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JL 5/6/22 FOR MAILING.

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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JAMIE M. COFFEY – PETITIONER

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; and  
ATTORNEY GENERAL, STATE OF FLORIDA – RESPONDENTS

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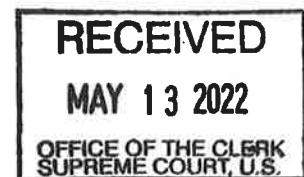
On Petition for Writ of Certiorari to  
The United States Court of Appeals for the 11<sup>th</sup> Circuit

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MOTION FOR EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI

Submitted by:

Jamie M. Coffey, Pro Se  
D/C #C09864  
Marion Correctional Institution  
P.O. Box 158  
Lowell, FL 32663-0158



**PETITIONER'S MOTION FOR EXTENSION OF TIME**  
**TO FILE PETITION FOR WRIT OF CERTIORARI**

COMES NOW the Petitioner, Jamie M. Coffey, pro se and in accordance with Supreme Court Rule 13, Rule 29, Rule 30, and Rule 33.2, and respectfully files this motion for extension of sixty days time up to and including Monday, July 18, 2022 to file his Petition for Writ of Certiorari in this Court. The Petitioner would offer the following in support thereof:

1. On July 27, 2020, the Petitioner filed his timely 28 USC §2254 Federal Habeas Corpus Petition and maintains that only three-hundred (**300**) days of untolled time had expired before the filing date.
2. On August 23, 2021, U.S. District Court Judge Hon. Steven D. Merryday issued his Final Order dismissing the Petition as time-barred and denying a Certificate of Appealability (“COA”) (see **Appendix A**). A timely appeal was taken.
3. On December 21, 2021, Hon. Robin S. Rosenbaum, U.S. Circuit Court of Appeals, 11<sup>th</sup> Circuit, found the District Court’s dismissal of the Petition proper and denied the appeal as moot (see **Appendix B**).
4. On February 16, 2022, Hon. Robin S. Rosenbaum and Hon. Britt C. Grant, U.S. Circuit Court of Appeals, 11<sup>th</sup> Circuit, issued an order denying Coffey’s timely motion for reconsideration (see **Appendix C**).
5. The Petitioner seeks a writ of certiorari on the question whether the federal courts abused their discretion when refusing to give Coffey equitable tolling for the period when Coffey was appealing the 2<sup>nd</sup> District Court of Appeals decision that his appeal notice for review of his Fla.R.Crim.P. Rule 3.850 postconviction motion denial order was untimely filed.

6. Coffey had filed for a rehearing with the State postconviction court on the summary denial order of his Fla.R.Crim.P. Rule 3.850 postconviction motion.
7. Coffey relied upon a Florida Rule of Judicial Administration that allowed 5 days to file the rehearing motion that was in conflict with Fla.R.Crim.P. Rule 3.850 that only provided 3 days to file.
8. Upon receipt of the lower State court order denying his motion for rehearing as untimely, Coffey immediately filed his notice of appeal with the 2<sup>nd</sup> DCA.
9. The 2<sup>nd</sup> DCA refused to give Coffey equitable tolling for his motion for rehearing on the 3.850 motion, and dismissed the notice of appeal as untimely because it was filed after 30 days from the State postconviction court summary denial order.
10. Upon completion of his State appeal regarding the timeliness of the appeal notice, Coffey filed his 28 USC §2254 Federal Habeas Corpus Petition.
11. Unfortunately, the federal courts also refuse to give Coffey any equitable tolling for the period that the Petitioner was appealing the issue of the timeliness of his notice of appeal of his 3.850 motion, in violation of Coffey's 14<sup>th</sup> Amendment right to due process.
12. This Honorable Court has long held that as long as a Petitioner is pursuing his State court remedies, equitable tolling will apply when determining the timeliness of a federal habeas petition.
13. Coffey provides the following reasons to grant him a reasonable extension of time of sixty days until Monday, July 18, 2022 to file a petition for writ of certiorari in this Court.
14. The Petitioner is housed at the Work Camp at Marion Correctional Institution that does not have a law library or access to any law clerks at the camp.

15. Coffey therefore has to write a request to access the law library at the Main Unit, and has to be transported to that law library by officers to receive any legal assistance.
16. There are only five inmate law clerks to assist the 1,100<sup>+</sup> inmates at the Petitioner's main institution, and this Petition for Writ of Certiorari has to be scheduled in conjunction with other inmate deadlines.
17. The law clerk assigned to assist the Petitioner was registered into a program that has reduced his working hours in the law library to half-time.
18. The Petitioner's transportation issues combined with the limited access to the assigned law clerk has resulted in an inability to meet the original May 17, 2022 deadline for filing this Petition as prescribed in U.S. Supreme Court Rule 13.
19. The Petitioner is not skilled in matters of the law and the issue of equitable tolling involved in this Petition is complex, and it will require substantial research.
20. See *Daniels v. State*, 892 So.2d 526 (Fla. 1<sup>st</sup> DCA 2004) (Extension of time should have been granted for “good cause by its allegation that petitioner needed to obtain the assistance of a prison law clerk” and to schedule time in the prison law library).
21. Due to reasons of good cause shown and extraordinary circumstances, a reasonable request of sixty (60) days until July 18, 2022 to file Coffey's petition for writ of certiorari is being requested.
22. Due to his incarceration, the Petitioner has been unable to contact the Attorney General's Office regarding this extension, but there is no foreseeable reason as why this request would harm opposing counsel.
23. This motion is taken in good faith and not for undue delay.

## INDEX TO APPENDICES

- APPENDIX A** August 23, 2021 Hon. Steven D. Merryday, U.S. District Court, Middle District of Florida, Tampa Division, Final Order dismissing the federal habeas petition as time-barred and denying a Certificate of Appealability (“COA”)
- APPENDIX B** December 21, 2021, Hon. Robin S. Rosenbaum, U.S. Circuit Court of Appeals, 11<sup>th</sup> Circuit denial order finding the District Court’s dismissal of the Petition proper.
- APPENDIX C** February 16, 2022, Hon. Robin S. Rosenbaum and Hon. Britt C. Grant, U.S. Circuit Court of Appeals, 11<sup>th</sup> Circuit order denying Coffey’s motion for reconsideration.

### PROOF OF SERVICE

I, Jamie M. Coffey, do swear or declare that on this date, May 6, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party’s counsel, and every other person required to be served, by placing the documents in the hands of a prison official for mailing out first class postage prepaid to:

**Clerk of the Court**  
**Supreme Court of the United States**  
**1 First Street, N.E.**  
**Washington, DC 20543**

**Office of the Attorney General**  
**3507 E. Frontage Road**  
**Suite 200**  
**Tampa, FL 33607-7013**

I declare under the penalty of perjury that the foregoing is true and correct.

05/06/2022

Date

/s/ Jamie Coffey

Jamie M. Coffey, D/C # C09864  
Marion Correctional Institution  
P.O. Box 158  
Lowell, FL 32663-0158

# APPENDIX

A

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

JAMIE M. COFFEY,

Applicant,

v.

CASE NO. 8:20-cv-1758-SDM-CPT

SECRETARY, Department of Corrections,

Respondent.

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**ORDER**

Coffey applies under 28 U.S.C. § 2254 for the writ of habeas corpus (Doc. 1) and challenges his conviction for, among other lesser offenses, driving while under the influence resulting in manslaughter, for which Coffey is imprisoned for fifteen years. The respondent argues (Doc. 7) that the application is time-barred. Coffey persists in arguing that his application is timely.

Under the Anti-Terrorism and Effective Death Penalty Act, “[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of . . . the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review . . . .” 28 U.S.C. § 2244(d)(1)(A). Additionally, under 28 U.S.C. § 2244(d)(2), “[t]he time during which a properly filed application for State post-conviction or other collateral review

with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."

Coffey's convictions became final on August 9, 2016.<sup>1</sup> Absent tolling for a timely post-conviction application in state court, the federal limitation barred his claim one year later on August 9, 2017. Coffey let 41 days elapse before he moved under state Rule 3.850 for post-conviction relief on September 20, 2016 (Respondent's Exhibit 6 at 1), which tolled the limitation. Tolling continued until the circuit court denied the motion and the time to appeal expired, which was October 8, 2018.<sup>2</sup> Coffey did not timely appeal. Because he had 324 days of the one-year limitation remaining, Coffey's deadline to apply under Section 2254 was August 28, 2019 (October 8, 2018 + 324 days = August 28, 2019). Coffey filed his application under Section 2254 on July 27, 2020, eleven months late.

Coffey argues for entitlement to tolling for the appeal from the denial of relief under Rule 3.850. As shown above, the deadline to appeal was October 8, 2018 (thirty days after the final order denying relief). Instead of appealing to the district court, Coffey moved for rehearing in the circuit court (Respondent's Exhibit 11), which motion the circuit court denied as untimely. (Respondent's Exhibit 12)

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<sup>1</sup> Coffey's direct appeal concluded on May 11, 2016. (Respondent's Exhibit 5) The conviction became final after ninety days, the time allowed for petitioning for the writ of *certiorari*. 28 U.S.C. § 2244(d)(1)(A). *See Bond v. Moore*, 309 F.3d 770 (11th Cir. 2002), and *Jackson v. Sec'y, Dep't of Corr.*, 292 F.3d 1347 (11th Cir. 2002).

<sup>2</sup> The circuit court issued an amended final order on September 6, 2018. The deadline to appeal expired thirty days later on October 6, 2018, but because that was a Saturday, under Rule 2.514(a)(1)(C), Florida Rules of Judicial Administration, the deadline is extended to "the next day that is not a Saturday, Sunday, or legal holiday . . ." October 8, 2018, was the next Monday.

Coffey's subsequent appeal to the district court was dismissed as untimely.

(Respondent's Exhibit 18) Later the appellate court denied Coffey's petition for a belated appeal. (Respondent's Exhibits 24 and 25) Tolling is not afforded to a state proceeding that was dismissed as untimely. *Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005) ("[W]e hold that time limits, no matter their form, are 'filing' conditions.

Because the state court rejected petitioner's PCRA petition as untimely, it was not 'properly filed,' and he is not entitled to statutory tolling under § 2244(d)(2)."); *Allen v. Siebert*, 552 U.S. 3, 7 (2007) ("We therefore reiterate now what we held in *Pace*: 'When a postconviction petition is untimely under state law, "that [is] the end of the matter" for purposes of § 2244(d)(2).'"') (brackets original). Consequently, the federal limitation was not tolled while Coffey pursued his untimely motion for rehearing and untimely appeal from the Rule 3.850 proceeding.

Coffey's application (Doc. 1) is **DISMISSED AS TIME-BARRED**. The clerk must enter a judgment against Coffey and **CLOSE** this case.

**DENIAL OF BOTH  
CERTIFICATE OF APPEALABILITY  
AND LEAVE TO APPEAL IN FORMA PAUPERIS**

Coffey is not entitled to a certificate of appealability ("COA"). A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his application. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a COA. Section 2253(c)(2) permits issuing a COA "only if the applicant has made a substantial showing of the denial of a constitutional right."

To merit a COA, Coffey must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise.

*See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir 2001). Because the application is clearly time-barred, Coffey is entitled to neither a COA nor leave to appeal *in forma pauperis*.

A certificate of appealability is **DENIED**. Leave to appeal *in forma pauperis* is **DENIED**. Coffey must obtain permission from the circuit court to appeal *in forma pauperis*.

ORDERED in Tampa, Florida, on August 17, 2021.

  
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STEVEN D. MERRYDAY  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

**JAMIE M. COFFEY,**

**Petitioner,**

**v.**

**Case No: 8:20-cv-1758-SDM-CPT**

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

**Respondents.**

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**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** that judgment is entered against Petitioner,  
Jamie M. Coffey.

**ELIZABETH M. WARREN,  
CLERK**

**s/MB; Deputy Clerk**

# APPENDIX

B

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 21-13120-J

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JAMIE M. COFFEY,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

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ORDER:

Jamie M. Coffey is a Florida prisoner serving a term of 15 years for driving while under the influence resulting in manslaughter. On July 27, 2020, Coffey filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254, arguing, *inter alia*, that he had received ineffective assistance of counsel. The district court dismissed his petition as time-barred. The district court also denied certificate of appealability (“COA”) and leave to proceed *in forma pauperis* (“IFP”) on appeal. Coffey appealed, and he now moves this Court for a COA and leave to proceed IFP.

Here, reasonable jurists would not debate the district court’s determination that Coffey’s § 2254 petition was time-barred. Coffey’s conviction and sentence became final on August 9,

2016, which was 90 days after the Florida Second District Court of Appeal affirmed his conviction and sentence on May 11, 2016. Thus, absent any statutory or equitable tolling, Coffey had one year from that date, or until August 9, 2017, to file a § 2254 petition.

When Coffey filed his Florida Rule of Criminal Procedure 3.850 motion on September 20, 2016, 41 days of the limitation period had run. The limitation period began to run again on October 8, 2018, which was the date that the 30-day deadline to appeal the state court's dismissal of his Rule 3.850 motion on September 6, 2018, expired. The limitation period ran for an additional 324 days and expired on August 28, 2019. Coffey's § 2254 petition, filed on July 27, 2020, was untimely. Further, the district court properly found that neither Coffey's motion for rehearing nor appeal from the denial of relief under Rule 3.850 tolled the statute of limitations, as both were dismissed as untimely, and thus, were not properly filed. Thus, Coffey's motion for a COA is DENIED and his motion for IFP status is DENIED AS MOOT.

/s/ Robin S. Rosenbaum  
UNITED STATES CIRCUIT JUDGE

# APPENDIX

C

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 21-13120-J

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JAMIE M. COFFEY,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

---

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

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Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Jamie M. Coffey has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated December 21, 2021, denying his motions for leave to proceed on appeal *in forma pauperis*, and for a certificate of appealability, in his appeal from the district court's order dismissing his *pro se* 28 U.S.C. § 2254 habeas corpus petition as untimely. Because Coffey has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, his motion for reconsideration is DENIED.