

IN THE UNITED STATES SUPREME COURT
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543-0001

Timothy A. MARZ
Petitioner,

vs

MARIC INCH
Respondent.

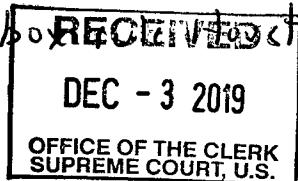
CASE NO. # USCA11NOH19-10175C



MOTION REQUESTING THE CLERK TO FILE A
PETITION FOR WRIT OF CERTIORARI OUT-OF-TIME

Appellant Timothy A MARZ is pro se pursuant to the United States Supreme Court Rule 29 moves for reconsideration of his timeliness in the filing of His WRIT of Certiorari requesting the Clerk to file a Petition for WRIT-OF-CERTIORARI OUT-OF-TIME.

1. Petitioner received the July 19, 2019 court order on July 26, 2019. Petitioner is implying the mailbox **RECEIVED** action ✓
Lack 108 S.Ct 2379 (1988)



2. Petitioner Sent a request to get a copy of his Six month money statement of his account in order to be in compliance with AFFIDAVIT OR DECLARATION in support

at 18:00 am.

5. The legal unit of EVERGLADES Correctional Institution is done
at "ONE TIME ADAY" for the entire Prison. There is a call out
place for people to pick up legal unit. And at the same time can
meet out legal unit. This is the only time of day it is done.

the expectations for the prisoners.

4. The motion was completed and signed on October 16, 2019.
Petitioner had to wait for "Copies" and to be "mailed".
Per Institution and Rules and Procedures to insure the Safety of

3. Petitioner was in compliance with the rules of the institution
and apply for a copy request at the Law Library. on Oct. 17, 2019
Petitioner did make a request for copies. on or around October
6, 2019, but the library was out of paper for the copy machine for
more than 10 days (From Oct. 6th Oct. 16, 2019) Situation that precluded
to obtain such copies in a timely manner. Thus such delay was
not made in disregard or negligence on the part of Petitioner.

on Oct. 16, 2019.

2. MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
on Oct. 15, 2019; This information was forwarded back to me

6. ON Oct. 17, 2019 Petitioner received his copies from the Law Library at 2:00 PM. Legal mail was already done. So the next available opportunity was at legal mail on Oct. 18, 2019. That is the earliest that I could get this out. Due to the procedure and policy of this institution.

7. ON September 2, 2019 is Labor Day this is a National holiday.

CONCLUSION

Based on the foregoing Appellant should be timely filed based on the mail box rule. is the date Petitioner received the order. July 26, 2019. Houston v Luck 108 S.Ct 2379 (1988) situation that precluded to obtain such copies in a timely manner. Thus such delay was not made in disregard or negligence on the part of Petitioner. It is so timely filed.

Respectfully Submitted

Timothy A. Mar

TimOTHY A. MAR/12 DC#252162

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10175-C

TIMOTHY ALAN MARR,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

ORDER:

Timothy Marr is a Florida prisoner serving life imprisonment after a jury found him guilty of robbery, fleeing an officer, resisting an officer with violence, and possession of cocaine. In January 2015, Mr. Marr filed this *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, which the district court dismissed as untimely. Mr. Marr filed a motion for reconsideration, under Fed. R. Civ. P. 60(b), reiterating the timeline of his post-conviction relief efforts and arguing that the district court improperly determined that his § 2254 petition was untimely. A few days later, he filed a Rule 59(e) motion, arguing that he was entitled to equitable tolling based on his bipolar disorder and low intelligence. The district court denied both motions. Mr. Marr appealed and now seeks a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") in this Court. He also seeks appointment of counsel.

In order to obtain a COA, a petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the district court denied a habeas petition on procedural grounds, the petitioner must show that jurists of reason would find debatable (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 (2000).

Here, reasonable jurists would not debate the district court’s determination that Mr. Marr’s § 2254 petition was time-barred. The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) limitations period began to run on August 4, 2009, and Mr. Marr let 226 days elapse before filing his first motion for post-conviction relief on March 18, 2010. *See Nix v. Sec'y for Dep't of Corr.*, 393 F.3d 1235, 1236-37 (11th Cir. 2004). The limitations period was tolled until February 11, 2011, and Mr. Marr then had until June 30, 2011, to file a § 2254 petition, which he failed to do. *See Nyland v. Moore*, 216 F.3d 1264, 1267 (11th Cir. 2000).

Mr. Marr did file a state post-conviction motion on April 4, 2011, which would have tolled the limitations period if it was “properly filed.” *See* 28 U.S.C. § 2244(d)(2). However, that motion was never “properly filed” and had no tolling effect because the state court denied it with prejudice after twice striking it and allowing him to amend to comply with the court’s rules. *See Artuz v. Bennett*, 531 U.S. 4, 8-9 (2000). Accordingly, the limitations period expired in June 2011, his future motion for post-conviction relief had no tolling effect because the limitations period had already expired, and his January 2015 § 2254 petition was untimely. *See Sibley v. Culliver*, 377 F.3d 1196, 1204 (11th Cir. 2004).

Mr. Marr also failed to demonstrate that he was entitled to equitable tolling. Although he argued in his Rule 59(e) motion that he suffered from bipolar disorder, he failed to explain how it

prevented him from timely filing a § 2254 motion. *See Holland v. Florida*, 560 U.S. 631, 649 (2010).

Additionally, the district court did not abuse its discretion by denying Mr. Marr's Rule 59(e) and 60(b) motions. First, Mr. Marr's Rule 60(b) motion did not specifically identify any mistake, clerical error, or fraud. Instead, he merely disagreed with the district court's timeliness determination. Accordingly, the district court did not abuse its discretion by denying his Rule 60(b) motion. *Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1278 (11th Cir. 2004) (*en banc*), *aff'd on other grounds sub nom. Gonzalez v. Crosby*, 545 U.S. 524, 532 nn. 4-5 (2005). Second, Mr. Marr's Rule 59(e) motion relied on no newly discovered evidence or manifest errors of law or fact, and, accordingly, the district court did not abuse its discretion by denying it. *See Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007).

Because reasonable jurists would not debate the district court's dismissal of Mr. Marr's § 2254 petition as time-barred, or its denials of his Rule 60(b) and 59(e) motions, his motion for a COA is DENIED. His motions for appointment of counsel and IFP status are DENIED AS MOOT.



UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10175-C

TIMOTHY ALAN MARR,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

Before: JORDAN and JILL PRYOR, Circuit Judges.

BY THE COURT:

Timothy Alan Marr has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's May 7, 2019, order denying a certificate of appealability, leave to proceed on appeal *in forma pauperis*, and appointment of counsel following the dismissal of his petition for a writ of habeas corpus, 28 U.S.C. § 2254, and denials of subsequent motions to reconsider and alter judgment, Fed. R. Civ. P. 59(e) and 60(b). Upon review, Marr's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

**Additional material
from this filing is
available in the
Clerk's Office.**