

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12105-B

EUGENE JACOBS, JR.,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

Before: WILSON and ROSENBAUM, Circuit Judges.

BY THE COURT:

Eugene Jacobs, Jr., has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's October 23, 2020, order denying his motion for a certificate of appealability in his underlying 28 U.S.C. § 2254 petition. Upon review, Jacobs's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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ORDER:

Eugene Jacobs, Jr., moves for a certificate of appealability in order to appeal the dismissal of his 28 U.S.C. § 2254 petition as time-barred. To merit a certificate of appealability, Jacobs 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 (2000). Because Jacobs's petition is plainly barred by § 2254's one-year statute of limitations and he has not shown that he is entitled to equitable tolling, he has failed to satisfy the second prong of *Slack*'s test. The motion for a certificate of appealability is DENIED.

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Pierce Division
Case Number: 18-14382-CIV-MARTINEZ

EUGENE JACOBS, JR.,
Petitioner,

v.

SEC'Y, FLORIDA DEP'T OF CORR.,
Respondent.

OMNIBUS ORDER

THIS CAUSE is before the Court upon Petitioner's Motion for Leave to Proceed in forma pauperis on Appeal, [ECF No. 20], Motion for Certificate of Appealability, [ECF No. 21], and Motion for Appointment of Counsel, [ECF No. 22]. The Court has considered the foregoing motions, the pertinent portions of the record, and is otherwise fully advised in the premises. The Court will address each motion in turn.

I. Motion for Leave to Appeal in Forma Pauperis

Rule 24(a) of the Rules of Appellate Procedure provides that “[a] party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization,” unless the district court certifies that the appeal is not taken in good faith. Fed. R. App. P. 24(a)(3).

Petitioner was “implicitly” granted pauper status for purposes of this habeas proceeding by the Magistrate Judge. [ECF No. 7]. The Magistrate Judge noted that Petitioner was given pauper status in the challenged state proceedings as well. As such, the Court will grant Petitioner’s request to appeal in forma pauperis.

II. Motion for Certificate of Appealability

A prisoner seeking to appeal a district court's final order denying his petition for writ of habeas corpus has no absolute entitlement to appeal; he must first obtain a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1); *Harbison v. Bell*, 556 U.S. 180 (2009). A COA shall only be issued if the petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Where the district court has 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 for 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).

As an initial matter, the Court notes that Petitioner failed to timely file objections to Magistrate Judge White's Report and Recommendation ("R&R") that no COA be issued. Accordingly, the Court adopted the R&R in its entirety. Petitioner's failure to object constitutes a waiver of the right to challenge such ruling. *See* 11th Cir. R. 3-1 (I.O.P. – 3).

Nonetheless, because Petitioner is correct in stating that the R&R did not give adequate warning about the consequences of missing the objections deadline, the Court addresses the merits of Petitioner's Motion for a COA.¹

Petitioner's Motion for a COA is denied. No reasonable jurist could debate that Petitioner's petition is time-barred pursuant to AEDPA. Petitioner did not file the federal petition until September 12, 2018—almost three years after the expiration of the one-year deadline. Additionally, Petitioner fails to set forth any circumstances warranting the "extraordinary remedy" of equitable tolling. *See Cadet v. Fla. Dep't of Corr.*, 742 F.3d 473, 477 (11th Cir. 2014). The Court notes that Petitioner is at liberty to appeal the district court's denial of the issuance of a COA. *See, e.g.*, 11th Cir. R. 22-1(b) ("If the district court denies a certificate of appealability, a

¹ This does not change the Court's finding that Petitioner failed to set forth requisite cause amounting to excusable neglect for the delay in his objections or request for relief from judgment. [ECF No. 18].

party may seek a certificate of appealability from the court of appeals.”).

Accordingly, the Court denies Petitioner’s Motion for a Certificate of Appealability.

III. Motion for Appointment of Counsel

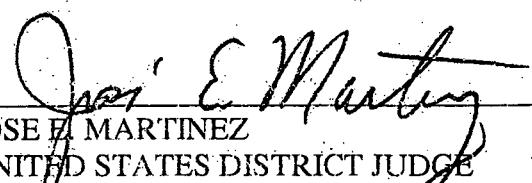
Plaintiffs in a civil case have no constitutional right to counsel. *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). A court may, however, pursuant to 28 U.S.C. § 1915(e)(1), appoint counsel for an indigent plaintiff. *Id.* A district court has broad discretion in making this decision and should appoint counsel only in “exceptional circumstances.” *Id.*; *Killian v. Holt*, 166 F.3d 1156, 1157 (11th Cir. 1992).

Petitioner submits that his case has become more complicated due to his failure to timely object to the R&R or successfully convince the Court that he is entitled to relief from judgment. [ECF No. 22]. This argument is unavailing. The issues set forth in this action are not so complicated or novel as to warrant the “exceptional” procedure of appointing counsel. If that rang true, nearly every indigent habeas petitioner would be entitled to court-appointed counsel.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that

1. Petitioner’s Motion for Leave to Proceed in forma pauperis on Appeal, [ECF No. 20], is **GRANTED**.
2. Petitioner’s Motion for Certificate of Appealability, [ECF No. 21], is **DENIED**.
3. Petitioner’s Motion to Appoint Counsel, [ECF No. 22], is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of July 2020.


JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All Counsel of Record
Eugene Jacobs, Jr., *pro se*

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