

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-11280-E

MANOLO MARTINEZ,

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

ORDER:

Manolo Martinez is a Florida prisoner serving 30 years' imprisonment following a jury trial for conspiracy to traffic over 400 grams of cocaine. In his instant *pro se* 28 U.S.C. § 2254 habeas corpus petition, he asserted that his trial counsel performed ineffectively by: (1) failing to move to suppress wiretaps because they were not supported by probable cause and were insufficient under Florida law; and (2) misadvising him regarding a plea offer because counsel failed to review evidence with him or inform him of the minimum and maximum sentences. He also requested an evidentiary hearing. The district court reviewed the state's response to Martinez' § 2254 petition and erroneously noted that Martinez did not file a reply. It then denied the petition, finding that his claims were meritless. Martinez moved for relief from judgment under Federal Rule of Civil Procedure 60(b), asserting that he had filed a timely reply to the state's response and

requesting that the court consider it. The district court determined that, even considering Martinez' reply, the claims in his § 2254 petition were meritless, and, thus, denied his Rule 60(b) motion. Martinez seeks a certificate of appealability ("COA") and moves for leave to proceed on appeal *in forma pauperis* ("IFP").

To obtain a COA, a movant 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 constitutional claim on the merits, the movant 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) (quotation marks omitted).

Here, reasonable jurists would not debate the district court's determination that the state court's resolution of Ground One was not contrary to, or an unreasonable application of, federal law, or based on an unreasonable determination of the facts. In light of the record, the wiretaps were supported by probable cause. Thus, a motion to suppress based on a lack of probable cause would have been meritless, and counsel cannot be deemed ineffective for failing to raise a nonmeritorious issue. *See Bolender v. Singletary*, 16 F.3d 1547, 1573 (11th Cir. 1994) (explaining that the failure to raise nonmeritorious issues does not constitute ineffective assistance). To the extent that Martinez challenged the wiretaps under Florida law, he raised an issue of state law, and the state court did not unreasonably determine that the affidavit supporting the wiretap was sufficient under state law. *See Pinkney v. Sec'y, Dep't of Corr.*, 876 F.3d 1290, 1295 (11th Cir. 2017) (explaining that, when the validity of the claim that counsel failed to raise turns on state law, this Court will defer to the state's construction of its own law).

Reasonable jurists would not debate the district court's determination that the state court's resolution of Ground Two was not contrary to, or an unreasonable application of, federal law, or based on an unreasonable determination of the facts. In light of Martinez' and his counsel's pre-trial testimony, Martinez failed to establish a "reasonable probability [he] would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel." *Missouri v. Frye*, 566 U.S. 134, 145 (2012). To the extent that he challenged the state court's failure to hold an evidentiary hearing on this claim, such a challenge is not cognizable for habeas relief. *See Carroll v. Sec'y, Dep't of Corr.*, 574 F.3d 1354, 1365 (11th Cir. 2009) ("This Court has repeatedly held defects in state collateral proceedings do not provide a basis for habeas relief."). Additionally, the district court did not abuse its discretion in failing to conduct an evidentiary hearing. 28 U.S.C. § 2254(e)(2).

Finally, reasonable jurists would not debate the district court's denial of Martinez' Rule 60(b) motion because the district court correctly determined that, even considering the arguments in Martinez' reply, he was not entitled to relief. Fed. R. Civ. P. 60(b). Accordingly, Martinez' motion for a COA is DENIED and his motion for IFP is DENIED AS MOOT.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MANOLO MARTINEZ,

Petitioner,

v.

Case No: 6:20-cv-1686-PGB-DCI

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

Respondents.

ORDER

This cause is before the Court on Petitioner's Motion for Relief from Judgment or Order (Doc. 20). The motion involves the Court's Order (Doc. 18) dismissing the case and corresponding Judgment (Doc. 19). Petitioner states that the Court's Order dismissing the case mentioned that Petitioner failed to file a Reply to the Response to Petition (Doc. 14) but that, in fact, he did file a Reply.

Petitioner has filed the motion pursuant to Federal Rule of Civil Procedure 60(b). Rule 60 (b) permits reconsideration of a district court order or judgment based on a limited number of circumstances. The rule permits a district court to relieve a party from a final order or judgment on grounds including but not limited to (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing party; (4)

the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief.

Petitioner is correct in that he did file a Reply (Doc. 16) on July 29, 2021. However, the Court has carefully reviewed the Reply and the arguments raised therein and determines that, even in light of the Reply, the claims raised by Petitioner in the Petition for Writ of Habeas Corpus ("Petition," Doc. 1) are without merit and that the Petition was properly denied.

In sum, Petitioner fails to demonstrate, any of the factors set forth in Rule 60(b) or to provide any other basis for reconsideration of the Court's Order of March 17, 2022 (Doc. 18) or the judgment entered with regard thereto.

Accordingly, it is **ORDERED** that Petitioner's Motion for Relief from Judgment or Order (Doc. 20) is **DENIED**. Further, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is denied with regard to the denial of this motion.

DONE and **ORDERED** in Orlando, Florida on April 6, 2022.



PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Unrepresented Party

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available in the
Clerk's Office.**