

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

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**In The  
Supreme Court of the United States**

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TIMOTHY WADE SAUNDERS,  
*Petitioner,*

v.

WARDEN, HOLMAN CORRECTIONAL FACILITY,  
*Respondent.*

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On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Eleventh Circuit

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**APPENDICES A - E**

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**1a - Appendix A**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-12427-P

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TIMOTHY W SAUNDERS,

Petitioner - Appellant,

versus

WARDEN, HOLMAN CORRECTIONAL FACILITY,

Respondent - Appellee.

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No. 21-10795-P

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TIMOTHY W SAUNDERS,

Petitioner - Appellant,

versus

WARDEN HOLMAN CORRECTIONAL FACILITY,

Respondent - Appellee.

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Appeals from the United States District Court  
for the Southern District of Alabama

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Before: WILLIAM PRYOR, Chief Judge, WILSON, and ROSENBAUM, Circuit Judges.

BY THE COURT:

Timothy Wade Saunders, an Alabama prisoner on death row, applied for certificates of appealability to appeal the district court's denial of his Rule 59(e) motions. We issued certificates of appealability. Upon review of the record and after consideration of the parties' briefs, however,

the certificates of appealability were improvidently granted. They do not specify a constitutional issue as they are required to. *See Spencer v. United States*, 773 F.3d 1132, 1137–38 (11th Cir. 2014) (en banc). And because Saunders has not made a substantial showing that he was denied a constitutional right, the certificates of appealability cannot be amended to specify a constitutional issue. *See id.* at 1137. They are thus vacated, and the appeal is dismissed.

\* \* \*

Saunders was sentenced to death in Alabama state court in 2005 for capital murder. He then unsuccessfully pursued state postconviction relief while represented by the law firm Balch & Bingham LLP. That firm also represented Saunders in federal habeas proceedings, where Saunders made some of the same arguments he'd made in state court, plus a new one: that his trial counsel was ineffective for failing to adequately prepare him to testify. A federal district court found that the newly-asserted ineffectiveness claim was procedurally defaulted because it had not been exhausted in state postconviction proceedings. As to Saunders's other claims, the district court denied relief but granted a certificate of appealability on one issue. We affirmed the denial of relief on appeal. *See Saunders v. Warden, Holman Corr. Facility*, 803 F. App'x 343, 344 (11th Cir. 2020) (per curiam).

But while Saunders's appeal was pending, he'd been appointed new counsel. His new counsel filed a motion in federal district court seeking relief from judgment under Federal Rule of Civil Procedure 60(b)(1), which allows post-judgment relief for "mistake" or "excusable neglect." The basis for the motion was that Balch & Bingham's representation had been infected by a conflict of interest, amounting to excusable neglect. Saunders argued in the motion that Balch & Bingham should have raised an argument in federal habeas proceedings under *Martinez v. Ryan*, 566 U.S. 1 (2012), that state postconviction counsel was ineffective for failing to exhaust the

defaulted ineffectiveness claim. The reason Balch & Bingham didn't make that argument, Saunders contended, was that it had a conflict of interest. That is, the failure to exhaust in state postconviction proceedings was Balch & Bingham's own mistake, and thus the firm wasn't going to point it out. Based on this conflict, Saunders asked the court to vacate the final judgment against him.

Six months later, Saunders filed another motion, this time under Rule 60(b)(6), a catchall provision providing for relief from judgment for "any other reason that justifies relief." In this motion, Saunders claimed that Balch & Bingham had a second conflict of interest: it represented the Alabama Department of Corrections in a class action at the same time Saunders's case was pending, and Saunders was among the class of persons that the plaintiffs in that case sought to represent. Saunders argued that this conflict infringed his statutory right to conflict-free counsel under 18 U.S.C. § 3599.

The district court denied both motions, and then denied Saunders's Rule 59(e) motions to alter or amend the denial of the Rule 60(b) motions. We granted certificates of appealability on the following issues: "[w]hether the district court erred in denying Saunders's Fed. R. Civ. P. 59(e) motion[s] to alter or amend the denial of his Fed. R. Civ. P. 60(b) . . . motion[s]."

A habeas petitioner's right to appeal a final order, including a ruling on a Rule 59(e) or Rule 60(b) motion, is governed by the certificate of appealability. *Hamilton v. Sec., Fla. Dept. of Corr.*, 793 F.3d 1261, 1265 (11th Cir. 2015) (per curiam). "A certificate of appealability may issue 'only if the applicant has made a substantial showing of the denial of a constitutional right.'" *See Spencer*, 773 F.3d at 1137 (quoting 28 U.S.C. § 2253(c)(2)). This rule applies even "[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The prisoner

must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.*

Here, the certificates of appealability do not specify a constitutional issue, nor could they be amended to specify one because Saunders has not made a substantial showing that he was denied a constitutional right. *See Spencer*, 773 F.3d at 1137. The first certificate of appealability relates to Saunders’s Rule 60(b)(1) motion. The crux of that motion was that Saunders never had the chance to raise a *Martinez* claim because his counsel had a conflict of interest. But the viability of Saunders’s *Martinez* claim would have depended on showing that his underlying ineffectiveness claim—based on his trial counsel’s failure to prepare him to testify—had at least “some merit.” 566 U.S. at 14. Neither Saunders’s Rule 60(b)(1) motion, nor his application for a certificate of appealability, nor even his habeas petition make that showing. To be sure, he makes the conclusory allegation that his trial counsel failed to adequately prepare him, but he has never developed or supported that claim. He has thus failed to make a substantial showing that he was denied a constitutional right. *See Spencer*, 773 F.3d at 1137.

Nor has Saunders made a substantial showing that he was denied a constitutional right in connection with his Rule 60(b)(6) motion. To the contrary, Saunders has argued on appeal that he suffered a violation only of a *statutory* right to conflict-free counsel. Indeed, his application for a certificate of appealability disclaims any argument that the denial of his Rule 60(b)(6) motion implicated his Sixth Amendment right to counsel. And although Saunders’s application mentions due process, it does not explain how that right is implicated, or cite any authority in support of a due process violation. We thus cannot say that Saunders has made a substantial showing that he was denied due process. *See Spencer*, 773 F.3d at 1137.

For these reasons, the certificates of appealability were improvidently granted. As a result, we vacate our previous order granting the certificates of appealability, and we dismiss Saunders's appeal.

**CERTIFICATES OF APPEALABILITY VACATED AS IMPROVIDENTLY GRANTED, AND APPEAL DISMISSED.**

**6a - Appendix B**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 21-10795-P

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TIMOTHY W SAUNDERS,

Petitioner-Appellant,

versus

WARDEN HOLMAN CORRECTIONAL FACILITY,

Respondent-Appellee.

---

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

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ORDER:

Appellant's motion for certificate of appealability is GRANTED on the following issue:

Whether the district court erred in denying Saunders's Fed. R. Civ. P. 59(e) motion to alter or amend the denial of his Fed. R. Civ. P. 60(b)(6) motion.

/s/ Charles R. Wilson  
UNITED STATES CIRCUIT JUDGE



**7a - Appendix C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>TIMOTHY W. SAUNDERS,</b>	:	
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION: 1:10-00439-KD-C</b>
	:	
<b>STATE OF ALABAMA,</b>	:	
<b>Respondent.</b>	:	

**ORDER**

This matter is before the Court on Petitioner Timothy W. Saunders (Saunders)' Rule 59(e) Motion for Relief the Court's August 20, 2020 Order (Doc. 85), Respondent the State of Alabama (the State)'s Response (Doc. 87), and Saunders' Reply (Doc. 88).

**I. Background**

On July 8, 2020, Saunders filed a Rule 60(b)(6) motion based on a newly identified conflict of counsel as to the law firm of Balch & Bingham. (Doc. 79). Specifically, Saunders asserted that during their representation of him, counsel was simultaneously representing the State of Alabama against a class action brought by state prisoners regarding prison conditions (the Bragg case). Saunders contended that the conflict of interest with his former counsel (Balch & Bingham) compromised his entire federal habeas case, such that the Court should commence his federal habeas proceedings anew, with his newly appointed counsel and an amended petition. In support, Saunders argued that "factual issues" need to be decided, which go to the ultimate issue: whether Balch & Bingham's conflict of interest is a defect in the integrity of his habeas proceedings. In response, the State argued that Saunders' request for a second successive Rule 60(b) motion is untimely and time-barred. (Doc. 80). Moreover, the State claimed the purported conflict of counsel that Saunders asserts was speculation, and that his ineffective assistance claim could not be litigated in a Rule 60(b) motion. Further, the

State submitted an August 25, 2016 waiver of any conflict of interest executed by Saunders with regard to his former counsel (Balch & Bingham). (Doc. 80-1 at 2).

On August 20, 2020 the Court denied Saunders' Rule 60(b)(6) motion rendering his motion for a hearing (Doc. 82) moot. In so doing, the Court found as follows:

For the reasons outlined by the State, the undersigned finds that Saunders' motion...was not filed within a reasonable time. ... new counsel has been involved in this case since at least December 2019, but yet waited until July 2020 to assert the new conflict claim.

.... Saunders has failed to demonstrate an actual conflict of interest (that Balch & Bingham counsel labored under an actual conflict of interest sufficient to harm their representation of him in his postconviction proceedings)....

\*\*\*

As noted *supra*, Saunders executed a waiver of any conflict with counsel (Balch & Bingham). In his current motion, Saunders has failed to point to specific instances of record to suggest either an actual conflict or impairment of his interests due to the conflict (which he waived) -- i.e., that the conflict adversely affected his representation. Additionally, Saunders has failed to make a factual showing of inconsistent interests. Moreover, Saunders has failed to demonstrate that said counsel made a choice between possible alternative courses of action (that the conflict was actual as opposed to potential or hypothetical). Further, the Court finds persuasive the State's Response (Doc. 80 at 11-17), and adopts same as the reasoning of the Court.

(Doc. 84). On September 16, 2020, Saunders' moved pursuant to Rule 59(e) to alter or amend the Court's August 20, 2020 Order due to manifest errors of law and fact, as well as to alter or amend the Court's denial of an evidentiary hearing. (Doc. 85).

## **II. Discussion**

Saunders moves pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. As noted in OJ Commerce, LLC v. Ashley Furniture Indus., Inc., 817 Fed. Appx. 686, 693 (11th Cir. 2020):

“The only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact.” Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007) (alteration in original), quoting In re Kellogg, 197 F.3d 1116, 1119 (11th Cir. 1999). “[A] Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” Id. (alterations in original), quoting Michael Linet, Inc. v. Village of Wellington, Fla., 408 F.3d 757, 763 (11th Cir. 2005).

Moreover, as summarized in [Ohio Cas. Ins. Co. v. Holcim \(US\) Inc., 2007 WL 4189503, \\*2 \(S.D. Ala. Nov. 20, 2007\)](#) (internal citations and footnotes omitted):

"In the interests of finality and conservation of scarce judicial resources, reconsideration of an order is an extraordinary remedy and is employed sparingly." .... "additional facts and arguments that should have been raised in the first instance are not appropriate grounds for a motion for reconsideration." .....The Eleventh Circuit has also stated that "a motion to reconsider should not be used by the parties to set forth new theories of law."....

Further, "[t]he decision ... is 'committed to the sound discretion of the district judge[.]'" [Fetterhoff v. Liberty Life Assur. Co., 2007 WL 1713349, \\*1 \(S.D. Ala. Jun. 11, 2007\)](#) (internal citations omitted), and Rule 59(e) motions are reviewed for abuse of discretion, [Moore v. Sec., Fla. Dept. of Corr., 762 Fed. Appx. 610, 615 \(11th Cir. 2019\)](#).

Saunders' Rule 59(e) motion argues manifest error of law in the Court's August 2020 ruling. Namely, that: 1) his Rule 60(b)(6) motion was timely; 2) the court erred in failing to hold a Garcia evidentiary hearing; 3) the Court applied an erroneous legal standard (Smith) and erred in finding he failed to demonstrate an actual conflict; and 3) the Court's reliance on his waiver was unsound as it was not knowingly and voluntarily made. In retort, the State argues that: 1) the Rule 60(b)(6) motion was untimely; 2) Saunders failed to demonstrate an actual conflict of interest; and 3) Saunders is not entitled to an evidentiary hearing. (Doc. 87).

Upon consideration, Saunders' present motion does not provide a basis for the Court to reconsider its rulings, or present Rule 59's *extraordinary* circumstances for this Court to depart from its prior conclusions. Thus, it is **ORDERED** that Saunders' Rule 59(e) Motion for Relief the Court's August 20, 2020 Order (Doc. 85) is **DENIED**.

**DONE and ORDERED** this the **8th** day of **December 2020**.

/s/ Kristi K. DuBose  
**KRISTI K. DUBOSE**  
**CHIEF UNITED STATES DISTRICT JUDGE**

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 20-12427-P & 21-10795-P

---

TIMOTHY W SAUNDERS,

Petitioner - Appellant,

versus

WARDEN, HOLMAN CORRECTIONAL FACILITY,

Respondent - Appellee.

---

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

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Before: WILLIAM PRYOR, Chief Judge, WILSON and ROSENBAUM, Circuit Judges.

BY THE COURT:

Appellant's Motion for Reconsideration of this Court's June 28, 2022 Order is DENIED.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 20-12427-P ; 21-10795 -P

---

TIMOTHY W SAUNDERS,

Petitioner - Appellant,

versus

WARDEN, HOLMAN CORRECTIONAL FACILITY,

Respondent - Appellee.

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

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ORDER:

The parties to these consolidated appeals are directed to file supplemental briefs on the following issues:

1. Whether the certificates of appealability issued in these appeals specify a constitutional issue. *See* 28 U.S.C. § 2253(c)(3); *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014) (en banc) (“[A] certificate of appealability . . . must specify what constitutional issue jurists of reason would find debatable. Even when a prisoner seeks to appeal a procedural error, the certificate must specify the underlying constitutional issue.”).

2. If the certificates of appealability do not specify a constitutional issue, whether the certificates of appealability should be vacated. *See Spencer*, 773 F.3d at 1138 (“A failure to specify [a constitutional] issue would violate the text enacted by Congress, *see* 28 U.S.C. § 2253(c)(3), and will result in the vacatur of the certificate.”).

3. If the certificates of appealability are vacated, whether Saunders’s applications for a certificate of appealability “ma[k]e a substantial showing of the denial of a constitutional right” that would justify the issuance of new certificates, or whether the applications should be denied and the appeals dismissed, *see* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a [certificate of appealability] should issue when

the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”).

The parties must file simultaneous letter briefs, not to exceed 10 single-spaced pages, within 14 days of our order.

DAVID J. SMITH  
Clerk of the United States Court of  
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION