

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13902-G

**RAYMOND J. RAMIREZ,
a.k.a. Rene Ramirez,**

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

**Appeal from the United States District Court
for the Southern District of Florida**

ORDER:

Raymond J. Ramirez, a pro se Florida prisoner, moves for a certificate of appealability ("COA") to challenge the denial of his 28 U.S.C. § 2254 motion. In his pro se § 2254 petition, Mr. Ramirez raised four grounds for relief, arguing that (1) the state court lacked jurisdiction to convict and sentence him because it violated Florida's speedy-trial rule, Fla. R. Crim. P. 3.191(j); (2) trial counsel was ineffective in failing to file a motion for discharge or dismissal based on the court's failure to comply with the speedy-trial rule; (3) the state court denied him equal protection, in

violation of the Fourteenth Amendment, because the laws were “not appl[ied] to Petitioner equally being similarly situated”; and (4) the state court denied him due process by denying him an evidentiary hearing on his speedy-trial habeas claims. We deny Mr. Ramirez’s request for a COA, because reasonable jurists would agree that his claims are unavailing.

A COA may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” Miller-El v. Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 1034 (2003); see 28 U.S.C. § 2253(c)(2). An applicant for a habeas petition meets this standard by showing that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1603-04 (2000).

1. Speedy Trial Claim

Mr. Ramirez was charged by information with eight felony counts in July 2012. His jury trial was set for October 15, 2012. Mr. Ramirez originally had a public defender, but then he retained counsel 10 days before trial, who successfully moved to continue the trial. Mr. Ramirez changed his attorney at least three more times in the next year.

In December 2013, Mr. Ramirez filed a pro se notice of the "expiration of speedy trial period" under Florida Rule of Criminal Procedure 3.191. He was still represented by counsel at this time. He filed a pro se motion in January 2014 indicating that he had made an verbal demand for speedy trial in October 2012 and arguing that his speedy-trial period had expired on December 4, 2012. Mr. Ramirez was still represented by counsel. That same month, Mr. Ramirez's attorney moved for a continuance, and the state court granted one, indicating on the order that the right to a speedy trial had been waived.

In March 2014, Mr. Ramirez filed another pro se motion to discharge his case based on a violation of his speedy-trial right. His attorney raised the speedy trial issue to the court in a hearing on March 28, stating that Mr. Ramirez wanted to argue that the court lost jurisdiction to take him to trial because of speedy-trial violations. The state court then denied Mr. Ramirez's motion, finding that he had waived the right to a speedy trial by moving for a continuance in October 2012 and that the defense was responsible for delays after this date. The state court offered to begin trial that day, but Mr. Ramirez's counsel was not ready. After this exchange, Mr. Ramirez and his counsel asked for at least four more continuances and filed numerous pre-trial motions. Mr. Ramirez did not plead to the charges against him until October 2016.

Reasonable jurists would not disagree that Mr. Ramirez's speedy-trial right was not violated. Under Florida law, a defendant waives his statutory right to a speedy trial by moving for a continuance prior to the expiration of the speedy-trial period, as Mr. Ramirez did. See Stewart v. State, 491 So. 2d 271, 272 (Fla. 1986). Beyond this, Mr. Ramirez cannot challenge the denial of a state speedy trial rule on federal habeas review. See Davis v. Wainwright, 527 F.2d 261, 264 (5th Cir. 1977) (holding that a violation of the Florida speedy-trial statute is "merely a violation of a state procedural rule which . . . is not reviewable by the Federal Courts on a petition for habeas"). For these reasons, reasonable jurists would not debate the denial of Mr. Ramirez's speedy trial claim.

2. Ineffective Assistance of Counsel Claim

Mr. Ramirez argues that his counsel was ineffective in failing to file a motion to discharge or dismiss based on a violation of Florida's speedy-trial rule. Under Strickland v. Washington, 466 U.S. 668, 694, 131 S. Ct. 733, 739 (1984), a defendant can establish an ineffective assistance claim by showing his "counsel's performance fell below an objective standard of reasonableness," Padilla v. Kentucky, 559 U.S. 356, 366, 130 S. Ct. 1473, 1482 (2010) (quotation marks omitted), and "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different,"

Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A “reasonable probability” is one “sufficient to undermine confidence in the outcome.” Id.

Reasonable jurists would not debate that Mr. Ramirez’s counsel performed effectively. First, in the March 28, 2014 hearing, Mr. Ramirez’s counsel did raise the argument that Ramirez’s case should be dismissed for speedy-trial violations. Secondly, even if counsel did not formally file a motion to discharge the case, Mr. Ramirez was not prejudiced by this decision because the motion would have failed under Florida law. See Stewart, 491 So. 2d at 272 (describing waiver of Florida right to a speedy trial where a defendant moves for a continuance before the speedy-trial period expires); Chandler v. Moore, 240 F.3d 907, 917 (11th Cir. 2001) (holding that “counsel was not ineffective for failing to raise a nonmeritorious issue”).

3. Equal Protection and Due Process Claims

Mr. Ramirez argues that the state court denied him equal protection by applying the law differently to him even though he was similarly situated. He also argues that he was denied due process because he did not receive an evidentiary hearing on his habeas claims.

Reasonable jurists would not debate the District Court’s denial of these claims. Mr. Ramirez has not detailed any facts underlying his equal protection claim, and we do not see any such facts in the record, so he has not shown that his

Fourteenth Amendment rights were violated. See United States v. Jones, 614 F.2d 80, 82 (5th Cir. 1980) (rejecting a constitutional habeas claim because the petitioner “states no specific facts in support of his allegation and there is nothing in the record” supporting the claim).

Finally, Mr. Ramirez’s due process claim does not succeed under our precedent. This Court has held that “a state court’s failure to conduct an evidentiary hearing on a post-conviction motion does not constitute a cognizable claim for habeas relief.” Carroll v. Sec’y, DOC, 574 F.3d 1354, 1366 (11th Cir. 2009) (rejecting a constitutional due process habeas claim on these grounds).

For these reasons, Mr. Ramirez has not made the requisite showing, and his motion for a COA is DENIED.


Bucky D. Martin
UNITED STATES CIRCUIT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13902-G

RAYMOND J. RAMIREZ,
a.k.a. Rene Ramirez,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

Before: MARTIN and JILL PRYOR, Circuit Judges.

BY THE COURT:

Mr. Raymond J. Ramirez has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's March 17, 2020, order denying a certificate of appealability in his appeal from the denial of his underlying habeas corpus petition, 28 U.S.C. § 2254. Upon review, Mr. Ramirez's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RAYMOND J. RAMIREZ,

CASE NO. 19-61415-CIV-DIMITROULEAS

Petitioner,

vs.

MARK S. INCH, Sec'y D.O.C.,

Defendant.

**FINAL JUDGMENT AND ORDER DENYING PETITION AND
DENYING CERTIFICATE OF APPEALABILITY**

THIS CAUSE is before the Court upon the Final Judgment and Order Denying Habeas Petition, signed on August 30, 2019. Accordingly, pursuant to Rule 58(a), Fed. R. Civ. Proc., and Rule 11(a), Section 2254 Proceedings, it is

1. Judgment is entered on behalf of Respondent, against the Petitioner, Raymond J. Ramirez.
2. On consideration of a Certificate of Appealability, the Court will deny such Certificate as this Court determines that Petitioner has not shown a violation of a substantial constitutional right. This Court notes that pursuant to Rule 22(b)(1), Federal Rules of App. Proc., Petitioner may now seek a certificate of appealability from the Eleventh Circuit Court of Appeals.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 30th day of August, 2019.


WILLIAM P. DIMITROULEAS
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RAYMOND J. RAMIREZ,

CASE NO. 19-61415-CIV-DIMITROULEAS

Petitioner,

vs.

MARK S. INCH, Sec'y D.O.C.,

Defendant.

**FINAL JUDGMENT AND ORDER DENYING PETITION AND
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1. Judgment is entered on behalf of Respondent, against the Petitioner, Raymond J. Ramirez.
2. On consideration of a Certificate of Appealability, the Court will deny such Certificate as this Court determines that Petitioner has not shown a violation of a substantial constitutional right. This Court notes that pursuant to Rule 22(b)(1), Federal Rules of App. Proc., Petitioner may now seek a certificate of appealability from the Eleventh Circuit Court of Appeals.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 30th day of August, 2019.


WILLIAM P. DIMITROULEAS
United States District Judge

APPENDIX E

“SOCIETY OF FRIENDS OF THE FREE STATE OF KANSAS”

ANSWER TO THE QUESTION

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18. *Leucanthemum vulgare* L. (Lam.)

After the initial period of uncertainty, the market has come to terms with the new reality.

¹⁰ See *W. H. H. Clayton, The Development and Function of the English Parliament, 1265-1322* (1930).

THE HISTORY OF THE CHINESE PEOPLE

2. 1945. 7. 2. 朝鮮の民族問題とその政治的動向

“我就是想让你知道，我对你没有恶意，我对你没有恶意，我对你没有恶意。”

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 19-61415-CIV-DIMITROULEAS

Raymond J. Ramirez

Petitioner,

v.

Secretary, Florida Department of Corrections,

Respondent.

**ORDER GRANTING APPLICATION FOR PERMISSION
TO APPEAL IN FORMA PAUPERIS FOR FILING FEES ONLY**

THIS CAUSE is before the Court upon Petitioner's Motion to Proceed In Forma Pauperis on Appeal [DE 23] ("Motion"). The Court has carefully considered the Motion and is otherwise fully advised in the premises.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Motion [DE 23] is hereby **GRANTED in part**, as to filing fees only.
2. The Clerk is **DIRECTED** to mail a copy of this Order to Petitioner at the address below.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 31st day of October, 2019.



WILLIAM P. DIMITROULEAS
United States District Judge

Copies provided to:
Counsel of Record

Raymond J. Ramirez, L55488
Everglades Correctional Institution
Inmate Mail/Parcels
1599 SW 187th Avenue
Miami, FL 33194

APPENDIX F

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO: 12-9673cf10a

Plaintiff,

JUDGE: BARBARA McCARTHY

vs.

DIVISION: FI

RAYMOND RAMIREZ

Defendant.

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON 10/29/18
BY [Signature]

**ORDER DENYING DEFENDANT'S PRO SE MOTION FOR POST CONVICTION
RELIEF**

THIS CAUSE having come before this Court upon the Defendant's Pro Se Motion For Post Conviction Relief, filed 9-29-17 and the Court having considered same, The State's Response and being fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that the Defendant's Pro Se Motion For Post Conviction Relief shall be **DENIED in all respects.**

Defendant has thirty (30) days to appeal from the rendition of this Order.

DONE AND ORDERED in Chambers on June 29, 2018 at Fort Lauderdale, Broward County, Florida.

Barbara McCarthy
BARBARA McCARTHY, Circuit Court Judge

Copies furnished:

ASA N.Bloom, Esq.

R. Ramirez, DC#L55488

OKEECHOBEE CORRECTIONAL INSTITUTION
3420 N. E. 168TH STREET
OKEECHOBEE, FL 34972

APPENDIX G

Amendment 5 Criminal actionsProvisions concerning Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case **to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.**

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 14

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. [RepresentativesPower to reduce apportionment.] Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.] No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questionedDebts of the Confederacy and claims not to be paid.] The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.] The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 [28 USCS 2255] before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such persons detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [28 USCS 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAYMOND J. RAMIREZ — PETITIONER
(Your Name)

VS.

SECRETARY FLORIDA — RESPONDENT(S)
DEPARTMENT OF CORRECTIONS
PROOF OF SERVICE

I, Raymond J. Ramirez, do swear or declare that on this date, October 4, 2020, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Melanie Dale Surber, counsel for respondent, 1515 N. Flagler
Dr., 9th Floor, West Palm Beach, FL 33401

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 4, 2020

RLB

(Signature)