

APPENDIX "A"

CORRECTED
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No 20-10574-J

ANTONIO U. AKEL,
a.k.a. Tony Akel,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

Appellant's motion for remand to the district court is DENIED. His motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). His motions for leave to proceed *in forma pauperis*, appointment of counsel, leave to file a supplemental reply, and judicial notice are DENIED AS MOOT.

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

"ADDENDUM A"

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No 20-10574-J

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO U. AKEL,
a.k.a. Tony Akel,

Defendant-Appellant.

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

Before: WILLIAM PRYOR and ROSENBAUM, Circuit Judges.

BY THE COURT:

Antonio Akel has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's May 19, 2020, order denying a certificate of appealability, leave to proceed *in forma pauperis*, appointment of counsel, remand to the district court, judicial notice, and leave to file supplemental reply in his appeal from the denial of his *pro se* Fed. R. Civ. P. 59(e) motion for reconsideration of the district court's order denying his Fed. R. Civ. P. 60(b) motion for relief from the district court's underlying judgment denying his 28 U.S.C. § 2255 motion to vacate. Upon review, Akel's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

" APPENDIX B "

APPENDIX "C"

ANTONIO U. AKEL, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2016 U.S. App. LEXIS 24492
No. 15-15341-E
March 2, 2016, Decided

Editorial Information: Prior History

{2016 U.S. App. LEXIS 1} Appeal from the United States District Court for the Northern District of Florida.

Counsel

Antonio U. Akel, Petitioner - Appellant, Pro se, Inez, KY.

For United States of America, Respondent - Appellee: Lennard B. Register III, Robert G. Davies, Pamela C. Marsh, Thomas P. Swaim, U.S. Attorney's Office, Pensacola, FL.

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

Opinion

Opinion by:

William H. Pryor Jr.

Opinion

ORDER:

Antonio U. Akel has filed an "Emergency Pro Se Declaration for Equal Protection and Due Process." The Court construes this as a motion for liberal construction of his *pro se* filings. So construed, the motion is GRANTED. See *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

Akel also moves for a certificate of appealability ("COA") in order to appeal the denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. To merit a COA, he 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, 1600-01, 146 L. Ed. 2d 542 (2000). Because he has failed to make the requisite showing, the motion for a COA is DENIED.

Akel's motion for appointment of counsel is DENIED AS MOOT.

/s/ William H. Pryor Jr.

UNITED STATES CIRCUIT JUDGE

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"APPENDIX C"

APPENDIX "D"

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANTONIO AKEL, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2019 U.S. App. LEXIS 35330
No. 17-14707-AA
November 25, 2019, Decided

Editorial Information: Subsequent History

Reconsideration denied by United States v. Akel, 2020 U.S. App. LEXIS 4146 (11th Cir. Fla., Feb. 10, 2020)

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1} Appeal from the United States District Court for the Northern District of Florida. Akel v. United States, 2017 U.S. App. LEXIS 27868 (11th Cir. Fla., July 12, 2017)

Counsel For United States of America, Plaintiff - Appellee: Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, Pensacola, FL.

Antonio U. Akel, Defendant - Appellant, Pro se, Estill, SC.

Judges: J.L. Edmondson, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: J.L. Edmondson

Opinion

ORDER:

Appellant moves for a certificate of appealability ("COA") on his claim for ineffective assistance of trial counsel in presenting Appellant's Fourth Amendment claims. This Court has already denied a COA on this claim. Appellant's motion for a COA is thus DENIED as barred under the law-of-the-doctrine case. For background, see United States v. Anderson, 772 F.3d 662, 668 (11th Cir. 2014); United States v. Escobar-Urrego, 110 F.3d 1556, 1560 (11th Cir. 1997).

Appellant's motion for a refund of the appellate filing fee is DENIED.

Appellant's motions (1) for leave to file a petition for rehearing in excess of the applicable page limits and (2) for appointment of appellate counsel are HELD IN ABEYANCE pending a determination about Appellant's financial ability to obtain representation. The Clerk is directed to send to Appellant the appropriate affidavit of indigency.

/s/ J.L. Edmondson

United STATES CIRCUIT JUDGE

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"APPENDIX D"

APPENDIX "E"

JOSEPH L. STRICKLAND, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

2010 U.S. App. LEXIS 27736

No. 09-15581-D

March 30, 2010, Filed

Editorial Information: Prior History

{2010 U.S. App. LEXIS 1}

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

Counsel

Joseph Strickland (49054-018), Pro se, MARIANNA, FL.

For United States of America, Appellee: Susan Hollis

Rothstein-Youakim, U.S. Attorney's Office/MFL, TAMPA, FL.

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

Opinion

Opinion by: William H. Pryor, Jr.

Opinion

ORDER:

Joseph L. Strickland moves for a certificate of appealability, as construed from his notice of appeal, to appeal the dismissal of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, as construed from his petition for a writ of *audita querela*. To merit a certificate of appealability, Strickland 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, 1600-01, 146 L. Ed. 2d 542 (2000).

Because Strickland's motion is plainly barred by § 2255's one-year statute of limitations and he has not shown that he is entitled to equitable tolling, Strickland has failed to satisfy the second prong of Slack's test. The motion for a certificate of appealability is DENIED.

Strickland's motion for {2010 U.S. App. LEXIS 2}leave to proceed on appeal *informa pauperis* is DENIED AS MOOT.

/s/ William H. Pryor, Jr.

UNITED STATES CIRCUIT JUDGE

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"APPENDIX E"

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JUANICE GAINES, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

2012 U.S. App. LEXIS 27382

No. 11-15404-A

April 30, 2012, Filed

Editorial Information: Prior History

{2012 U.S. App. LEXIS 1} Appeal from the United States District Court for the Southern District of Georgia. Gaines v. United States, 2011 U.S. Dist. LEXIS 121374 (S.D. Ga., Oct. 20, 2011)

Counsel JUANICE GAINES, Petitioner - Appellant, Pro se, EDGEFIELD, SC.
For UNITED STATES OF AMERICA, Respondent - Appellee: R.
Brian Tanner, Edward J. Tarver, U.S. Attorney's Office, SAVANNAH, GA.
Judges: James Larry Edmondson, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: James Larry Edmondson

Opinion

ORDER:

Juanice Gaines moves for a certificate of appealability, as construed from his notice of appeal, to appeal the denial of his motion to vacate, filed pursuant to 28 U.S.C. § 2255, as untimely. In his motion, Gaines argued that: (1) the prosecutor "failed to produce" the cocaine that he allegedly possessed, resulting in a violation of his Fifth, Eighth, and Fourteenth Amendment rights; (2) the court erred by refusing to allow him to withdraw his guilty plea; (3) he had new evidence, consisting of an affidavit, dated August 11, 2011, that proved that he was innocent of the alleged offense conduct; and (4) his trial counsel rendered ineffective assistance of counsel. To merit a certificate of appealability, Gaines 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, 1600-01, 146 L. Ed. 2d 542 (2000). Although the one-year {2012 U.S. App. LEXIS 2} limitations period for filing his § 2255 motion to vacate expired in June 2010, Gaines did not file his motion until August 2011, and did not demonstrate that he was eligible for either statutory or equitable tolling of the applicable limitations period. Accordingly, because Gaines has failed to make the requisite showing, his motion for a certificate of appealability is DENIED. Gaines's motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.

/s/ James Larry Edmondson

UNITED STATES CIRCUIT JUDGE

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"APPENDIX E"

THOMAS CURTIS HINES, Petitioner-Appellant, versus WILLIE E. JOHNSON, Respondent,
CYNTHIA WHITE, Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2013 U.S. App. LEXIS 17000
No. 12-13732-E
March 1, 2013, Decided

Editorial Information: Subsequent History

US Supreme Court certiorari denied by Hines v. White, 2014 U.S. LEXIS 1387 (U.S., Feb. 24, 2014)

Editorial Information: Prior History

{2013 U.S. App. LEXIS 1}

Appeal from the United States District Court for the Southern District of Alabama. Hines v. White, 2012 U.S. Dist. LEXIS 81196 (S.D. Ala., June 12, 2012)

Counsel THOMAS CURTIS HINES, Petitioner - Appellant, Pro se, ATMORE, AL.
For CYNTHIA WHITE, Respondent - Appellee: Madeline Lewis,
Luther J. Strange, III, Attorney General's Office, MONTGOMERY, AL.

Judges: Gerald Bard Tjoflat, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Gerald Bard Tjoflat

Opinion

ORDER:

Thomas Curtis Hines moves for a certificate of appealability ("COA") in order to appeal the denial of his habeas corpus petition, filed pursuant to 28 U.S.C. § 2254. To merit a COA, he 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, 1600-01, 146 L. Ed. 2d 542 (2000). Because he has failed to make the requisite showing, the motion for a COA is DENIED.

Hines's motion for leave to proceed on appeal *in forma pauperis* is DENIED AS MOOT. His motion for leave to file original state court transcripts on oversize paper is likewise DENIED AS MOOT.

/s/ Gerald Bard Tjoflat

UNITED STATES CIRCUIT JUDGE

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"APPENDIX E"

06899017

ERNESTO CORTES-CASTRO, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2015 U.S. App. LEXIS 23357
No. 14-14787-D
March 4, 2015, Decided

Editorial Information: Prior History

Cortes-Castro v. United States, 2014 U.S. Dist. LEXIS 199174 (S.D. Fla., Oct. 7, 2014)

Counsel

{2015 U.S. App. LEXIS 1} Ernesto Cortes-Castro, Petitioner - Appellant,
Pro se, Petersburg, VA.

For United States of America, Respondent - Appellee: Wifredo
A. Ferrer, Marlene Rodriguez, Kathleen Mary Salyer, U.S. Attorney's Office, Miami, FL.

Judges: Charles R. Wilson, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Charles R. Wilson

Opinion

ORDER:

Ernesto Cortes-Castro moves for a certificate of appealability ("COA") in order to appeal the district court's denial of his 28 U.S.C. § 2255 motion to vacate sentence. To merit a COA, an 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, 1600-01, 146 L. Ed. 2d 542 (2000). Cortes-Castro's motion for a COA is DENIED because he has failed to make the requisite showing.

/s/ Charles R. Wilson

UNITED STATES CIRCUIT JUDGE

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"APPENDIX E"

06/18/2017

GEORGE RANDALL JONES, Petitioner-Appellant, versus WARDEN, VANCE LAUGHLIN,
Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2016 U.S. App. LEXIS 23814
No. 16-15010-E
December 19, 2016, Decided

Editorial Information: Prior History

{2016 U.S. App. LEXIS 1}Appeal from the United States District Court for the Southern District of Georgia.Jones v. Laughlin, 2016 U.S. Dist. LEXIS 88690 (S.D. Ga., July 7, 2016)

Counsel GEORGE RANDALL JONES, Petitioner - Appellant, Pro se, ALAMO,
GA.

For WARDEN, Respondent - Appellee: Matthew Crowder,
Samuel Scott Olens, Paula Khristian Smith, Attorney General's Office, ATLANTA, GA.

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 satisfy the second prong of *Slack's* test, the motion for a certificate of appealability, construed from his notice of appeal, is DENIED.

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

/s/ William H. Pryor Jr.

UNITED STATES CIRCUIT JUDGE

"APPENDIX E"

MATTHEW J. TAYLOR, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2016 U.S. App. LEXIS 23709
No. 16-14946-G
December 19, 2016, Decided

Editorial Information: Prior History

{2016 U.S. App. LEXIS 1}Appeal from the United States District Court for the Southern District of Georgia. Taylor v. United States, 2016 U.S. Dist. LEXIS 77970 (S.D. Ga., June 15, 2016)

Counsel MATTHEW J. TAYLOR, Petitioner - Appellant, Pro se, EDGEFIELD, SC.

For UNITED STATES OF AMERICA, Respondent - Appellee: R. Brian Tanner, James C. Stuchell, Edward J. Tarver, U.S. Attorney's Office, SAVANNAH, GA; Lamont A. Belk, Tennessee Valley Authority, Office of General Counsel, KNOXVILLE, TN.

Judges: Stanley Marcus, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Stanley Marcus

Opinion

ORDER:

Matthew J. Taylor seeks a certificate of appealability to appeal the dismissal of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. To merit a certificate of appealability, he 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). His motion for a certificate of appealability is DENIED because he has failed to make the requisite showing. His motions for leave to proceed on appeal *in forma pauperis* and for an extension of time to make financial arrangements for transcripts are DENIED AS MOOT.

/s/ Stanley Marcus

UNITED STATES CIRCUIT JUDGE

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"APPENDIX E"

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**SAMPSON COURTNEY, Petitioner-Appellant, versus FLORIDA PAROLE COMMISSION,
CHAIRMAN, FLORIDA PAROLE COMMISSION, MELINDA N. COONROD, Respondents-Appellees.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2017 U.S. App. LEXIS 22156
No. 16-16658-E
May 24, 2017, Decided**

Editorial Information: Prior History

{2017 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Florida.Courtney v. Coonrod, 2016 U.S. Dist. LEXIS 129250 (N.D. Fla., Aug. 2, 2016)

Counsel SAMPSON COURTNEY, Petitioner - Appellant, Pro se, PERRY, FL.
For CHAIRMAN, FLORIDA PAROLE COMMISSION, MELINDA
N. COONROD, Respondents - Appellees: Mark J. Hiers, Florida Commission on Offender
Review, TALLAHASSEE, FL.

Judges: Gerald B. Tjoflat, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Gerald B. Tjoflat

Opinion

ORDER:

To merit a certificate of appealability, Sampson Courtney 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 he has failed to make the requisite showing, the motion for a certificate of appealability is DENIED.

His motion for appointment of counsel is DENIED AS MOOT.

/s/ Gerald B. Tjoflat

UNITED STATES CIRCUIT JUDGE

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" APPENDIX E "

06899917

NOEL ARNOLD, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2018 U.S. App. LEXIS 16910
No. 18-11224-E
June 21, 2018, Decided

Editorial Information: Subsequent History

Reconsideration denied by Arnold v. United States, 2018 U.S. App. LEXIS 22553 (11th Cir. Ga., Aug. 14, 2018)

Editorial Information: Prior History

{2018 U.S. App. LEXIS 1}Appeal from the United States District Court for the Southern District of Georgia.

Counsel Noel Arnold, Petitioner - Appellant, Pro se, Miami, FL.
For United States of America, Respondent - Appellee: R. Brian
Tanner, U.S. Attorney Service - Southern District of Georgia, U.S. Attorney's Office,
Savannah, GA.

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 motions for leave to proceed *in forma pauperis* and for sanctions against the government are DENIED AS MOOT.

/s/ William H. Pryor Jr.

UNITED STATES CIRCUIT JUDGE

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"APPENDIX E"

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KENNETH A. CULVER, JR., Petitioner-Appellant, versus SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS, Respondents-Appellees.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2018 U.S. App. LEXIS 24313
No. 18-11851-F
August 27, 2018, Filed

Editorial Information: Prior History

{2018 U.S. App. LEXIS 1}Appeal from the United States District Court for the Southern District of
Florida.Culver v. Jones, 2018 U.S. Dist. LEXIS 62991 (S.D. Fla., Apr. 12, 2018)

Counsel Kenneth A. Culver, Jr., Petitioner - Appellant, Pro se, Moore Haven, FL.
For Secretary, Florida Department of Corrections, Respondent -
Appellee: Melanie Dale Surber, Attorney General's Office, West Palm Beach, FL; Pam
Bondi, Attorney General's Office, Tallahassee, FL.
Judges: Stanley Marcus, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Stanley Marcus

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.

/s/ Stanley Marcus

UNITED STATES CIRCUIT JUDGE

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"APPENDIX E"

06899017

**KELVIN MILES, Petitioner-Appellant, versus SECRETARY, FLORIDA DEPARTMENT OF
CORRECTIONS, Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2019 U.S. App. LEXIS 9899
No. 18-13241-C
April 3, 2019, Decided**

Editorial Information: Subsequent History

Reconsideration denied by Miles v. Sec'y, Fla. Dep't of Corr., 2019 U.S. App. LEXIS 15508 (11th Cir. Fla., May 23, 2019)US Supreme Court certiorari denied by Miles v. Inch, 2019 U.S. LEXIS 7122 (U.S., Nov. 25, 2019)

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Florida.Miles v. Sec'y, Fla. Dep't of Corr., 2018 U.S. Dist. LEXIS 101415 (N.D. Fla., June 18, 2018)

Counsel Kelvin Miles, Petitioner - Appellant, Pro se, South Bay, FL.
For Secretary, Florida Department of Corrections, Respondent -
Appellee: Bryan G. Jordan, Pam Bondi, Jennifer Johnson Moore, Attorney General's Office,
Tallahassee, FL; Joshua Ryan Heller, Social Security Administration, Office of Disability
Adjudication & Review, Tallahassee, FL.

Judges: Stanley Marcus, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Stanley Marcus

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.

/s/ Stanley Marcus

UNITED STATES CIRCUIT JUDGE

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" APPENDIX E "

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**WAYNE BURCKS, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2020 U.S. App. LEXIS 5628
No. 20-10118-F
February 24, 2020, Decided**

Editorial Information: Prior History

{2020 U.S. App. LEXIS 1}Appeal from the United States District Court for the Southern District of Florida. United States v. Burcks, 701 Fed. Appx. 914, 2017 U.S. App. LEXIS 13351 (11th Cir. Fla., July 25, 2017)

Counsel Wayne Burcks, Petitioner - Appellant, Pro se, Jesup, GA.
For United States of America, Respondent - Appellee: Emily M. Smachetti, U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service - SFL, Miami, 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 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 satisfy the second prong of *Slack's* test, the motion for a certificate of appealability is DENIED.

/s/ William H. Pryor Jr.

UNITED STATES CIRCUIT JUDGE

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"APPENDIX E"

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**JONATHAN MONSANTO-BERRIO, Petitioner-Appellant, versus SECRETARY, DEPARTMENT OF
CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA, Respondents-Appellees.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2020 U.S. App. LEXIS 4144
No. 19-12678-B
February 10, 2020, Filed**

Editorial Information: Prior History

{2020 U.S. App. LEXIS 1}Appeal from the United States District Court for the Middle District of Florida. Monsanto-Berrio v. Sec'y, Fla. Dep't of Corr., 2019 U.S. Dist. LEXIS 98301 (M.D. Fla., June 12, 2019)

Counsel Jonathan Monsanto-Berrio, Petitioner - Appellant, Pro se, Florida City, FL.
For Secretary, Department of Corrections, Attorney General, State of Florida Respondents - Appellees: Ashley Moody, 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:

Jonathan Monsanto-Berrio moves for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* in order to appeal the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. To merit a COA, Monsanto-Berrio 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). Monsanto-Berrio's motion for a COA is DENIED because he failed to make the requisite showing, and his motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.

/s/ William H. Pryor Jr.

UNITED STATES CIRCUIT JUDGE

"APPENDIX E"

APPENDIX "F"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

WITNESS: CLAUDE LEWIS COSEY

RE: TONY U. AKELS

FEDERAL GRAND JURY PROCEEDINGS

APPEARANCE:

THOMAS SWAIM, ESQUIRE
Assistant U.S. Attorney
Northern District of Florida
21 East Garden Street
Suite 400
Pensacola, FL 32501

UNITED STATES DISTRICT COURT
U.S. Courthouse
One North Palafox Street
Pensacola, FL 32501
November 27, 2007

Reported by:

Dana Delk-Jeffries, Registered Professional Reporter

Wierzbicki & Stephenson Court Reporting Service

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"APPX. F"

1 WHEREUPON,

2 CLAUDE LEWIS COSEY

3 was called as a witness and, after having been first duly
4 sworn, testified as follows:

5 THE FOREPERSON: Please state your full name
6 and spell your last name for the record.

7 THE WITNESS: Claude Lewis Cosey, C-O-S-E-Y.

8 EXAMINATION

9 BY MR. SWAIM:

10 Q Special Agent Cosey, you're with the Drug
11 Enforcement Administration?

12 A Yes, sir.

13 Q I believe you've testified before this Grand
14 Jury before, but how long have you been with the DEA?

15 A About 11-and-a-half years.

16 Q And pursuant to your duties with the DEA,
17 have you, in conjunction with the Bureau of Alcohol,
18 Tobacco & Firearms and, I believe, the Santa Rosa County
19 Sheriff's Office --

20 A And Okaloosa County.

21 Q -- and the Okaloosa County Sheriff's Office
22 had an opportunity to conduct an investigation of an
23 individual by the name of Antonio U. Akel, A-K-E-L, also
24 known as Tony Akel?

25 A Yes.

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1 Q Could you summarize for the Grand Jury the
2 results of your investigation or DEA perspective of
3 Mr. Akel?

4 A There was an individual that was apprehended
5 by the Okaloosa County Sheriff's Office back in May with
6 some Ecstasy, which is known as MDMA or
7 methylenedioxymethamphetamine. It's -- I'm sure most
8 people here know of it as Ecstasy.

9 When the subject was apprehended, they asked,
10 they said, where did you get this from, and he -- I refer
11 to him as Akel, A-K-E-L, he said, I got it from Tony Akel.
12 I don't think he actually knew his real name at the time,
13 but he described him and he just described enough about him
14 that they were able to possibly identify him.

15 And as a result of that, then this individual
16 becomes an informant for the Okaloosa County Sheriff's
17 Office and made two controlled buys from Mr. Akel, both of
18 those were in Navarre, in the Navarre area, where Akel had
19 formerly lived in Fort Walton Beach and this is where the
20 informant met him and had dealt with him in the past.

21 Q By controlled buy, you mean a transfer of
22 drugs by the CI to Mr. Akel that was monitored by law
23 enforcement?

24 A That's correct. The -- on the two occasions
25 when he did these controlled buys, the informant was

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1 searched by law enforcement to make sure that he didn't
2 have any drugs on him and then was equipped with a body
3 wire and was given funds, investigative funds to make the
4 buys. The first buy, controlled buy was -- was 98 Ecstasy
5 tablets or MDMA. It took place on May the 31st. He paid
6 \$800 for that by Mr. Akel in Navarre. Then the other --

7 Q So Mr. Akel provided 98 pills of MDMA on May
8 31st to the CI?

9 A Yes, it was supposed to be 100, but two
10 short, and that's been analyzed by the lab as well, by the
11 FDLE lab.

12 Q Tested positive for being MDMA?

13 A Tested positive for being MDMA.

14 Q And there was a second transaction?

15 A Second transaction on July the 18th of this
16 year, and that involved 147-and-a-half tablets. And also
17 during that time Mr. Akel was trying to get the informant
18 to sell cocaine for him, and he actually provided a free
19 sample of cocaine. He didn't charge him for that, in my
20 memory serves me correct, but he charged him \$1,500 for
21 the -- it supposed to be 150 tablets and it turned out
22 short as well on there of MDMA.

23 Q So when you say tablets, you mean MDMA?

24 A MDMA, yes, and he provided him samples,
25 approximately 3.9 grams of cocaine on that occasion, and

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1 then we tried to make additional controlled buys from
2 Mr. Akel at a later date using the same informant and he
3 wouldn't return his calls. I should point out that during
4 one of the previous transactions, he -- he -- Mr. Akel
5 accused the informant or was suspicious of the informant
6 and searched him for a body wire. And he had also seen
7 Mr. Akel in possession of firearms during other
8 transactions. So now we come to --

9 Q In fact, the CI specifically identified a
10 particular type of weapon that he would see on Mr. Akel
11 when -- during their drug-related meetings?

12 A Yes. He actually described two different
13 weapons he had seen two different times. The second
14 weapon, I believe, was the one -- one of the weapons that
15 was recovered from the residence during the search warrant
16 November 3rd, and it was a Ruger .9 millimeter.

17 Q We'll get to that. Then there was a search
18 warrant as a result of that investigation that was executed
19 at a residence connected with Mr. Akel on November 3rd of
20 2007?

21 A Yes. There was -- as I said before, the
22 informant got to where Mr. Akel wouldn't return his phone
23 calls, answer any of his calls. He would leave messages
24 and he wouldn't return his calls.

25 So on November 1st, there was a trash root

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1 conducted where you basically pull someone's discarded
2 trash pulled out on the side of the street. It's abandoned
3 property at that point. And there was evidence in there to
4 indicate that Mr. Akel was still involved in the -- in the
5 sell of drugs which included some empty Ziploc bags that
6 had the marijuana odor in it, dryer sheets that people used
7 when they're transporting drugs or shipping drugs to match
8 the odor, and also some loose marijuana residue and some
9 marijuana what they call roaches, just the spent part of
10 the cigarette.

11 A search warrant was obtained the following
12 day. And then on November 3rd, a search warrant was
13 actually executed at Mr. Akel's house. Mr. Akel was
14 sitting -- when entry was made, was sitting behind, I
15 believe, sitting at a laptop, with a laptop in front of him
16 and a loaded Bushmaster 223 firearm was under the coffee
17 table and then there was --

18 Q Basically at his feet?

19 A At his feet, and there was a -- the loaded
20 Ruger in the -- I believe it was somewhere around his --
21 where he was sitting on the sofa.

22 Q Either right next to him or between his legs?

23 A I --

24 Q Somewhere within easy reach?

25 A Within arm's reach where he was sitting. And

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1 then, of course, during the search warrant additional MDMA
2 was recovered, a sum of cash of \$3,600, I believe, was
3 recovered, 33 marijuana plants under grow lights was
4 recovered. He actually had his own marijuana grow at the
5 time. And then during the course of the search warrant,
6 Fed-Ex arrived with a package addressed to Mr. Akel.

7 Q If --

8 A Actually it wasn't addressed to Mr. Akel.

9 Q Sorry. Go ahead.

10 A But -- so since the search warrant included
11 all of the property and everything on the curbage, anything
12 basically on the yard, in the house, whatever, once the
13 package was delivered, it was subject to the search warrant
14 as well. So it was opened by law enforcement and
15 discovered there was a kilo of cocaine in that that had
16 been sent the previous day, according to Fed-Ex records,
17 from Corona, California. What's interesting, the tracking
18 number on the package, Mr. Akel had been tracking the
19 progress of that package on his laptop.

20 Q When the officers came through to execute the
21 search warrant?

22 A That's correct.

23 Q So while the officers are executing the
24 search warrant securing Mr. Akel, Fed-Ex delivers a kilo of
25 cocaine to the house?

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1 A Yes. And Mr. Akel actually was -- he was
2 Mirandized prior to -- to -- to the package arriving. He
3 was advised of his rights, and then he asked was there
4 anything here, you know, that shouldn't be here and he
5 said, well, I got the marijuana. We forgot to mention that
6 he had the cocaine, the package of cocaine arrived, a kilo
7 of cocaine.

8 But during his -- his conversation, he
9 actually acknowledged that he recently returned from
10 California and the package was sent the previous day, the
11 previous afternoon from Corona, California, which is in
12 Southern California, it's near the Ontario area, I believe.

13 Q So by his own statement, he placed himself in
14 California during the time frame when the Fed-Ex package
15 with the kilo of cocaine was -- at least the records,
16 tracking records, indicate it was mailed from California?

17 A Yes.

18 Q And --

19 A Oh, also, there was Delta Airline tickets
20 that confirmed that he had traveled from this area to
21 California and back.

22 Q And the substance -- approximately the kilo
23 of suspected cocaine, was it field tested or tested yet?

24 A It was field tested, presumptive test,
25 positive for cocaine and that's been forwarded to our lab

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1 in Miami.

2 Q It goes without saying, but a kilo of cocaine
3 exceeds 500 grams; is that correct?

4 A Let me take that back. I think it's been
5 sent to our lab. It could be at the FDLA lab still, but I
6 think it's been forwarded to our lab and the presumptive
7 test, field tested positive for cocaine.

8 Q For cocaine, and that the weight would be in
9 excess of 500 grams?

10 A Yes. A kilo was 1,000 grams so that would be
11 double, 500 grams.

12 Q And the -- so the -- and when you combine the
13 controlled buys that occur on May 31st and July 18th and
14 the incident that occurred on November 3rd, we have both
15 MDMA distribution and cocaine distribution with in-hand
16 amounts of cocaine in excess of 500 grams?

17 A That's correct.

18 Q All right. Also, there were guns that were
19 found at the time the search warrant was executed; is that
20 correct?

21 A That's correct. Carrier is going to talk
22 more about the firearms and the history of those.

23 MR. SWAIM: Those are all the questions that
24 I have of Special Agent Cosey with regard to the drug
25 aspects of the investigation.

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1 Are there any questions from the Grand Jury
2 for Special Agent Cosey regarding that aspect of the
3 investigation?

4 GRAND JUROR: What about growing marijuana?
5 What about that?

6 THE WITNESS: It was 33 plants. So I mean,
7 he's looking at -- if you're asking why wasn't he charged
8 with that. Really, 33 plants -- growing 33 plants in the
9 federal system would -- it's -- it's a relatively minor
10 offense so we go for the greater.

11 GRAND JUROR: I didn't know whether the
12 manufacturer of marijuana of what --

13 MR. SWAIM: There is a -- and, of course,
14 we'll do whatever the Grand Jury directs us to do, but
15 there is a -- it is illegal to grow marijuana, but under
16 the federal statute, until you get above 100 plants, and in
17 this particular case it was approximately 33 plants.

18 GRAND JUROR: That's what I was looking at.

19 MR. SWAIM: 100 plants is --

20 THE WITNESS: That triggers the mandatory
21 minimum statute.

22 GRAND JUROR: That's what I was wondering.

23 THE WITNESS: But if he's convicted, then
24 also the 33 plants would go into his presentence
25 investigation, and there's a formula that I would -- it

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1 would take a probation officer to -- but there's a formula
2 where he actually is held accountable for that, even though
3 he's not charged for it.

4 MR. SWAIM: But all we're asking the Grand
5 Jury to consider are charges with regard to the MDMA and
6 the cocaine.

7 GRAND JUROR: On the controlled buy, do you
8 normally set the amount that you can purchase prior to the
9 informant leaving, front money?

10 THE WITNESS: Money -- most of the time, and
11 in this case, you know, there was a discussion about how
12 much was going to be purchased on both occasions.

13 GRAND JUROR: On the second one, you alluded
14 to the fact that somehow there was a discrepancy in the
15 price when he got there, right? That's what he had to pay.

16 THE WITNESS: Not on the price. It was --
17 both times in that -- this is standard practice, I've been
18 working narcotics full time since 1987. Before I was a DEA
19 agent, I was a state narc in California, and I could tell
20 you, most drug dealers, it wasn't -- it wasn't a
21 discrepancy in the price, it was the amount that was
22 delivered, because on both occasions he shorted him.

23 Mr. Akel a certain amount was agreed upon,
24 and then when it was actually -- especially with like 98 to
25 100 pills. Here is 100 pills and you're not going to sit

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1 there and take time in the parking lot to count them. Most
2 people aren't. And it's not something that you can throw
3 on the scales and weigh. Even that can be shorted.

4 In my days of working a lot of undercover
5 works, guys rig scales. They do tricks to rig scale to
6 make it -- that's just -- you expect in the dope game, if
7 you're buying dope from somebody, that you're probably
8 going to get beat and they're going to short you. That's
9 what happened on both occasions. But he did make it up,
10 because he gave him some free cocaine. He was really
11 pushing the cocaine angle on the informant and told him he
12 wanted him to sell cocaine for him.

13 MR. SWAIM: He maybe used the term fronted
14 cocaine, that may not be the term that's familiar.

15 THE WITNESS: Fronted is basically -- I don't
16 even know that you would really call it fronted. It was
17 just, hey, take it and see if you can find somebody.
18 Fronted means that -- like me and someone is going to do a
19 drug deal and I'm the drug dealer, if I front it to him,
20 okay, here is a kilo of cocaine or here is 100 pills, pay
21 me after you sell it.

22 MR. SWAIM: You give it on credit?

23 GRAND JUROR: I think when you mentioned make
24 it up, I was trying to figure out if the informant was
25 caught in a dilemma like that where he has enough money to

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1 pay for it since he already had the amount he needed to
2 pay.

3 BY MR. SWAIM:

4 Q The informant expected to get more pills than
5 what was actually delivered; is that what you're telling
6 us?

7 A Yes. Basically, hey, bring me a hundred, he
8 brought him 98. Bring me 150, he brought him 147. One of
9 them was broken in half.

10 Q So the controlled buys would indicate beside
11 being an illegal drug deal, Mr. Akel is not an honest
12 illegal drug dealer?

13 A He's just a typical drug dealer, trying to
14 beat somebody.

15 MR. SWAIM: Any other questions for the Grand
16 Jury?

17 (Testimony concluded. Witness excused.)
18
19
20
21
22
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24
25

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF ESCAMBIA)

I, Dana L. Jeffries, Registered Professional
Reporter, certify that I was authorized to and did
stenographically report the foregoing proceedings; and that
the transcript is a true record.



DANA L. JEFFRIES
Registered Professional Reporter

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