

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12004-C

JAY ALAN MYERS,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF
CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

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

ORDER:

Jay Myers, a Florida prisoner serving a 20-year sentence for robbery, seeks a certificate of appealability (“COA”), to appeal the district court’s denial of his *pro se* 28 U.S.C. § 2254 petition, and his motion for reconsideration. He also moves for leave to proceed *in forma pauperis* (“IFP”) on appeal. In his petition, he raised the following six grounds for relief: (1) the state trial court erred in dismissing his post-trial motions for a new trial and a directed verdict for lack of jurisdiction; (2) the state appellate court lacked jurisdiction to entertain his direct appeal because his *pro se* notice of appeal, while counseled, was a nullity; (3) the state court erred in denying his claim that the jury was able to entertain facts that were not presented at trial; (4) his appellate counsel was ineffective by failing to raise fundamental errors on direct appeal; (5) the prosecutor

committed an error under *Giglio v. United States*, 405 U.S. 150 (1972), by failing to correct false testimony; and (6) his trial counsel was ineffective throughout the trial.

To obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right” 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.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted). If the district court denied a habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484. If a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the decision of the state court (1) “was contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court,” or (2) “was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding.” 28 U.S.C. § 2254(d)(1), (2).

A COA is required to appeal from the denial of a Rule 59(e) motion arising from a habeas proceeding. *Perez v. Sec'y, Fla. Dep't of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013).

Here, reasonable jurists would not debate the district court’s denial of Myers’s § 2254 petition. Grounds One and Three are procedurally defaulted because the state court applied an independent and adequate ground of state procedure to conclude that Myers’s claims were barred, and he has not established that his procedural default should be excused. *See Bailey v. Nagle*, 172 F.3d 1299, 1302, 1306 (11th Cir. 1999). Additionally, Myers did not exhaust Ground Two because he did not make the state courts aware that his claim asserted federal constitutional issues. *See*

Ward v. Hall, 592 F.3d 1144, 1156 (11th Cir. 2010); *see also Snowden v. Singletary*, 135 F.3d 732, 735 (11th Cir. 1998). Further, as to Ground Five, Myers could not establish that a *Giglio* error occurred. *See Raleigh v. Sec'y, Fla. Dep't of Corr.*, 827 F.3d 938, 949 (11th Cir. 2016); *see also Trepal v. Sec'y, Fla. Dep't of Corr.*, 684 F.3d 1088, 1112 (11th Cir. 2012). Similarly, with respect to Grounds Four and Six, Myers did not establish that his trial counsel's performance, or appellate counsel's performance, was deficient. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Additionally, the district court did not abuse its discretion in denying Myers's motion for reconsideration. First, Myers's argument that his constitutional rights were violated because he did not receive a magistrate judge's report and recommendation did not identify any manifest errors of law because the district court was not required to refer the case to a magistrate judge. *See Rules Governing § 2254 Cases, Rule 8(b)*; *see also Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). Second, his motion for reconsideration largely reiterated the arguments that he had previously made in his original § 2254 petition, which is not permitted. *See Arthur*, 500 F.3d at 1343.

Accordingly, Myers's motion for a COA is DENIED, and his IFF motion is DENIED as moot.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

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Appeal from the United States District Court
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Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Jay Myers has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's October 14, 2021, order denying his motion for a certificate of appealability and *in forma pauperis*. Upon review, Myers's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JAY ALAN MYERS,

Petitioner,

v.

Case No.: 2:17-cv-493-JLB-MRM

SECRETARY, DOC and FLORIDA
ATTORNEY GENERAL,

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED pursuant to the Court's Order dated March 22, 2021, Judgment is entered and the case is closed accordingly. Petitioner is denied a certificate of appealability and not entitled to appeal in forma pauperis.

March 23, 2021

ELIZABETH M. WARREN,
CLERK

s/L. Bingham, Deputy Clerk

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