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USCA11 No. 18-14726

IN THE
SUPREME COURT OF THE UNITED STATES

JODY M. JOHNSON

Petitioner

v.

SECRETARY, FLA. DEPT. OF CORRECTIONS, ET AL.

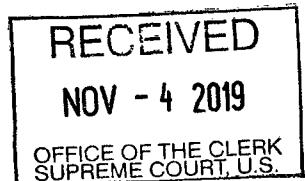
Respondent

**MOTION TO ACCEPT PETITION AS TIMELY FILED
DUE TO EXTRAORDINARY CIRCUMSTANCES**

COMES NOW, the Petitioner, **Jody M. Johnson**, *pro se*, pursuant to the instructions provided by the Clerk on its letter dated October 17, 2019, and respectfully requests that the Clerk accept Petitioner's Petition for Writ of Certiorari as timely filed, where Petitioner's one day delay in filing his Petition was not the result of his neglect but, rather it was due to extraordinary circumstances and external impediments beyond his control.

In support thereof, the Petitioner states as follows:

- (1) The Petitioner is a prisoner at the Florida Department of Corrections ("FDC") Madison C.I. facility located in Madison County, Florida.
- (2) The Petitioner was ready to timely file his Petition on September 24, 2019, as reflected by the Certificate of Service in the Petition.

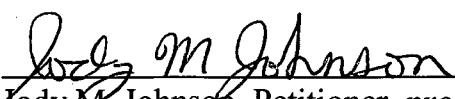


(3) The institution where Petitioner is housed was placed on an institution-wide security lock-down between the dates of September 23 and September 25, 2019. During this lock-down, the Petitioner was not permitted to leave his housing unit to attend the law library and prepare the copies necessary to timely mail/file his Petition. This fact is confirmed by a letter/memorandum provided to Petitioner by an institutional official at Madison C.I. attesting to the facts which prevented Petitioner, despite his diligent efforts, from timely filing his Petition. *See Exhibit – 1*, FDC Memorandum.

(4) Petitioner's failure to timely file his Petition for Writ of Certiorari with this Honorable Court was not due to personal neglect, but rather, due to extraordinary circumstances and external impediments that were beyond his control as an incarcerated inmate, facts which are supported by an official memorandum from an FDC official addressed to the Clerk of this Court explaining the reason why the filing deadline was missed by Petitioner.

WHEREFORE, based on the foregoing reasons, the Petitioner kindly requests that his Petition and Supplemental Appendix be accepted as timely filed due to the extraordinary circumstances outlined herein.

Respectfully submitted,



Jody M. Johnson, Petitioner, *pro se*
DC# I01246
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340-4430

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14726-D

JODY M. JOHNSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

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

Before: WILLIAM PRYOR and NEWSOM, Circuit Judges.

BY THE COURT:

Jody M. Johnson has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated May 7, 2019, denying his motions for a certificate of appealability ("COA") and leave to proceed *in forma pauperis*, in his appeal of the district court's denial of his motions for relief from the denial of his 28 U.S.C. § 2254 habeas corpus petition. Upon review, Johnson's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit that warrant relief.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14726-D

JODY M. JOHNSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

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

ORDER:

Jody M. Johnson is a Florida prisoner serving a 35-year sentence for a 2007 conviction for lewd or lascivious molestation of a child under 12 years of age. In 2014, he filed a *pro se* 28 U.S.C. § 2254 petition for writ of habeas corpus, raising 14 claims. The district court denied the § 2254 petition, concluding that Claims 9 through 12 were procedurally defaulted and that the remaining claims failed on the merits. Subsequently, Johnson filed two motions for reconsideration, which the district court denied. Johnson now seeks a certificate of appealability (“COA”) and leave to proceed on appeal *in forma pauperis* (“IFP”), to appeal the district court’s denial of his motions for reconsideration.¹

¹ This Court’s jurisdiction does not extend to the judgment denying Johnson’s § 2254 petition, which was entered more than 60 days before Johnson’s notice of appeal. *See Fed. R. App. P. 4(a)(1)(B).*

A COA is required to appeal of the denial of both Rule 59(e) and 60(b) motions in a § 2254 proceeding. *Perez v. Sec'y, Fla. Dep't of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013) (stating that a COA is required to appeal the denial of a Rule 59(e) motion in a habeas proceeding); *Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2006) (stating that a COA is required for an appeal of the denial of a Rule 60(b) motion in a habeas proceeding). 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).

The appeal of a Rule 60(b) motion is limited to determining whether the district court abused its discretion in denying the motion, as is the denial of a Rule 59(e) motion. *See Mincey v. Head*, 206 F.3d 1106, 1137 (11th Cir. 2000) (establishing the standard of review for Rule 59(e) motions); *Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996) (establishing the standard of review for Rule 60 motions). “[A]n abuse of discretion occurs if the judge fails to apply the proper legal standard or to follow proper procedures in making the determination, or . . . makes findings of fact that are clearly erroneous.” *Mincey*, 206 F.3d at 1137 n.69.

Rule 60(b) allows a party to move a court for relief from a final judgment due to mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, misrepresentation or misconduct of an adverse party, the judgment being discharged, or any other reason justifying relief. Fed. R. Civ. P. 60(b)(1)-(6). Relief under Rule 60(b)(6) “is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances.” *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984). The only grounds for granting a Rule 59(e) motion are newly discovered evidence or manifest errors of law or fact. *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010). A Rule 59(e) motion cannot be used to relitigate old matters, raise argument, or present evidence that could have been raised prior to the entry of judgment. *Id.*

Here, the district court did not abuse its discretion in denying Johnson's motions for reconsideration under either Rule 59(e) or 60(b). In his motions, Johnson merely attempted to relitigate arguments raised in his § 2254 petition and did not allege any reasons that would warrant relief under either Rule 59(e) or 60(b). Fed. R. Civ. P. 60(b)(1)-(6); *Jacobs*, 626 F.3d at 1344. Johnson did not demonstrate any "extraordinary circumstances" justifying relief. *Griffin*, 722 F.2d at 680. Accordingly, because Johnson failed to make a showing of the denial of a constitutional right, his motion for a COA is DENIED and his motion for IFP status is DENIED AS MOOT. 28 U.S.C. § 2253(c)(2).

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

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Clerk's Office.**