

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.

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

ORDER:

Luckner Pierre, a Florida prisoner serving a 25-year sentence for sexual activity with a child, seeks a certificate of appealability (“COA”) in order to appeal the district court’s denial of his *pro se* 28 U.S.C. § 2254 petition. In order to obtain a COA, Mr. Pierre must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). He satisfies this requirement by demonstrating that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted). He has failed to make the requisite showing.

In Claims 1 and 2, Mr. Pierre argued that: (1) counsel failed to object to a bench trial when Pierre did not knowingly and voluntarily waive his right to a jury trial on the charges in the

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

U.S. District Court - Southern District of Florida

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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

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See reverse side

Subject: Activity in Case 0:18-cv-61112-MGC Pierre v. Secretary, Department of Corrections et al Order on Report and Recommendations
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U.S. District Court
Southern District of Florida

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Case Name: Pierre v. Secretary, Department of Corrections et al
Case Number: 0:18-cv-61112-MGC

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WARNING: CASE CLOSED on 07/23/2020

Document Number: 23

Docket Text:
ORDER ADOPTING [19] REPORT OF MAGISTRATE JUDGE for [1] Application/Petition (Complaint) for Writ of Habeas Corpus. 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. Signed by Judge Marcia G. Cooke on 7/21/2020. <I>See attached document for full details.</I> (kpe)

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Noticing 2254 SAG Broward and North CrimAppWPB@MyFloridaLegal.com

Jeanine Marie Germanowicz
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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.