APPENDIX - A

UNITED STATES COURT OF APPEALS UNPUBLISHED WRITTEN OPINION (11TH CIRCUIT).

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-14231
Non-Argument Calendar

D.C. Docket No. 4:14-cv-00629-RH-EMT

JOHN O. WILLIAMS,

Petitioner-Appellant,

versus

STATE OF FLORIDA,

Respondent-Appellee.

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

(August 23, 2021)

Before WILSON, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

John Williams, a Florida state prisoner proceeding *pro se*, appeals the district court's denial of his Fed. R. Civ. P. 60(b)(6) motion as untimely and as an impermissible successive habeas petition under 28 U.S.C. § 2254. On appeal, Williams argues that a Rule 60(b)(6) motion is not constrained by a specific time limitation on filing and that his motion did not constitute a successive § 2254 petition because it challenged a procedural-default ruling. We agree with Williams that the court erred in construing his Rule 60(b) in its entirety as a successive § 2254 petition, but we affirm the denial of his motion on alternative grounds.

I.

Briefly stated, these are the relevant facts. Williams was convicted by a Florida jury of lewd or lascivious molestation of a child (Count 1) and attempted lewd or lascivious molestation of a child (Count 2). He was sentenced in 2008 to life imprisonment to be suspended after twenty-five years of imprisonment as to Count 1 and five years concurrent as to Count 2. Williams's convictions and sentences were upheld by The Florida courts on appeal and in collateral proceedings for postconviction relief.

In 2014, Williams filed a § 2254 petition for a writ of habeas corpus in federal ct court. As relevant here, he claimed that the state trial court erred in two) by denying his request for a jury instruction on the lesser-included offense ttery; and (2) by denying his motion for a judgment of acquittal on Count

1 based on insufficient evidence that he touched the victim in a lewd or lascivious manner. These arguments are referred to in the record as Claims Eight and Nine.

The district court denied the § 2254 petition in August 2016, concluding that Claims Eight and Nine were unexhausted and therefore procedurally defaulted. Although the court acknowledged that Williams raised these claims on direct appeal, it reasoned that this was insufficient because he did not fairly present a *federal* claim and instead relied solely on *state* law. *See, e.g.*, *Gray v. Netherland*, 518 U.S. 152, 162–63 (1996) ("[F]or purposes of exhausting state remedies, a claim for relief in habeas corpus must include reference to a specific federal constitutional guarantee, as well as a statement of the facts that entitle the petitioner to relief."). It further concluded that no exception to the procedural bar applied because he did not exhaust an ineffective-assistance claim related to Claims Eight and Nine. Finally, the court found that Williams's claims failed on the merits in any case because he was not entitled to a lesser-included-offense instruction under Supreme Court precedent, and sufficient evidence supported his conviction as to Count 1. The court denied a certificate of appealability ("COA").

Williams appealed to this Court and requested a COA. In October 2018, a single judge of this Court denied a COA, concluding that reasonable jurists would not find debatable the district court's determination that the two claims were procedurally defaulted. A panel of two judges denied Williams's motion for

reconsideration of that order in February 2019. Williams then sought review by the U.S. Supreme Court, but it denied his petition in October 2019.

Having struck out on appeal, Williams turned back to the district court. In July 2020, Williams submitted a motion for relief from the judgment under Rule 60(b)(6). In addition to arguing the merits of his claims, he contended that Claims Eight and Nine were not procedurally defaulted because he raised them on direct appeal and they implicated his federal constitutional rights to have his guilt proved beyond a reasonable doubt and to have the jury instructed on a lesser included offense.[1]

The district court denied the Rule 60(b)(6) motion on two grounds. First, it concluded that the motion was "in substance" a successive § 2254 petition because "he has asserted nothing irregular about the proceedings in this court; his assertion is only that the decision was incorrect." Alternatively, the court found that "Williams did not file the motion 'within a reasonable time' after the August 1, 2016 ruling, as required by Rule 60(c)(1)." Williams now appeals.

[1] *See, e.g.*, *Jackson v. Virginia*, 443 U.S. 307, 309 (1979) ("The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt."); *Keeble v. United States*, 412 U.S. 205, 208 (1973) ("[I]t is now beyond dispute that the defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater.").

II.

Ordinarily, we review the denial of a Rule 60(b) motion for an abuse of discretion. *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1170 (11th Cir. 2017). We review *de novo* legal and jurisdictional issues, including whether a Rule 60(b) motion should be treated as an unauthorized successive § 2254 petition. *Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007).

Williams sought relief under Rule 60(b)(6), which is a catchall provision that permits reopening of a judgment when the movant shows "any . . . reason that justifies relief" other than the more specific circumstances set out in Rule 60(b)(1)–(5). Fed. R. Civ. P. 60(b)(6). Relief under 60(b)(6) is an "extraordinary remedy," and a movant must show "extraordinary circumstances justifying the reopening of a final judgment." *Arthur v. Thomas*, 739 F.3d 611, 628 (11th Cir. 2014) (quotation marks omitted). In addition, motions under Rule 60(b)(6) must be filed "within a reasonable time" after the entry of the judgment or order. Fed. R. Civ. P. 60(c)(1).

Importantly, however, prisoners cannot rely on Rule 60 "where it would be inconsistent with the restrictions imposed on successive petitions by the [Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")]." *Williams*, 510 F.3d at 1293; *see Gonzalez v. Crosby*, 545 U.S. 524, 531–32 (2005) (stating that prisoners cannot "circumvent the requirement that a successive habeas petition be precertified by the court of appeals" by avoiding the § 2254 label). Under AEDPA,

a prisoner is ordinarily limited to one § 2254 petition unless he has received authorization from this Court to file a second or successive petition. *See* 28 U.S.C. § 2244(b)(3)(A). Without our authorization, the district court lacks jurisdiction to consider a successive petition. *Williams*, 510 F.3d at 1295.

When a prisoner files a Rule 60(b) motion that either seeks to add a new ground for relief from his convictions or attacks the federal court's previous resolution of a § 2254 claim on the merits, the district court is required to treat the motion as a successive § 2254 motion. *Id.* at 1293–94. Rule 60(b) motions, however, may properly be used to allege "defect[s] in the integrity of the federal habeas proceedings." *Gonzalez*, 545 U.S. at 532. For instance, there is no bar to filing a Rule 60(b) motion that "asserts that a previous ruling which precluded a merits determination was in error—for example, a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar." *Id.* at n.4.

III.

Here, the district court erred in construing Williams's Rule 60(b) motion in its entirety as an impermissible successive § 2254 petition. While parts of his motion addressed the merits of his claims or raised new ones and thus would be properly construed as successive, he also clearly asserted that a prior non-merits ruling—that he failed to exhaust and therefore procedurally defaulted Claims Eight and Nine—was in error. *See id.* As the state concedes, "[s]uch a claim of error is cognizable

under Rule 60(b)." Appellee's Br. at 7. Accordingly, we agree with Williams that the court should not have denied his Rule 60(b) motion in full as a successive § 2254 petition.

Nevertheless, we affirm the district court's independent and alternative determination that the motion was not filed within a "reasonable time."[2] *See* Fed. R. Civ. P. 60(c)(1). A determination of what constitutes a reasonable time depends on the facts in an individual case, including whether the movant had a good reason for the delay in filing and whether the non-movant would be prejudiced by the delay. *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 (11th Cir. 2008).

While Williams is correct that there is no specific time limitation on filing a Rule 60(b)(6) motion, he fails to offer any grounds for concluding that the nearly four-year delay between the August 2016 judgment denying his § 2254 petition and his July 2020 Rule 60(b) motion was "reasonable." *See* Fed. R. Civ. P. 60(c)(1). Even assuming the time he spent appealing the judgment could not be charged against him, he still waited well over a year after the mandate issued in his appeal,

[2] The state claims we lack jurisdiction to review the timeliness issue because Williams did not obtain a COA on that or any other issue. Ordinarily, a COA is required for the appeal of any denial of a Rule 60(b) motion for relief from a judgment in a 28 U.S.C. § 2254 proceeding. *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1169 (11th Cir. 2017). But no COA is needed to appeal a determination that a Rule 60(b) motion constitutes an impermissible successive habeas petition. *See Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). We therefore have jurisdiction to review the district court's order in that regard, and we may also consider alternative grounds for affirmance, even though no COA has issued as to those matters. *See Jennings v. Stephens*, 135 S. Ct. 793, 802 (2015) (holding that no COA is required for "the defense of a judgment on alternative grounds").

and over six months after the Supreme Court denied certiorari, to file the Rule 60(b) motion. Yet there appears to be no good reason for the delay in filing because he did not rely on any intervening events. Instead, he essentially repackaged arguments that had already been presented to, and rejected by, the district court during his § 2254 proceeding and to this Court on appeal from the denial of his § 2254 petition. Accordingly, the district court did not abuse its discretion in concluding that Williams's Rule 60(b) motion was not filed within a "reasonable time." *See* Fed. R. Civ. P. 60(c)(1).

Alternatively, we conclude that Williams failed to present any "extraordinary circumstances" that would have permitted the district court to exercise its discretion and reopen the judgment. *See Arthur*, 739 F.3d at 628; *see Gonzalez*, 545 U.S. at 535 (noting that "[s]uch circumstances will rarely occur in the habeas context"). Importantly, neither the district court, in denying his original § 2254 petition, nor this Court, in denying a COA on appeal, overlooked the fact—highlighted again by Williams in this appeal—that he had raised the substance of Claims Eight and Nine on direct appeal of his convictions. Rather, the procedural-default ruling was based on Williams's failure to raise these claims in terms of federal law, rather than solely in terms of state law.

Williams essentially requests that we reconsider the procedural-default ruling, but a Rule 60(b) motion is not a means to obtain "a second opportunity for appellate

review," *Burnside v. E. Airlines, Inc.*, 519 F.2d 1127, 1128 (5th Cir. 1975)[3], nor does it bring up the underlying judgment for review, *Cavaliere v. Allstate Ins. Co.*, 996 F.2d 1111, 1115 (11th Cir. 1993). In any case, while Williams persuasively shows that these claims could have been raised as federal in nature in state court, he falls short of showing that he in fact did so. *See Gray*, 518 U.S. at 162–63; *cf. Lucas v. Sec'y, Dep't of Corr.*, 682 F.3d 1342, 1352–53 (11th Cir. 2012) ("Simply referring to a 'constitutional right of confrontation of witnesses' is not a sufficient reference to a federal claim . . . ."). For these reasons, Williams has not shown that he warrants the extraordinary remedy of relief under Rule 60(b)(6). *See Arthur*, 739 F.3d at 628.

For these reasons, we affirm the denial of Williams's Rule 60(b)(6) motion.

AFFIRMED.

[3] This Court adopted as binding precedent all Fifth Circuit decisions prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*).

APPENDIX-B

UNITED STATES DISTRICT COURT decision, MAGISTRATE Judge's REPORT AND RECOMMENDATION. SENIOR Judge's REPORT AND RECOMMENDATION.

APPENDIX (D)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

JOHN O. WILLIAMS,

Petitioner,

v. CASE NO. 4:14cv629-RH/EMT

STATE OF FLORIDA,

Respondent.

_____/

ORDER DENYING RELIEF FROM THE JUDGMENT

The petitioner John O. Williams is serving a sentence on a Florida state-court conviction. He initiated this proceeding by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254. A judgment was entered on August 1, 2016 denying the petition. Mr. Williams filed a notice of appeal, but the United States Court of Appeals for the Eleventh Circuit denied a certificate of appealability. The Eleventh Circuit issued its mandate on October 12, 2018. The United States Supreme Court denied certiorari on October 7, 2019.

On July 23, 2020, Mr. Williams submitted to prison authorities for mailing to this court a motion for relief from the August 1, 2016 judgment denying the petition. Mr. Williams says he is entitled to relief under Federal Rule of Civil

Procedure 60(b)(6), but he has asserted nothing irregular about the proceedings in this court; his assertion is only that the decision was incorrect. This is not a sufficient basis for relief under Rule 60(b)(6). And in any event, Mr. Williams did not file the motion "within a reasonable time" after the August 1, 2016 ruling, as required by Rule 60(c)(1).

In substance, Mr. Williams's claim in the current motion is that he is entitled to relief from the underlying state-court conviction. So in substance, this is a second or successive § 2254 petition. This court would have jurisdiction over the petition only if Mr. Williams had moved for and received the Eleventh Circuit's authorization to file it. *See* 28 U.S.C. § 2244(b)(3) (requiring a petitioner to obtain court of appeals authorization before filing a second or successive § 2254 petition and limiting the grounds on which authorization may be granted); *Gonzalez v. Crosby*, 545 U.S. 524, 534 (2005) (distinguishing between a genuine Rule 60(b) motion directed to an order denying a § 2254 petition, on the one hand, and, on the other hand, a challenge to a district court's ruling on the merits of a petition, which must be treated as a claim that can be asserted only in a second or successive habeas petition).

Mr. Williams has not obtained the Eleventh Circuit's authorization to proceed. Nor has he alleged grounds on which the Eleventh Circuit could properly

grant authorization. This is precisely the kind of duplicative petition that § 2244 is intended to foreclose.

For these reasons,

IT IS ORDERED:

The motion, ECF No. 44, for relief under Federal Rule of Civil Procedure 60(b)(6) from the August 1, 2016 order and judgment is denied.

SO ORDERED on July 29, 2020.

s/Robert L. Hinkle
United States District Judge

APPENDIX (A)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JOHN O. WILLIAMS,

Petitioner,

v.

Case No. 4:20cv268-WS-HTC

MARK S. INCH,

Respondent.

_____/

REPORT AND RECOMMENDATION

Petitioner, John O. Williams, proceeding *pro se*, filed a document entitled "Motion for Relief in Judgment" which the clerk docketed as a petition under 28 U.S.C. § 2254. ECF Doc. 1. The filing was accompanied by a sworn affidavit, ECF Doc. 2, and both were submitted to prison mail officials on May 13, 2020. The matter was referred to the undersigned Magistrate Judge for preliminary screening under Habeas Rule 4 and report and recommendation pursuant to 28 U.S.C. § 636 and N.D. Fla. Loc. R. 72.2(B). After reviewing the motion, the undersigned recommends that this matter be DISMISSED. Notably, eight (8) of the claims raised in the motion were raised in a prior § 2254 petition, and thus, constitute an impermissible successive petition. Also, while the remaining two (2) claims raised

can properly be brought as a Rule 60(b) motion, such a motion should be filed in Case No. 4:14-cv-629.[1]

I. BACKGROUND

Williams was convicted in Leon County, Florida, in case number 2007-CF-3046A of lewd and lascivious molestation and attempted lewd and lascivious molestation. ECF Doc. 1 at 2; ECF Doc. 1 at 1 in 4:14-cv-629 (N.D. Fla.). He was sentenced to life imprisonment, suspended after 25 years, on count one and 5 years on count two, running concurrently to count one. In 2014, he filed a habeas petition under 28 U.S.C. § 2254, asserting the following grounds for relief: (1) "The defendant's counsel was ineffective for failing to investigate and call three material witnesses who were known to counsel prior to trial"; (2) "The defendant's counsel was ineffective for failing to object to improper comments made by the State during closing arguments"; (3) "The defendant's [counsel] was ineffective for failing to properly impeach state witness S.O. with statements she made to the police"; (4) "The defendant's counsel was ineffective for failing to properly impeach state witness J.A. with statements she made to the police"; (5) "The defendant's counsel was ineffect[ive] for failing to file a motion for judgment of acquittal, and/or motion

[1] *See Standard Oil Co. of California v. United States*, 429 U.S. 17, 19 (1976) (holding that the district court may consider a Rule 60(b) motion without the defendant first having to seek recall from the appellate court).

for new trial on Count 2 when the conviction is based upon legally insufficient evidence and is not supported by the greater weight of the evidence, which prejudiced the defendant"; (6) "Judge Sheffield abused his discretion and denied him procedural due process by failing to make complete and adequate findings of fact and conclusions of law"; and (7) "The cumulative effect of counsel's deficient performance prejudiced the defendant." *Williams v. Florida*, 4:14-cv-629, ECF Doc. 1 (N.D. Fla.). Williams added three new grounds for relief in his reply, which were also considered by the district court: (1) the trial court erred in denying his request for a jury instruction on the lesser included offense of simple battery, (2) the trial court erred in denying his motion for JOA on Count I, because the State failed to introduce competent substantial evidence to establish that he touched S.O. on her buttocks or her breast area in a lewd or lascivious manner, and (3) Petitioner's life sentence imposed on Count I violated his constitutional right to be free from cruel and unusual punishment. *Id.* at ECF Doc. 24, 4:14-cv-629.

The magistrate judge issued a thorough 86-page report and recommendation, recommending denial of relief on the merits as to the first seven grounds raised in the petition and as to the third ground raised in the reply. Additionally, the

magistrate judge found the first and second grounds for relief raised in the reply to be unexhausted and procedurally defaulted. *Id.* at ECF Doc. 25, 4:14-cv-629.

The district court adopted the Report and Recommendation and wrote additionally to address whether the first and second grounds raised in the reply should be stayed, rather than denied, to allow Petitioner to exhaust them in state court. The district judge found that a stay would be futile because those claims were "unfounded on the merits." Thus, the district judge adopted the recommendation that the claims be denied rather than stayed and further denied a certificate of appealability. *Id.* at ECF Doc. 31, 4:14-cv-629. The Eleventh Circuit, in a 24-page order, also denied a certificate of appealability. *Williams v. Florida*, No. 16-15863-G (11th Cir. October 12, 2018). On October 7, 2019, the United States Supreme Court denied certiorari. ECF Doc. 1 at 4.

In the instant motion, Williams challenges the Eleventh Circuit's and district court's rulings on that prior petition.

II. DISCUSSION

As stated above, Williams' initial filing is titled a motion for relief from judgment. In the motion, Williams cites Rule 60(b)(1-6), and specifically relies upon Rule 60(b)(6). As Williams correctly notes, Rule 60(b)(6) is a catchall provision that permits reopening of a judgment when the movant shows "any ... reason that justifies relief" other than the more specific circumstances set out in

Rules 60(b)(1)–(5). Fed. R. Civ. P. 60(b)(6). "Relief from judgment under Rule 60(b)(6) ... requires showing extraordinary circumstances justifying the reopening of a final judgment." *Arthur v. Thomas*, 739 F.3d 611, 628 (11th Cir. 2014) (quotation marks omitted).

When a *pro se* petitioner brings a motion under Rule 60(b), the district court may appropriately construe it as a 28 U.S.C. § 2254 habeas petition, and, if applicable, treat it as an unauthorized second or successive petition. *See Williams*, 510 F.3d at 1293–95. Under 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Therefore, if Williams's filing is construed as a second or successive petition, the district court lacks subject matter jurisdiction on the merits of any claims in the petition. *Williams*, 510 F.3d at 1295.

In *Gonzalez v. Crosby*, 545 U.S. 524, 531–32 (2005), the Supreme Court provided guidance on how claims in a Rule 60(b) motion should be construed where the petitioner has filed a previous § 2254 petition that has been denied. If the Rule 60(b) motion (1) seeks to add a new claim for relief from the underlying judgment of conviction, or (2) attacks the federal court's previous resolution of a § 2254 claim on the merits, then the court should construe the Rule 60(b) motion as a second or

successive § 2254 petition attacking the conviction and sentence and dismiss it accordingly. *Id.* at 532; *see also Williams*, 510 F.3d at 1293–94. By contrast, when a Rule 60(b) motion attacks some defect in the integrity of the prior federal habeas proceedings, the motion is not a successive § 2254 petition. *Gonzalez*, 545 U.S. at 532–33; *Williams*, 510 F.3d at 1294. Such motions can be ruled on by the district court without the precertification from the court of appeals ordinarily required for a successive § 2254 petition. *Gonzalez*, 545 U.S. at 538.

A "claim," as described by the Court in *Gonzalez*, is "an asserted federal basis for relief from a state court's judgment of conviction." *Id.* at 530. The Supreme Court further explained in *Gonzalez* that:

> The term "on the merits" has multiple usages. We refer here to a determination that there exist or do not exist grounds entitling a petitioner to habeas corpus relief under 28 U.S.C. § 2254(a) and (b). When a movant asserts one of those grounds (or asserts that a previous ruling regarding one of those grounds was in error) he is making a habeas corpus claim. He is not doing so when he merely asserts that a previous ruling which precluded a merits determination was in error—for example, a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar.

Id. at 532 n.4 (citation omitted).

A. Claims One through Seven And Ten Of The Motion Constitute An Unauthorized Successive Petition

In his nominal Rule 60(b) motion, Williams simply argues that the district court's ruling on the merits of claims one through seven and ten (which were raised as grounds for relief one through seven of the first § 2254 petition, and ground three

of the reply) were in error. Williams points to no defect in the integrity of the proceedings on his § 2254 petition; instead, Williams only makes arguments attacking the validity of his conviction. Therefore, these grounds amount to a successive § 2254 petition. *See Gonzalez*, 545 U.S. at 532; *Williams*, 510 F.3d at 1293–94. Because Williams has not obtained a certification from the Eleventh Circuit authorizing this Court to proceed on a successive petition, this Court lacks jurisdiction to address claims one through seven and ten. *See Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003) (providing that, without an order from the court of appeals authorizing the district court to consider a successive habeas petition, the district courts lack jurisdiction to consider the petition).

B. Claims Eight And Nine Must Be Raised As A Rule 60(b) Motion In Case No. 4:14-cv-629

However, in claims eight and nine of the instant motion (which were raised as grounds for relief one and two in the reply filed in the prior § 2254 action), Williams argues that the district judge wrongly found the claims unexhausted because "appellate counsel raised the two claims on direct appeal in the First District Court Appeal." ECF Doc. 1 at 23. Since these claims "merely assert that a previous ruling which precluded a merits determination was in error" – i.e., the ruling that he failed to exhaust these two claims – they do not raise habeas corpus claims and do not constitute a successive petition. *See Gonzalez*, 545 U.S. at 532 n.4. Instead, these grounds can properly be brought in a Rule 60(b)(6) motion without precertification

by the Eleventh Circuit. Such a motion, however, must be filed in case 4:14-cv-629, since it is the judgment in that case from which Williams seeks relief.[2]

III. CONCLUSION

Claims one through seven and ten of the motion are properly construed as a successive petition, and thus, should be dismissed for lack of jurisdiction. Claims eight and nine of the motion raise challenges to the district court's prior ruling and, thus, can be brought as a Rule 60(b) motion, but must be filed in 4:14-cv-629. Thus, this matter should be dismissed.

A court does not err by *sua sponte* dismissing a § 2254 case as long as it gives petitioner notice of its decision and an opportunity to be heard in opposition. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019) (holding that the district court did not err by *sua sponte* dismissing a plainly untimely § 2254 petition where the court provided the petitioner with "adequate notice and an opportunity to respond") (quotation marks omitted).

This Report and Recommendation provides Petitioner an opportunity to file objections and, thus, affords Williams both notice and a reasonable opportunity to respond. *Paez v. Sec'y, Fla. Dep't of Corr.*, 947 F.3d 649, 655 (11th Cir. 2020) (petitioner was "provided ample notice and opportunity to explain why his petition

[2] By finding that Williams can raise these two grounds in a Rule 60(b) motion, the undersigned is not making any determination regarding the merits or futility of such a motion.

was timely in his form petition and again when he was given the opportunity to respond to the magistrate judge's Report and Recommendation that his petition be summarily dismissed as untimely") (citing *Magouirk v. Phillips*, 144 F.3d 348, 359 (5th Cir. 1998) (holding that plaintiff "was afforded both notice and a reasonable opportunity to oppose" procedural default when he was given an opportunity to object to the magistrate judge's Report and Recommendation that "placed [him] on notice that procedural default was a potentially dispositive issue")).

A. An Evidentiary Hearing Is Not Warranted

The undersigned also finds that an evidentiary hearing is not warranted. In deciding whether to grant an evidentiary hearing, this Court must consider "whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief." *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007). Here, because the claims should be denied for purely legal reasons no relevant factual allegations, if true, would entitle Williams to habeas relief, and an evidentiary hearing is not warranted.

B. Certificate Of Appealability

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides: "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." If a certificate is issued, "the court must state the specific issue or issues that satisfy the showing

2. That claims eight and nine be construed as a motion under Federal Rule of Civil Procedure 60(b)(6) and be DISMISSED, without prejudice to Petitioner re-filing a motion raising those same grounds for relief in case 4:14-cv-629.

3. That a certificate of appealability be DENIED.

4. That the clerk be directed to close the file.

At Pensacola, Florida, this 9th day of June, 2020.

/s/ Hope Thai Cannon

HOPE THAI CANNON
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Objections to these proposed findings and recommendations may be filed within 14 days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only and does not control. A copy of objections shall be served upon the magistrate judge and all other parties. A party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions. *See* 11th Cir. R. 3-1; 28 U.S.C. § 636.

APPENDIX (B)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JOHN O. WILLIAMS,

Petitioner,

v.

4:20cv268–WS/HTC

MARK S. INCH,

Respondent.

ORDER DISMISSING PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS

Before the court is the magistrate judge's report and recommendation (ECF No. 3) docketed June 9, 2020. The magistrate judge recommends that Petitioner's "Motion for Relief in Judgment" be DISMISSED. Petitioner has filed objections (ECF No. 8) to the magistrate judge's report and recommendation, and those objections have been carefully reviewed by the undersigned.

Upon review of the record in light of Petitioner's objections, the undersigned has determined that the magistrate judge's report and recommendation is due to be adopted.

Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation (ECF No. 3) is hereby ADOPTED and incorporated by reference into this order.

2. Claims one (1) through seven (7) and claim ten of Petitioner's "Motion for Relief in Judgment" (ECF No. 1) are DISMISSED as unauthorized successive claims.

3. Claims eight (8) and nine (9) are construed as a motion under Federal Rule of Civil Procedure 60(b)(6) and are DISMISSED without prejudice to Petitioner's filing a motion raising those same grounds for relief in Case No. 4:14cv629–RH.

4. The clerk shall enter judgment stating: "Petitioner's "Motion for Relief in Judgment" is DISMISSED."

5. A certificate of appealability is DENIED.

DONE AND ORDERED this 12th day of November, 2020.

s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE.

APPENDIX-C

UNITED STATES COURT OF APPEALS ORDER DENYING PETITION FOR REHEARING (11TH CIRCUIT).

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 20, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-14231-BB
Case Style: John Williams v. State of Florida
District Court Docket No: 4:14-cv-00629-RH-EMT

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Tonya L. Richardson, BB/lt
Phone #: (404) 335-6174

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-14231-BB

JOHN O. WILLIAMS,

Petitioner - Appellant,

versus

STATE OF FLORIDA,

Respondent - Appellee.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

APPENDIX - D

STATE COURT'S decision.

JOHN O. WILLIAMS, Appellant, v. STATE OF FLORIDA, Appellee.
COURT OF APPEAL OF FLORIDA, FIRST DISTRICT
48 So. 3d 59; 2010 Fla. App. LEXIS 14704
CASE NO. 1D09-1780
September 29, 2010, Opinion Filed

Notice:

DECISION WITHOUT PUBLISHED OPINION

Editorial Information: Subsequent History

Rehearing denied by Williams v. State, 2010 Fla. App. LEXIS 18641 (Fla. Dist. Ct. App. 1st Dist., Nov. 8, 2010)Writ of habeas corpus denied Williams v. State, 60 So. 3d 1076, 2011 Fla. App. LEXIS 2453 (Fla. Dist. Ct. App. 1st Dist., 2011)Writ of habeas corpus dismissed Williams v. State, 68 So. 3d 278, 2011 Fla. App. LEXIS 11126 (Fla. Dist. Ct. App. 1st Dist., 2011)Writ of habeas corpus dismissed Williams v. State, 109 So. 3d 889, 2013 Fla. App. LEXIS 5015 (Fla. Dist. Ct. App. 1st Dist., 2013)Post-conviction relief denied at Williams v. State, 145 So. 3d 838, 2014 Fla. App. LEXIS 10289 (Fla. Dist. Ct. App. 1st Dist., 2014)Post-conviction relief denied at Williams v. State, 147 So. 3d 991, 2014 Fla. App. LEXIS 13501 (Fla. Dist. Ct. App. 1st Dist., 2014)Magistrate's recommendation at, Habeas corpus proceeding at Williams v. Florida, 2016 U.S. Dist. LEXIS 100469 (N.D. Fla., Mar. 14, 2016)

Editorial Information: Prior History

An appeal from the Circuit Court for Leon County. Kathleen F. Dekker, Judge.

Counsel Nancy A. Daniels, Public Defender; Alice B. Copek and Glen P. Gifford, Assistant Public Defenders, Tallahassee; Adrienne D. Soule, Regional Counsel, Office of Criminal Conflict & Civil Regional Counsel, Region One, Tallahassee, for Appellant.

Bill McCollum, Attorney General, Donna A. Gerace, Assistant Attorney General, Tallahassee, for Appellee.

Judges: THOMAS and ROWE, JJ., CONCUR; BENTON, J., DISSENTS WITHOUT OPINION.

Opinion

PER CURIAM.

AFFIRMED.

THOMAS and ROWE, JJ., CONCUR; BENTON, J., DISSENTS WITHOUT OPINION.

APPENDIX - E

PETITION FOR REHEARING EN BANC

EX. (d)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JOHN O. WILLIAMS,
APPELLANT,

VS.

MARK S. INCH,
SEC'Y OF D.O.C.,
RESPONDENT,

APPEAL NO: 20-14231
D.C. DOCKET CASE NO: 4:14-CV-00629-RH-EMT

PETITION FOR REHEARING EN BANC

COMES NOW, APPELLANT JOHN O. WILLIAMS, PRO SE LITIGANT PURSUANT TO THE ELEVENTH RULES OF APPELLATE PROCEDURE (11TH CIR. R. 40-3, AND 11TH CIR. R. 35-2 PETITIONS THIS HONORABLE COURT FOR A REHEARING EN BANC, AND SHOWS THE COURT THE FOLLOWING IN SUPPORT THEREOF:

APPELLANT RESPECTFULLY REQUEST THAT THE COURT RECONSIDER ITS PREVIOUS DECISION OF PER CURIAM AFFIRMANCE THAT WAS ENTERED IN THE ABOVED CITED CASE ON AUGUST 23, 2021, AND GRANT THE INSTANT PETITION FOR A REVIEW BY THE FULL COURT BASED UPON THE FACTS AND AUTHORITIES CITED HEREIN THAT THE COURT MIGHT HAVE OVERLOOKED OR MISAPPREHENDED TO CORRECT A FUNDAMENTAL MISCARRIAGE OF JUSTICE THAT HAS BEEN DEMONSTRATED THROUGH "due diligence under EXTRAORDINARY CIRCUMSTANCES."

SEE Wilson V. Sellers, 584 U.S. 138 S.CT. 1188, 1192, 200 L.Ed.2d 530 (2018) REQUIRING A FULL LOOK THROUGH.

THE APPELLANT PRESENTS THE FOLLOWING FACTS AND POINTS OF LAW THAT THE COURT MIGHT HAVE OVERLOOKED OR MISAPPREHENDED IN ITS PREVIOUS DECISION OF PER CURIAM AFFIRMANCE.

POINT ONE:

THE RECORD DEMONSTRATES THAT THE UNITED STATES DISTRICT COURT JUDGE, THE HONORABLE ROBERT L. HINKLE ENTERED AN ORDER ON AUGUST 1, 2016 DENYING APPELLANT'S 2254 HABEAS PETITION.

APPELLANT FILED A RULE 60 (b) (6) MOTION FOR RELIEF IN JUDGMENT IN JULY OF 2020, AND WAS DENIED BY THE DISTRICT COURT JUDGE ROBERT L. HINKLE. HE ASSERTED IN HIS ORDER OF DENIAL THAT APPELLANTS MOTION WAS IN SUBSTANCE A SUCCESSIVE 2254 PETITION AND HE FAILED TO FILE THE MOTION WITHIN A REASONABLE TIME AFTER THE AUGUST 1, 2016 RULING AS, REQUIRED BY RULE 60 (c) (1).

APPELLANT TIMELY APPEALED THE DENIAL IN THE 11TH CIRCUIT COURT OF APPEALS. THE APPEAL COURT AGREED WITH APPELLANT THAT HIS FED. R. CIVIL P. 60 (b) (6) MOTION WAS NOT A SUCCESSIVE 2254 PETITION AND THAT THE COURT SHOULD NOT HAVE DENIED HIS RULE 60 (b) MOTION IN FULL AS A SUCCESSIVE 2254 PETITION.

HOWEVER, THE APPEAL COURT AFFIRMED THE DISTRICT COURT'S INDEPENDENT AND ALTERNATIVE DETERMINATION THAT THE MOTION WAS NOT FILED WITHIN A REASONABLE TIME FED. R. CIV. P. 60 (c) (1), AND A DETERMINATION OF WHAT CONSTITUTES A REASONABLE TIME DEPENDS ON THE FACTS IN AN INDIVIDUAL CASE AND WAS THERE A GOOD REASON FOR THE DELAY.

THE APPEALS COURT FURTHER HELD THAT THE APPELLANT WAS CORRECT THAT THERE IS NO SPECIFIC TIME LIMITATION ON FILING A RULE 60 (b) (6) MOTION AND THAT HE FAILED TO OFFER ANY GROUNDS FOR CONCLUDING THAT THE NEARLY FOUR (4) YEAR DELAY BETWEEN AUGUST 2016, JUDGMENT DENYING HIS 2254 PETITION AND HIS JULY 2020 60 (b) MOTION WAS REASONABLE ASSUMING THE TIME HE SPENT APPEALING THE JUDGMENT COULD NOT BE CHARGED AGAINST HIM, HE STILL WAITED WELL OVER A YEAR AFTER THE MANDATE IN HIS APPEAL AND SIX (6) MONTHS AFTER THE DENIAL OF HIS WRIT OF CERTIORARI BY THE UNITED STATES SUPREME COURT, AND THERE APPEARS TO BE NO GOOD REASON FOR THE DELAY IN FILING BECAUSE HE DID NOT RELY ON ANY INTERVENING EVENTS.

THE APPELLANT ASSERTS THAT THE APPEALS COURT IS CORRECT THAT THE TIME HE HAS SPENT FILING MOTIONS IN HIS JUDGMENT CANNOT BE CHARGED AGAINST HIM. APPELLANT FURTHER ASSERTS THAT AFTER HIS AUGUST 1, 2016 JUDGMENT, ALL OF HIS FILINGS HAS BEEN IN THE FEDERAL COURTS WHO RETAINED JURISDICTION OF HIS CASE AND CLAIMS. THEREFORE, HE DID FILE HIS RULE 60 (b) MOTION WITHIN A REASONABLE TIME.

HOWEVER, THE COURT ASSERTED IN ITS PER CURIAM AFFIRMANCE THAT APPELLANT FAILED TO OFFER ANY GROUNDS FOR THE NEARLY FOUR YEAR DELAY BETWEEN THE AUGUST 1, 2016 JUDGMENT AND THE DENIAL OF HIS 2254 AND THE FILING OF HIS JULY 2020 MOTION FOR RELIEF IN JUDGMENT.

APPELLANT PRESENTS THE FOLLOWING EVENTS THAT TOOK PLACE BETWEEN THE AUGUST 2016 JUDGMENT AND THE JULY 2020 FILING OF HIS RULE 60 (b) (6) MOTION, WHERE HE EXERCISED EXTREME DUE DILIGENCE TO GET RELIEF.

THE RECORD DEMONSTRATES THAT AFTER THE AUGUST 1, 2016 JUDGMENT, HE APPEALED THE DENIAL OF HIS CERTIFICATE OF APPEALABILITY TO THE 11TH CIRCUIT COURT OF APPEAL IN SEPTEMBER 2016. THE COURT OF APPEALS DID NOT ENTER A RULING UNTIL OCTOBER 10, 2018, WITH A MANDATE BEING ISSUED ON OCTOBER 15, 2018 THAT'S TWO (2) YEARS BETWEEN THE JUDGMENT AND THE MANDATE. THE COURT OF APPEAL HAD JURISDICTION AN APPELLANT COULD NOT RIGHTFULLY FILE ANY MOTIONS IN THE DISTRICT COURT UNTIL AFTER THE COA PROCEEDINGS WAS COMPLETED. (EX. (A).

AFTER THE JUDGMENT AND THE ISSUING OF THE MANDATE, APPELLANT FILED A MOTION FOR RECONSIDERATION, VACATE, OR MODIFY TO RECALL THE JUDGMENT/MANDATE IN THE PREVIOUSLY FILED CERTIFICATE OF APPEALABILITY IN THE 11TH CIRCUIT." REFER TO THE CLERK OF COURT RECORDS APPEAL NO: 16-15863-G FOR FILING DATES." (EX. (B)

ON MAY 14, 2019, APPELLANT PETITION THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI. THE COURT DENIED THE PETITION ON OCTOBER 9, 2019. THE COURT HELD JURISDICTION FOR FIVE (5) MONTHS BEFORE THE DENIAL.

ON JULY 13, 2020, APPELLANT FILED A MOTION FOR EXTENSION OF TIME TO FILE HIS 60 (b) (6) MOTION. THE COURT DENIED THE MOTION ON JULY 20, 2020.

APPELLANT Filed His Rule 60 (b) (6) MOTION ON July 27, 2020, IN THE DISTRICT COURT, THE COURT denied THE MOTION ON July 31, 2020.

IN THE ELEVENTH CIRCUITS COURT OF APPEAL PER CURIAM AFFIRMANCE, THE COURT Relied ON THE COURT'S Holding IN ARTHUR V. THOMAS, 739 F.3d 611, 628 (11TH CIR. 2014). THE COURT OPINIONED THAT THE APPELLANT IN THE INSTANT CAUSE FAILED TO SHOW THAT HE WARRANTS THE EXTRAORDINARY Remedy Relief Under Rule 60 (b) (6), AND FOR THESE REASONS, We AFFIRM THE denial OF APPELLANT'S Rule 60 (b) (6) MOTION TO REOPEN THE Judgment IN His CASE.

HOWEVER, See, ARTUZ V. BENNETT, 531 U.S. 4, 148 L.Ed. 2d 213, 121 S.CT. 361 (2000), THE COURT Held THAT THE CHANGE IN LAW WORKED BY ARTUZ IS All THE less EXTRAORDINARY IN PETITIONER'S CASE BECAUSE OF His "**lack of Diligence**" PURSUING Review OF THE STATUTE OF limitations issue. AT THE Time ARTUZ WAS decided, PETITIONER HAD ABANDONED ANY ATTEMPT TO Seek Review OF THE DISTRICT COURT'S decision ON THIS STATUTE OF limitations issue. ALTHOUGH THE DISTRICT COURT Relied ON THE ELEVENTH CIRCUITS PRECEDENT Holding THAT A STATE POST-CONVICTION APPLICATION IS NOT "PROPERLY Filed" IF IT IS PROCEDURALLY DEFAULTED, ALTHOUGH THAT PRECEDENT WAS AT odds WITH THE Rule IN SEVERAL OTHER CIRCUITS, PETITIONER NEITHER RAISED THAT issue IN His APPLICATION FOR COA, NOR Filed A PETITION FOR REHEARING OF THE ELEVENTH CIRCUITS denial OF A COA, NOR SOUGHT CERTIORARI Review OF THAT denial. THIS "LACK OF DILIGENCE" CONFIRMS THAT ARTUZ IS NOT AN EXTRAORDINARY CIRCUMSTANCE JUSTIFYING Relief FROM THE Judgment IN PETITIONER'S CASE. INDEED, IN ONE OF THE CASES IN WHICH We EXPLAINED Rule 60 (b) (6)'S EXTRAORDINARY CIRCUMSTANCE REQUIREMENT, THE MOVANT HAD FAILED TO APPEAL AN ADVERSE Ruling BY THE DISTRICT COURT, WHEREAS ANOTHER PARTY TO THE SAME Judgment HAD [545 U.S. 538] APPEALED AND WON Reversal, ACKERMANN, 340 U.S. AT 195, 95 L.Ed. 207, 71 S.CT. 209. SOME YEARS LATER, THE PETITIONER SOUGHT Rule 60 (b) Relief, WHICH THE DISTRICT COURT denied. We AFFIRMED THE DENIAL OF Rule 60 (b) Relief NOTING THAT MOVANT'S decision NOT APPEAL HAD been FREE AND VOLUNTARY.

See, Liljeberg v. Health Services Acquisition Corp, 486 U.S. 847, 864, 100 L.Ed 2d 855, 108 S.Ct. 2194 (1988) (quoting Klapprott v. United States, 335 U.S. 601, 614-615, 93 L.Ed. 266, 69 S.Ct. 384 (1949). The Court Held That The Petitioner Who Was Serving A 99-Year Term in Florida Prison, Filed His Rule 60 (b) Motion **eight** Months After Thier decision in Artuz. That A District Court Could Reasonably Conclude That This Period Reveals "**No**" **lack of Diligence**" on The Part of An Incarcerated Pro Se litigant.

The Court Further Opinioned That, I do Not Know How To Resolve These Allegations, but This only Highlights The Propriety of A Remand. Even on The State's Version of event's, Petitioner's Attempt at Filing For Rehearing is Proof of diligence on His Part. Putting Aside, The Court's Reasoning _ _, is Too Parsimonious. While Petitioner Could Have Shown even Greater diligence by seeking Rehearing For A Second Time And Then Filing For Certiorari, We Have Never Held Pro Se Prisoner's To The Standards of Counseled litigants, See e.g. Haines v. Kerner, 404 U.S. 519, 30 L.Ed. 2d 652, 92 S.Ct. 594 (1972) (Per Curiam).

Moreover, The Appellant Points To The Facts of His "Due Diligence" Where He Appealed The denials of His Petitions, COA, Filed Motion For Reconsideration And To Recall Judgment. Petition The United States Supreme Court For Writ of Certiorari All in The Pursuit of Relief Since The Judgment Was entered on August 1, 2016 And After The Mandate Was issued on October 15, 2018.

Wherefore, The Appeals Court Conceded That The Appellant Was Correct That There is No Specific Time limitation on Filing A Rule 60 (b) (6) Motion. Appellant Asserts That He Has demonstrated by The Record That The Grounds And Reasons For Timing of His Filing His 60 (b) (6) Motion Was Within A Reasonable Time **and** Not Subject To The Strict Rules of 60 (c) (1) Fed. R. Civ. P. One (1) Year Time Restraint.

Therefore, based upon Those Grounds And Record Filings Appellant Has demonstrated extraordinary Circumstances under A Rule 60 (b) (6) Motion To Reopen The Judgment in His Case And Relief Under The Catchall Provision.

POINT TWO:

THE ELEVENTH CIRCUIT COURT OF APPEALS OPINIONED IN ITS PER CURIAM AFFIRMANCE DECISION OF APPELLANT'S Rule 60 (b) (6) MOTION THAT THE HAD PERSUASIVELY SHOWED THAT CLAIMS EIGHT (8) AND NINE (9) COULD HAVE BEEN RAISED AS FEDERAL IN NATURE IN THE STATE COURT, BUT FELL SHORT OF SHOWING THAT HE IN FACT DID SO. THE COURT CITED, GRAY, 518 U.S. AT 162-63; CF. LUCAS V. SEC'Y, DEP'T OF CORR., 682 F.3d 1342, 1352-53 (11TH CIR. 2012), HOLDING THAT SIMPLY REFERRING TO A CONSTITUTIONAL RIGHT OF CONFRONTATIONAL OF A WITNESSES IS NOT SUFFICIENT REFERENCE TO A FEDERAL CLAIM. FOR THESE REASONS, WILLIAMS HAS NOT SHOWN THAT HE WARRANTS THE EXTRAORDINARY REMEDY OF RELIEF UNDER Rule 60 (b) (6) See ARTHUR, 739 F.3d AT 628.

APPELLANT ASSERTS THAT THE RECORD DEMONSTRATES THAT THE STATE OF FLORIDA CHARGED HIM BY INFORMATION WITH TWO (2) COUNTS OF lewd OR lascivious molestation PURSUANT TO FLA. STAT. 800.04 (5) And 800.04

THE RECORD FURTHER DEMONSTRATES THAT THE COUNTS WERE NOT TRIED SEPARATELY, BOTH Alleged VICTIMS TESTIFIED AT TRIAL TO THE ALLEGEDLY beING TOUCHED BY APPELLANT WAS NOT CONSENSUAL. CT. T. PG.

THE JURY RETURNED A VERDICT OF GUILTY AS CHARGED AS TO COUNT ONE, AND ATTEMPT lewd OR lascivious molestation AS TO COUNT TWO (2).

HOWEVER, PRIOR TO TRIAL THE TRIAL COURT AND STATE BOTH AGREED THAT THE evidence SUPPORTED THE PERMISSIVE lesser-included OFFENSE OF BATTERY, BUT REFUSED TO GIVE IT ALLEGING THAT AGAINST THE WILL HAD be ALLEGED IN THE CHARGING INFORMATION FOR IT TO be GIVEN, THE COURT FURTHER REASONED THAT SHE WOULD GIVE THE INSTRUCTION IF THE STATE STIPULATED AND THE defense WAIVED. APPELLANT did NOT WAIVE HIS RIGHT TO THE INSTRUCTION.

APPELLANT POINTS TO THE UNITED STATES SUPREME COURT'S OPINION IN Keeble V. UNITED STATES, 412 U.S. 205, 208 (1973), HOLDING THAT ALTHOUGH, THE lesser included OFFENSE doctrine developed AT COMMON LAW TO ASSIST THE PROSECUTION IN CASES WHERE THE evidence FAILED TO ESTABLISH some element OF THE OFFENSE ORIGINALLY CHARGED, IT IS NOW beyond dispute THAT THE defendant is ENTITLED TO AN INSTRUCTION ON A lesser included OFFENSE IF THE evidence WOULD PERMIT A JURY

RATIONALLY TO FIND HIM GUILTY OF THE LESSER OFFENSE AND ACQUIT HIM OF THE GREATER. THE FEDERAL RULES OF CRIMINAL PROCEDURE DEAL WITH LESSER INCLUDED OFFENSES, SEE RULE 31 (C), AND DEFENDANT'S RIGHT TO SUCH AN INSTRUCTION HAS BEEN RECOGNIZED IN NUMEROUS DECISIONS OF THIS COURT. SEE SANSONE V. UNITED STATES, 380 US 343, 349, 13 L.Ed. 2d 882, 85 S.CT. 1004 (PG. 848) (1965); BERRA V. UNITED STATES, 351 US 131, 134, 100 L.Ed. 1013, 76 S.CT. 685 (1956); STEVENSON V. UNITED STATES, 162 US 313, 40 L.Ed. 980, 16 S.CT. 839 (1896).

IN JOHNSON V. UNITED STATES, 130 S.CT. 1265, 599 U.S. 133 (2010) THE COURT HELD THAT THE PROSECUTION CAN PROVE A BATTERY IN ONE OF THREE (3) WAYS, STATE V. HEARNS, 961 SO. 2d 211, 218 (FLA. 2007) IT CAN PROVE THAT THE DEFENDANT "INTENTIONALLY CAUSED BODILY HARM," THAT HE "INTENTIONALLY STRUCK" THE VICTIM, OR THAT HE MERELY "ACTUALLY AND INTENTIONALLY TOUCHED" THE VICTIM. SEE, JOHNSON V. FANKELL, 520 U.S. 911, 916, 117 S.CT. 1800, 138 L.Ed. 2d 108 (1997)

APPELLANT FURTHER ASSERTS THAT THE COURT OF APPEALS MIGHT HAVE OVERLOOKED OR MISAPPREHENDED THE FACTS OF THE JURY'S VERDICT OF GUILT WHERE HE WAS CONVICTED OF A LESSER OFFENSE BASED ON THE EVIDENCE ADDUCED AT TRIAL.

THE ESSENTIAL POINT IS THAT THE STATE, TRIAL COURT AND APPELLANT'S TRIAL COUNSEL ALL CONCEDED PRIOR TO TRIAL THAT THE EVIDENCE SUPPORTED THE LESSER INCLUDED OFFENSE OF BATTERY WHICH WAS PROVEN BY THE JURY VERDICT. THEREFORE, THE STATE FAILED TO PROVE EVERY ELEMENT OF THE CRIME HE WAS CHARGED WITH BEYOND A REASONABLE DOUBT, AND DENIED HIM HIS RIGHTS OF DUE PROCESS. A DEFENDANT HAS THE RIGHT TO HAVE A JURY INSTRUCTED ON HIS THEORY OF DEFENSE AS THIS COURT IN ITS OPINION IN UNITED STATES V. KIVELY, 803 F.2d 1124 (11TH CIR. 1986)

SECONDLY, TO ESTABLISH THAT THE DISTRICT COURT ERRED IN REFUSING TO GIVE THE LESSER INCLUDED OFFENSE INSTRUCTION, DEFENDANT MUST SATISFY A TWO PART-TEST. FIRST, HE MUST SHOW THAT THE CHARGED OFFENSE ENCOMPASSES ALL OF THE ELEMENTS OF THE LESSER OFFENSE ("THE ELEMENTS" TEST). SCHMUCK V. UNITED STATES, 489 U.S. 705, 716, 109 S.CT. 1443, 1450, 103 L.Ed. 2d 734 (1989). SECOND, HE MUST ESTABLISH THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN FAILING TO GIVE THE INSTRUCTION. AN ABUSE OF DISCRETION MAY OCCUR WHERE THE EVIDENCE WOULD PERMIT THE JURY RATIONALLY TO ACQUIT THE DEFENDANT OF THE GREATER CHARGED OFFENSE AND CONVICT HIM OF THE LESSER. UNITED STATES V. CORNILLIE, 92 F.3d 1108, 1109 (11TH CIR. 1996). APPLYING THE TWO-PART TEST, WE BELIEVE THAT

THE DISTRICT COURT ERRED IN THIS CASE WHEN IT REFUSED TO INSTRUCT THE JURY ON ASSAULT AS A LESSER INCLUDED OFFENSE.

WHEREFORE, THE APPELLANT ASSERTS THAT HE WAS denied HIS RIGHTS OF DUE PROCESS UNDER THE UNITED STATES CONSTITUTION TO A FAIR TRIAL BY THE TRIAL COURT WHEN THE COURT REFUSED TO INSTRUCT THE JURY ON THE lesser OFFENSE OF BATTERY, DEPRIVING HIM OF THE RIGHT TO be CONVICTED OF A lesser OFFENSE AND ACQUITTED OF THE GREATER. APPELLANT Relies ON THE Holding OF THE UNITED STATES SUPREME COURTS OPINION IN Keeble v. UNITED STATES, 412 US 205, 208 (1973) THAT IT is NOW beYOND dispute THAT THE defendant is ENTITLED TO A lesser included OFFENSE IF THE evidence would PERMIT A JURY RATIONALLY TO FIND HIM GUILTY OF THE lesser OFFENSE AND ACQUIT HIM OF THE GREATER.

APPELLANT WAS demonstrated BY THE evidence Adduced AT TRIAL AND THE JURY'S VERDICT THAT HE MET THE TWO PART TEST TO HAVE THE JURY INSTRUCTED ON THE lesser OF BATTERY, AND THAT HE WAS deprived AND denied OF HIS DUE PROCESS RIGHTS TO HAVE THE JURY INSTRUCTED ON HIS THEORY OF defense WHICH WAS SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL.

POINT THREE:

APPELLANT ASSERTS THAT THE COURT MIGHT HAVE OVERLOOKED OR MISAPPREHENDED THE UNITED STATES SUPREME COURTS OPINIONED IN JACKSON V. VIRIGINIA, 443 U.S. 309, 309 (1949) AND IN Re WINSHIP, 397 US 358, 25 L.Ed. 2d 368, 90 S.CT. 1068, 51 OHIO OPS 2d 323, WHERE COURT OPINIONED THAT WHEN A STATE PRISONER WHO ALLEGES THAT THE EVIDENCE IN SUPPORT OF HIS STATE CONVICTION CANNOT NOT FAIRLY CHARACTERIZED AS SUFFICIENT TO HAVE led A RATIONAL TRIER OF FACT TO FIND GUILT BEYOND A REASONABLE DOUBT HAS STATED A FEDERAL CONSTITUTIONAL CLAIM. See APPENDIX (C) ON APPEAL RECORD.

APPELLANT FURTHER ASSERTS THAT THE Record SUPPORTS THAT A Federal CONSTITUTIONAL CLAIM WAS PRESENTED TO THE STATE COURTS AS A DUE PROCESS VIOLATION AND THAT THE EVIDENCE WAS INSUFFICIENT, THAT THE PROSECUTION FAILED TO PROVE EVERY ELEMENT THAT HE WAS CHARGED WITH BEYOND A REASONABLE DOUBT, HAS STATED A FEDERAL CONSTITUTIONAL CLAIM.

MOREOVER, IN Anderson v. Harless, 459 U.S. 4, 103 S.Ct. 276, 74 L.Ed. 2d 3 (1982), The Habeas Petitioner was granted Relief on the ground that a jury instruction violated due process because it obviated the requirement that the prosecution prove all the elements of the crime beyond a reasonable doubt.

CONCLUSION

WHEREFORE, APPELLANT RESPECTFULLY REQUEST THAT THE COURT RE-CONSIDER ITS PREVIOUS DECISION OR IN THE ALTERNATIVE GRANT THE INSTANT PETITION FOR REHEARING EN BANC FOR A REVIEW BY THE FULL COURT SO AS TO PREVENT A FUNDAMENTAL MISCARRIAGE OF JUSTICE TO GO UN-CORRECTED.

IN ADDITION BASED UPON THE FACTS AND POINTS OF LAW THAT'S PRESENTED IN THE INSTANT PETITION APPELLANT RESPECTFULLY REQUEST A LOOK THROUGH BY THE FULL COURT UNDER Wilson v. Sellers, 584 U.S. 138 ,CT. 1188, 1192, 200 L.Ed. 2d 530 (2018)

CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE AND CORRECT COPY OF THE FORESOING document HAS been PLACED IN THE HANDS OF AN INSTITUTION OFFICIAL HERE AT BLACKWATER RIVER C.F. FOR MAILING FIRST CLASS PREPAID U.S. MAIL TO THE ELEVENTH CIRCUIT COURT OF APPEALS AND THE OFFICE OF THE STATE ATTORNEY ON THIS SEPTEMBER 13TH DAY OF 2021.

s/ John O. Williams

s/ John O. Williams

JOHN O. WILLIAMS DC# 977298
BLACKWATER RIVER C.F.
5914 JEFF ATES ROAD
MILTON, FLA. 32583

APPENDIX-F

UNITED STATES DISTRICT COURT CIVIL DOCKET CASE NUMBER 4:14-CV-00629-RH-EMT.

EX. A

CLOSED,APPEAL,HABEAS,R&R

U.S. District Court
Northern District of Florida (Tallahassee)
CIVIL DOCKET FOR CASE #: 4:14-cv-00629-RH-EMT

WILLIAMS v. STATE OF FLORIDA
Assigned to: JUDGE ROBERT L HINKLE
Referred to: MAGISTRATE JUDGE ELIZABETH M TIMOTHY
Case in other court: USCA, 16-15863-G
11th Circuit Court of Appeals, 20-14231-BB
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 11/24/2014
Date Terminated: 08/01/2016
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Petitioner

JOHN O WILLIAMS

represented by **JOHN O WILLIAMS**
977298
WAKULLA CORRECTIONAL INSTITUTION
110 MELALEUCA DRIVE
CRAWFORDVILLE, FL 32327
PRO SE

V.

Respondent

STATE OF FLORIDA

represented by **ANNE CATHERINE CONLEY**
ATTORNEY GENERAL - PL-01 - TALLAHASSEE FL
STATE OF FLORIDA
PL 01 THE CAPITOL
400 S MONROE ST
TALLAHASSEE, FL 32399
850/414-3300
Fax: 850-922-6674
Email: anne.conley@myfloridalegal.com
ATTORNEY TO BE NOTICED

JOSHUA RYAN HELLER
SOCIAL SECURITY ADMINISTRATION - TALLAHASSEE FL
OFFICE OF DISABILITY ADJUDICATION & REVIEW

1961 QUAIL GROVE LN
TALLAHASSEE, FL 32311
888-472-5996
Email: joshua.heller@ssa.gov
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/24/2014	1	PETITION for Writ of Habeas Corpus filed by JOHN O WILLIAMS. (sdw) (2 service copies/pending IFP). (Entered: 11/26/2014)
11/24/2014	2	MOTION for Leave to Proceed in forma pauperis by JOHN O WILLIAMS. (sdw) (Entered: 11/26/2014)
11/26/2014	3	Notice to Pro Se litigant JOHN O WILLIAMS. (sdw) (Entered: 11/26/2014)
11/26/2014		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 2 MOTION for Leave to Proceed in forma pauperis and 1 Petition for Writ of Habeas Corpus. Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 11/26/2014)
12/02/2014	4	ORDER - Petitioner's 2 MOTION for Leave to Proceed in forma pauperis is DENIED without prejudice. The clerk shall send Petitioner a motion to proceed in forma pauperis and a Prisoner Consent Form and Financial Certificate approved for use in the Northern District. Within 30 DAYS from the date of docketing of this order Petitioner shall (1) pay the $5.00 filing fee, or (2) submit a completed motion to proceed in forma pauperis with the requisite Prisoner Consent Form and Financial Certificate, including an attached computer printout of the transactions in his prison account during the preceding six-month period. Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 12/2/2014. (IFP motion/Filing Fee due by **1/2/2015**.) (form mailed w/order) (djb) (Entered: 12/02/2014)
12/03/2014	5	NOTICE of Filing by JOHN O WILLIAMS re 1 Petition for Writ of Habeas Corpus. (sdw) (Entered: 12/05/2014)
12/05/2014		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 5 Notice of Filing. (sdw) (Entered: 12/05/2014)
12/18/2014	6	MOTION to Extend Time by JOHN O WILLIAMS. (sdw) (Entered: 12/18/2014)
12/18/2014		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 6 MOTION to Extend Time. Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 12/18/2014)
12/29/2014	7	ORDER granting 6 MOTION to Extend Time. Petitioner shall pay the filing fee or submit a completed motion to proceed in forma pauperis on or before **1/30/2015**. Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 12/29/2014. (djb) (Entered: 12/29/2014)

01/26/2015	8	MOTION for Leave to Proceed in forma pauperis by JOHN O WILLIAMS. (sdw) (Entered: 01/26/2015)
01/26/2015		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 8 MOTION for Leave to Proceed in forma pauperis. Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 01/26/2015)
02/05/2015	9	ORDER. Petitioner's motion to proceed in forma pauperis (doc. 8) is GRANTED. The clerk is directed to furnish a copy of the petition (doc. 1), with a copy of this order, to Respondent and the Attorney General of the State of Florida. Respondent shall have NINETY (90) DAYS from the date of docketing of this order to file an answer as directed by this order. (Response due by **5/6/2015**.) Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 2/5/2015. (order w/petition via cert mail to Resp and Atty Gen) (sdw) (Entered: 02/05/2015)
02/12/2015	10	ACKNOWLEDGMENT OF SERVICE Executed as to Atty Gen re 1 Petition for Writ of Habeas Corpus. (sdw) (Entered: 02/12/2015)
02/13/2015	11	ACKNOWLEDGMENT OF SERVICE Executed (Return Receipt) as to 9 Order, 1 Petition for Writ of Habeas Corpus. Acknowledgment filed by STATE OF FLORIDA. (djb) (Entered: 02/13/2015)
05/06/2015	12	MOTION to Extend Time *to Respond to Order of February 5, 2015* by STATE OF FLORIDA. (HELLER, JOSHUA) (Entered: 05/06/2015)
05/06/2015		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 12 MOTION to Extend Time *to Respond to Order of February 5, 2015*. Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 05/06/2015)
05/06/2015	13	ORDER granting 12 Motion to Extend Time. Respondent shall file an answer to the habeas petition on or before JULY 6, 2015. *s/Elizabeth M. Timothy* Chief United States Magistrate Judge on 5/6/15. (tsm) (Entered: 05/06/2015)
05/06/2015		Set Deadlines re 13 Order. (Response to habeas petition due **7/6/2015**.) (sdw) (Entered: 05/06/2015)
06/25/2015	14	NOTICE of Appearance by ANNE CATHERINE CONLEY on behalf of STATE OF FLORIDA (CONLEY, ANNE) (Entered: 06/25/2015)
07/06/2015	15	Second MOTION for Extension of Time to File Answer re 1 Petition for Writ of Habeas Corpus by STATE OF FLORIDA. (CONLEY, ANNE) (Entered: 07/06/2015)
07/06/2015		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 15 Second MOTION for Extension of Time to File Answer re 1 Petition for Writ of Habeas Corpus . Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 07/06/2015)

07/08/2015	16	ORDER granting 15 Motion for Extension of Time to Answer. Respondent shall file an answer to the habeas petition on or before SEPTEMBER 4, 2015. *s/Elizabeth M. Timothy* Chief United States Magistrate Judge on 7/8/15. (tsm) (Entered: 07/08/2015)
07/08/2015		Set Deadlines re 16 Order. (Response to habeas petition due by **9/4/2015**.) (sdw) (Entered: 07/08/2015)
08/21/2015	17	RESPONSE to 1 Petition for Writ of Habeas Corpus by STATE OF FLORIDA. (Attachments: # 1 Appendix Exhibits, # 2 Appendix Exhibits, # 3 Appendix Exhibits, # 4 Appendix Exhibits) (CONLEY, ANNE) (Entered: 08/21/2015)
08/21/2015		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 17 Response to Habeas Petition. (sdw) (Entered: 08/21/2015)
08/24/2015	18	ORDER. Petitioner shall file a reply to Respondent's answer (doc. 17) within THIRTY (30) DAYS from the date of docketing of this order. (Reply due by **9/23/2015**.) Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 8/24/2015. (sdw) (Entered: 08/24/2015)
08/24/2015	19	DOCKET ANNOTATION BY COURT: Re 17 Response to Habeas Petition. Received hardcopy of response and exhibits and placed on file shelf. (sdw) (Entered: 08/24/2015)
09/02/2015	20	MOTION for Extension of Time by JOHN O WILLIAMS. (sdw) (Entered: 09/02/2015)
09/02/2015		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 20 MOTION for Extension of Time. Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 09/02/2015)
09/03/2015	21	MOTION to Enlarge Page Limit of Brief by JOHN O WILLIAMS. (sdw) (Entered: 09/03/2015)
09/03/2015		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 21 MOTION to Enlarge Page Limit of Brief. Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 09/03/2015)
09/03/2015	22	ORDER granting 20 MOTION for Extension of Time. (Reply due by **11/30/2015**.) Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 9/3/2015. (sdw) (Entered: 09/03/2015)
09/04/2015	23	ORDER The 21 MOTION for Leave to File Excess Pages is GRANTED ONLY TO THE EXTENT THAT Petitioner's reply brief may exceed the 25-page limit by 5 pages (for a total lengthy of 30 pages). Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 9/4/2015. (djb) (Entered: 09/04/2015)
10/22/2015	24	REPLY (titled, "Petitioner's Response and Memorandum of Law to Respondent's Response"), by JOHN O WILLIAMS re 17 Response to Habeas Petition. (MB) (Entered: 10/23/2015)

10/23/2015		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 24 Reply (titled, "Petitioner's Response and Memorandum of Law to Respondent's Response"), re 17 Response to Habeas Petition. Referred to ELIZABETH M TIMOTHY. (MB) (Entered: 10/23/2015)
03/14/2016	25	REPORT AND RECOMMENDATION. RECOMMENDED that the petition for writ of habeas corpus (ECF No. 1) be DENIED. That a certificate of appealability be DENIED. R&R flag set. Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 3/14/2016. Internal deadline for referral to district judge if objections are not filed earlier: **4/11/2016**. (sdw) (Entered: 03/14/2016)
03/24/2016	26	MOTION for Extension of Time by JOHN O WILLIAMS. (sdw) (Entered: 03/24/2016)
03/24/2016		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 26 MOTION for Extension of Time. Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 03/24/2016)
03/29/2016	27	ORDER granting 26 MOTION for Extension of Time. (Internal deadline for referral to district judge if objections are not filed earlier: **5/31/2016**.) Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 3/29/2016. (sdw) (Entered: 03/29/2016)
04/25/2016	28	MOTION to Dismiss and Issue an Order to Stay and Abeyance by JOHN O WILLIAMS. (sdw) (Entered: 04/25/2016)
04/25/2016		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE ELIZABETH M TIMOTHY notified that action is needed Re: 28 MOTION to Dismiss and Issue an Order to Stay and Abeyance. Referred to ELIZABETH M TIMOTHY. (sdw) (Entered: 04/25/2016)
04/26/2016	29	SUPPLEMENT TO 25 REPORT AND RECOMMENDATION. Recommended that Petitioner's "Motion to Dismiss and Issue an Order to Stay and Abeyance [sic] Case" (ECF No. 28) be DENIED. Signed by MAGISTRATE JUDGE ELIZABETH M TIMOTHY on 4/26/2016. Internal deadline for referral to district judge if objections are not filed earlier: **5/31/2016**. (sdw) (Entered: 04/26/2016)
05/31/2016	30	OBJECTION (Titled: Motion to Object) by JOHN O WILLIAMS re 29 and 25 Report and Recommendations. (sdw) (Entered: 06/01/2016)
06/01/2016		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE ROBERT L HINKLE notified that action is needed Re: 29 Supplement REPORT AND RECOMMENDATION, 25 REPORT AND RECOMMENDATION, and 30 Objection. (sdw) (Entered: 06/01/2016)
08/01/2016	31	ORDER DENYING THE PETITION AND DENYING A CERTIFICATE OF APPEALABILITY - The report and recommendation, ECF No. 25 , and supplemental report and recommendation, ECF No. 29 , are accepted and adopted as the court's further opinion. The motion to stay, ECF No. 28 , is denied. The

		clerk must enter judgment stating, "The petition is denied with prejudice." A certificate of appealability is DENIED. The clerk must close the file. Signed by JUDGE ROBERT L HINKLE on 8/1/2016. (vkm) (Entered: 08/01/2016)
08/01/2016	32	CLERK'S JUDGMENT entered pursuant to 31 ORDER DENYING THE PETITION AND DENYING A CERTIFICATE OF APPEALABILITY. 90 Day Exhibit Return Deadline set for **10/31/2016** (vkm) (Entered: 08/01/2016)
08/17/2016	33	MOTION for Extension of Time. by JOHN O WILLIAMS. (cle) (Entered: 08/19/2016)
08/27/2016	34	ORDER EXTENDING THE DEADLINE TO APPEAL OR APPLY FOR A CERTIFICATE OF APPEALABILITY - The petitioner's motion, ECF No. 33, to extend the deadline to appeal or file an application for a certificate of appealability is granted. The deadline is extended to **9/19/2016**. Signed by JUDGE ROBERT L HINKLE on 8/27/2016. (cle) (Entered: 08/29/2016)
09/06/2016	35	NOTICE OF APPEAL - as to 31 ORDER DENYING THE PETITION AND DENYING A CERTIFICATE OF APPEALABILITY, by JOHN O WILLIAMS. (cle) (Entered: 09/07/2016)
09/07/2016	36	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals - re: 35 Notice of Appeal. (cle) (Entered: 09/07/2016)
09/07/2016	37	Appeal Instructions re: 35 Notice of Appeal : The Transcript Request Form is available on the Internet at http://www.flnd.uscourts.gov/forms/Attorney/ECCA_transcript_form_fillable.pdf **PLEASE NOTE** Separate forms must be filed for each court reporter. (cle) (Entered: 09/07/2016)
09/07/2016		Set Appeal Status Deadline - re: 35 Notice of Appeal. Clerk to check status of Appeal on **12/7/2016**. (cle) (Entered: 09/07/2016)
09/12/2016	38	USCA Case Number 16-15863-G assigned to 35 NOTICE OF APPEAL. (cle) (Entered: 09/13/2016)
12/08/2016		Set Appeal Status Deadline - re: 35 Notice of Appeal. Clerk to check status of Appeal on **3/8/2017**. (cle) (Entered: 12/08/2016)
03/09/2017		Set Appeal Status Deadline - re: 35 Notice of Appeal. Clerk to check status of Appeal on **6/9/2017**. (cle) (Entered: 03/09/2017)
03/30/2017	39	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Northern District of Florida certifies that the record is complete for purposes of this appeal - re: 35 Notice of Appeal. Appeal No. 16-15863-G. The entire record on appeal is available electronically. (cle) (Entered: 03/30/2017)
06/12/2017		Set Appeal Status Deadline - re: 35 Notice of Appeal. Clerk to check status of Appeal on **9/12/2017**. (cle) (Entered: 06/12/2017)
09/13/2017		Set Appeal Status Deadline - re: 35 Notice of Appeal. USCA Case Number: 16-15863-G. Clerk to check status of Appeal on **12/13/2017**. (cle) (Entered: 09/13/2017)
12/15/2017		

		Set Appeal Status Deadline - re: 35 Notice of Appeal. Clerk to check status of Appeal on **3/15/2018**. (cle) (Entered: 12/15/2017)
03/16/2018		Set Appeal Status Deadline - re: 35 Notice of Appeal. USCA Case Number: 16-15863-G. Clerk to check status of Appeal on **6/18/2018**. (cle) (Entered: 03/16/2018)
06/28/2018		Set Appeal Status Deadline - re: 35 Notice of Appeal. Clerk to check status of Appeal on **9/28/2018**. USCA Case Number 16-15863-G. (cle) (Entered: 06/28/2018)
10/01/2018		Set Appeal Status Deadline - re: 35 Notice of Appeal. Clerk to check status of Appeal on **1/2/2019**. USCA Case Number 16-15863-G. (cle) (Entered: 10/01/2018)
10/12/2018	40	MANDATE of USCA as to 35 Notice of Appeal. USCA# 16-15863-G. Mandate: Mr. Williams's motion for a COA is DENIED. (kdm) (Entered: 10/15/2018)
10/12/2018		Set Deadlines. Miscellaneous Deadline for working file to be destroyed - by **11/13/2018**. (sdw) (Entered: 10/15/2018)
10/07/2019	41	USCA PROCEDURAL LETTER - re: 35 NOTICE OF APPEAL. - U.S. Supreme Court Order: The petition for a writ of certiorari is denied. USCA Appeal # 16-15863-G. (cle) (Entered: 10/09/2019)
07/13/2020	42	MOTION for Extension of Time, filed by JOHN O WILLIAMS. (cle) (Entered: 07/15/2020)
07/15/2020		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE ROBERT L HINKLE notified that action is needed re: 42 MOTION for Extension of Time. (cle) (Entered: 07/15/2020)
07/22/2020	43	ORDER DENYING AN EXTENSION TO FILE A RULE 60(b)(6) MOTION - re: 42 Motion for Extension of Time. The motion, ECF No. 42, to extend the deadline for a Federal Rule of Civil Procedure 60(b)(6) motion is denied. Signed by JUDGE ROBERT L HINKLE on 7/22/2020. (cle) (Entered: 07/22/2020)
07/27/2020	44	MOTION For Relief in Judgment, filed by JOHN O WILLIAMS. (cle) (Entered: 07/28/2020)
07/29/2020	45	ORDER DENYING RELIEF FROM THE JUDGMENT - The motion, ECF No. 44 , for relief under Federal Rule of Civil Procedure 60(b)(6) from the August 1, 2016 order and judgment is denied. Signed by JUDGE ROBERT L HINKLE on 7/29/2020. (cle) (Entered: 07/31/2020)
11/06/2020	46	NOTICE OF APPEAL as to 45 ORDER DENYING RELIEF FROM THE JUDGMENT, filed by JOHN O WILLIAMS. Certificate of Readiness (FRAP 11) due by **12/9/2020**. (cle) (Entered: 11/09/2020)
11/09/2020	47	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals - re: 46 Notice of Appeal. (cle) (Entered: 11/09/2020)
11/09/2020	48	Appeal Instructions - re: 46 Notice of Appeal. The Transcript Request Form is available on the Internet at http://www.flnd.uscourts.gov/forms/Attorney/ECCA_transcript_form_fillable.pdf

		PLEASE NOTE Separate forms must be filed for each court reporter. *** THERE WERE NO HEARINGS HELD IN THIS CASE. *** (cle) (Entered: 11/09/2020)
11/09/2020		Set Appeal Status Deadline - re: 46 Notice of Appeal. Clerk to check status of Appeal on **2/9/2021**. (cle) (Entered: 11/09/2020)
11/12/2020	49	USCA Case Number 20-14231-BB is assigned to 46 NOTICE OF APPEAL. (cle) (Entered: 11/17/2020)
12/10/2020	50	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Northern District of Florida certifies that the record is complete for purposes of this appeal - re: 46 Notice of Appeal. Appeal No. 20-14231-BB. **The entire record on appeal is available electronically.** (cle) (Entered: 12/10/2020)
02/02/2021	51	LIMITED REMAND as to 46 Notice of Appeal. This appeal is REMANDED, *sua sponte*, to the district court for the limited purpose of determining whether Appellant John Williams merits reopening of the appeal period. Any outstanding motions are DENIED as moot. JURISDICTION OF THIS APPEAL IS BEING RETAINED BY THE ELEVENTH CIRCUIT. This case will be be held in abeyance. Upon completion of remand proceedings, the district court shall promptly send a copy of the ORDER ON REMAND to this court. Clerk to check status of Appeal on **3/1/2021**. USCA Appeal Number: 20-14231-BB. (cle) (Entered: 02/02/2021)
02/02/2021		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE ROBERT L HINKLE notified that action is needed re: 51 Limited Remand from 11th Circuit. (cle) (Entered: 02/02/2021)
02/03/2021	52	ORDER REOPENING THE TIME TO FILE AN APPEAL - re: 51 Limited Remand. The notice of appeal, ECF No. 46 , is treated as both a notice of appeal and as a motion to reopen the time to appeal. The motion to reopen is granted. The appeal period is reopened through February 17, 2021, and the previously filed notice of appeal is deemed timely. Signed by JUDGE ROBERT L HINKLE on 2/3/2021. (cle) (Entered: 02/03/2021)
03/02/2021		Set Appeal Status Deadline - re: 46 Notice of Appeal. Clerk to check status of Appeal on **6/1/2021**. (cle) (Entered: 03/02/2021)

PACER Service Center			
Transaction Receipt			
PACER Login:		**Client Code:**	L20-1-10166
Description:	Docket Report	**Search Criteria:**	4:14-cv-00629-RH-EMT
Billable Pages:	6	**Cost:**	0.60