April 21, 2014. Fed. R. Civ. P. 6(a)(1)(C).

statute-of-limitations bar). The Court concludes Mr. Collins is not entitled to a COA to appeal the District Court's dismissal of his petition.

B.

This Court reviews a district court's "denial of a motion for reconsideration for an abuse of discretion." Richardson v. Johnson, 598 F.3d 734, 740 (11th Cir. 2010). "A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." Id. (quotation marks omitted). Rather, the three primary grounds justifying the grant of 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." Del. Valley Floral Grp., Inc. v. Shaw Rose Nets, LLC, 597 F.3d 1374, 1383 (11th Cir. 2010) (quotation omitted).

In his motion for reconsideration, Mr. Collins simply reiterated the same arguments raised in his § 2254 petition and reply to the state's response. He did not identify any change in the law, new evidence not presented in his prior pleadings, or clear error by the District Court. Because Mr. Collins offered no new evidence or arguments of merit as to why the District Court should reconsider its previous order dismissing his § 2254 petition as time-barred, the District Court did not abuse its discretion in denying the motion. Id.

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Mr. Collins's motion for a COA is **DENIED**, and his motion for leave to proceed IFP on appeal is **DENIED AS MOOT**.

Barry D. Martin
UNITED STATES CIRCUIT JUDGE