

amended information; and (2) counsel failed to withdraw his waiver of his jury-trial right after the state filed the amended information, which, according to Mr. Pierre, substantively amended the original information. Reasonable jurists would not debate the denial of these claims. With respect to Claim 1, a review of the trial court's colloquy with Mr. Pierre regarding his waiver confirms that he knowingly, intelligently, and voluntarily waived his right to a jury trial. With respect to Claim 2, Mr. Pierre's trial counsel testified at the evidentiary hearing that she discussed the amended information with him, and at all times, he wanted a bench trial. She also testified that the amended information did not substantively change the original information and did not affect her preparation of the case. Accordingly, he failed to show deficient performance or prejudice.

In Claims 3 and 4, Mr. Pierre argued that counsel misadvised him about his right to testify and failed to seek suppression of his confession. Reasonable jurists would not debate the district court's determination that these claims are procedurally defaulted. In his counseled appeal from the denial of his Fla. R. Crim. P. 3.850 motion, Mr. Pierre abandoned Claims 3 and 4 by not raising them in his brief. He therefore did not exhaust all state court remedies that were available to him. See 28 U.S.C. § 2254(b); *Leonard v. Wainwright*, 601 F.2d 807, 808 (5th Cir. 1979). In addition, he has not shown cause and prejudice for his default, or that a fundamental miscarriage of justice will result if these claims are not heard. See *Martinez v. Ryan*, 566 U.S. 1, 16 (2012); *Coleman v. Thompson*, 501 U.S. 722, 749-50 (11th Cir. 1991).

Accordingly, Mr. Pierre's COA motion is DENIED.

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

APPENDIX-B

Case No: 18-61112-Civ-COOKE/REID

LUCKNER PIERRE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ORDER ADOPTING REPORT OF MAGISTRATE JUDGE

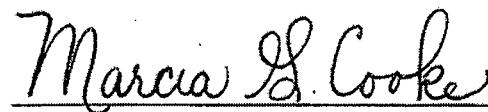
THIS MATTER was referred to the United States Magistrate Judge Lisette M. Reid under 28 U.S.C. § 636(b)(1)(B), the Rules Governing Section 2254 Habeas Corpus in the United States District Courts, and S.D. Fla. Admin. Order 2019-02, for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. *See* ECF No. 2.

On March 20, 2020, Judge Reid issued a Report recommending that this Court: 1) deny the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254; and 2) decline to issue a certificate of appealability. ECF No. 19. Petitioner filed his objections to Judge Reid's Report on May 8, 2020. ECF No. 22. The Court has reviewed Judge Reid's Report, Petitioner's Objections, the record, and the relevant legal authorities.

It is therefore ORDERED and ADJUDGED as follows:

- This Court **AFFIRMS** and **ADOPTS** Judge Reid's Report and **DENIES** the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254.
- This Court **DENIES** a Certificate of Appealability.
- The Clerk will **CLOSE** this case.

DONE and ORDERED in chambers, at Miami, Florida, this 21st day of July 2020.



MARCIA G. COOKE
United States District Judge

Copies furnished to:

Lisette M. Reid, U.S. Magistrate Judge
Luckner Pierre, pro se
Counsel of record

U.S. District Court - Southern District of Florida

Luckner Pierre W41601
Everglades Correctional Institution
Inmate Mail/Parcels
1599 SW 187th Avenue
Miami, FL 33194

Case: 0:18-cv-61112-MGC #23 3 pages Thu Jul 23 23:56:08 2020

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

Note: This is NOT a request for information.

Do NOT include personal identifiers in documents filed with the Court, unless specifically permitted by the rules or Court Order. If you MUST include personal identifiers, ONLY include the limited information noted below:

- Social Security number: last four digits only
- Taxpayer ID number: last four digits only
- Financial Account Numbers: last four digits only
- Date of Birth: year only
- Minor's name: initials only
- Home Address: city and state only (for criminal cases only).

Attorneys and parties are responsible for redacting (removing) personal identifiers from filings. The Clerk's Office does not check filings for personal information. Any personal information included in filings will be accessible to the public over the internet via PACER.

For additional information, refer to Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1. Also see the CM/ECF Administrative Procedures located on the Court's website www.flasd.uscourts.gov.

IMPORTANT: REQUIREMENT TO MAINTAIN CURRENT MAILING ADDRESS AND CONTACT INFORMATION

Pursuant to Administrative Order 2005-38, parties appearing pro se and counsel appearing pro hac vice must file, in each pending case, a notice of change of mailing address or contact information whenever such a change occurs. If court notices sent via the U.S. mail are returned as undeliverable TWICE in a case, notices will no longer be sent to that party until a current mailing address is provided.

IMPORTANT: ADDITIONAL TIME TO RESPOND FOR NON-ELECTRONIC SERVICE

Additional days to respond may be available to parties serviced by non-electronic means. See Fed.R.Civ.P.6(d), Fed.R.Crim.P.45(c) and Local Rule 7.1(c)(1)(A). Parties are advised that the response deadlines automatically calculated in CMECF do NOT account for and may NOT be accurate when service is by mail. Parties may NOT rely on response times calculated in CMECF, which are only a general guide, and must calculate response deadlines themselves.

See reverse side

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-13156-J

LUCKNER PIERRE,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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

Before: JILL PRYOR and BRASHER, Circuit Judges.

BY THE COURT:

Luckner Pierre has filed a motion for reconsideration of this Court's April 2, 2021, order denying a certificate of appealability in his appeal from the denial of his underlying habeas petition, pursuant to 28 U.S.C. § 2254. Upon review, Pierre's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.