IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-12310-D

JOHNSON CHRISTOPHER JAMERSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Johnson Jamerson has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's September 24, 2021, order denying his motion for a certificate of appealability. Upon review, Jamerson's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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ORDER:

Johnson Jamerson, a Florida prisoner serving a 15-year sentence for aggravated battery on a law enforcement officer and resisting arrest with violence, seeks a certificate of appealability ("COA"), to appeal the district court's denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition. In his petition, he challenged the loss of gain time for a prison infraction, asserting that his due process and equal protection rights were violated because (1) he was found guilty, during a prison disciplinary hearing, of an offense that did not exist as a matter of law, and (2) the State did not refute the merits of his claims in the response that it filed in the state court.

A prisoner may challenge his prison disciplinary proceedings and sanctions by filing a habeas petition under 28 U.S.C. §§ 2241 and 2254, and he must obtain a COA to appeal the denial of such a petition. *Medberry v. Crosby*, 351 F.3d 1049, 1061-63 (11th Cir. 2003). In order to obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional

right." 28 U.S.C. § 2253(c)(2). If the district court denied a habeas petition on the merits, the prisoner must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Here, reasonable jurists would not debate the district court's denial of Jamerson's § 2254 petition. As to Ground One, Jamerson's argument that he was found guilty of an offense that the Florida Supreme Court had held did not exist is meritless because it held, prior to him filing the instant petition, that § 784.07 creates a substantive crime, and that interpretation is binding on this Court. *See State v. Darst*, 837 So. 2d 394, 395 (Fla. 2002); *see also Ramroop v. State*, 214 So. 3d 657, 663 (Fla. 2017); *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005). In any event, the Florida Department of Correction's ("FDOC") rule against attempted battery of a correctional officer falls within its authority to promulgate rules relating to the conduct of inmates and the categories of violations. *See* Fla. Stat. § 944.09(1)(b). Further, there is nothing in the statute requiring that the FDOC only punish conduct that is also criminalized by the State. *See generally id.* § 944.09.

As to Ground Two, although Jamerson argued that his due process and equal protection rights were violated because the State's answer did not rebut the merits of his claims, the State was required to state whether any of Jamerson's claims were procedurally barred. *See Holcomb v. Dep't of Corr.*, 609 So. 2d 751, 753 (Fla. Dist. Ct. App. 1992); *see also Plymel v. Moore*, 770 So. 2d 242, 247 (Fla. Dist. Ct. App. 2000). Further, the State's decision to raise jurisdictional issues did not affect or invalidate the merits of Jamerson's claims.

Accordingly, Jamerson's motion for a COA is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE