# U.S Supreme Court Rule 14 (I)

## Appendix

1. Document #38 Filed 8-9-21 (11 pgs) Case# 2:19-cv-190-SPM-MRM
2. Document #58 Filed 7-27-22 (2 pgs) Case# 2:19-cv-190-SPM-MRM
3. Jan. 21st 2022 letter Case# 22-10193-A (2 pgs) 11th Cir. App.
4. Feb. 14th 2022 letter Case# 22-10193-A (1 pg) 11th Cir. App.
5. C.I.P & Corp. Disclosure Filed 5-6-2022 Case# 22-10193-
6. Nov. 18 2022 order of Dismissal Case# 22-10193-A (3 pgs)
7. 12-5-2022 MTR "Copy" Case# 22-10193-A (10 pgs)
8. 12-27-2022 order of Dismissal of MTR, Case 22-10193-A (2 pgs
9. 6-13-2022 order to proceed Case# 22-10193-A (2 pgs)
10. 7-19-2022 order Req. COA Case# 22-10193-A (3 pgs)
11. Exhibit 1 MTR Filed 5-11-2022 Case# 22-10193-A (25 pgs)
12. C.I.P for #7 above (1 pg)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 22-10193-A

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TORREY DEWAYNE WALKER,

Petitioner-Appellant,

versus

WARDEN,

Respondent-Appellee.

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

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ORDER:

Torrey Walker is a Florida prisoner serving a 15-year total sentence for burglary of a dwelling and grand theft. He filed a *pro se* 28 U.S.C. § 2254 petition, alleging that: (1) his 15-year sentence on the burglary count was excessive under the Florida Constitution and the Eighth Amendment; and (2) his excessive 15-year sentence on the burglary count violated the Equal Protection Clause of the 14th Amendment.

The district court denied the § 2254 petition. Walker subsequently moved for reconsideration under Fed. R. Civ. P. 59(e), which the district court also denied. Walker now moves for a certificate of appealability ("COA"), for this Court not to construe his notice of appeal as a motion for a COA, and for leave to proceed on appeal *in forma pauperis* ("IFP").

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). The petitioner satisfies this requirement 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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Here, reasonable jurists would not debate the district court's denial of Ground 1. *See Slack*, 529 U.S. at 484. To the extent Walker raised a Florida constitutional claim, his claim was not cognizable on federal habeas corpus review. *See Estelle v. McGuire*, 502 U.S. 62, 67 (1991); *Chamblee v. Florida*, 905 F.3d 1192, 1198 (11th Cir. 2018). Further, to the extent that Walker asserts that the rule of lenity should apply because Fla. Stat. Ann. § 810.02 is ambiguous, the Florida court's finding that the statute is unambiguous is authoritative and cannot be a basis for federal habeas relief. *See Estelle*, 502 U.S. at 67; *Chamblee*, 905 F.3d at 1198.

Additionally, Walker has failed to show that his sentence for burglary of a dwelling violated the Eighth Amendment. Notably, Walker's 15-year sentence was the least that the court could sentence him to on the burglary count, because he was a prison releasee reoffender, and was substantially under the 30-year maximum that he faced as a habitual offender. *See United States v. Moriarty*, 429 F.3d 1012, 1024 (11th Cir. 2005) (holding that generally a sentence does not violate the Eighth Amendment if it is within the limits imposed by statute). Thus, there is a general presumption that his sentence was constitutional. *See id.* Moreover, Walker has failed to show that the sentence was "grossly disproportionate to the offense," particularly, because the 15-year sentence was requested by counsel at sentencing. *See McCullough v. Singletary*, 967 F.2d 530, 535 (11th Cir. 1992).

Reasonable jurists would also not debate the district courts denial of Ground 2. *See Slack*, 529 U.S. at 484. Regardless of whether the district court erred by finding that the claim was procedurally barred, Ground 2 fails on the merits. While Walker makes conclusory assertions that

his equal protection rights have been violated, he has failed to provide examples of similarly situated persons who received more favorable treatment or proof of discriminatory intent. *See Jones v. Ray*, 279 F.3d 944, 946-47 (11th Cir. 2001).

Lastly, the district court did not abuse its discretion in denying Walker's motion for reconsideration because he failed to present newly discovered evidence or manifest errors of law or fact. *See Mincey v. Head*, 206 F.3d 1106, 1137 (11th Cir. 2000); *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). Further, to the extent that Walker asserts that the rule of lenity should apply because Fla. Stat. Ann. § 810.02 is ambiguous, he has not explained why the Florida court erred in ruling otherwise.

Accordingly, Walker's motion for a COA is DENIED. His motions for IFP and for this Court to not construe his notice of appeal as a COA are DENIED AS MOOT.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**FORT MYERS DIVISION**

TORREY D. WALKER,

Petitioner,

v. Case No: 2:19-cv-190-SPC-MRM

D. SNIDER,

Respondent.
_____/

**OPINION AND ORDER**[1]

Before the Court is Petitioner Torrey D. Walker's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. 1). Walker, proceeding *pro se*, challenges his sentencing as violative of the Florida Constitution and the Eighth and Fourteenth Amendments of the United States Constitution. (Doc. 1). After considering the Petition, response (Doc. 18), state court record, and other filings, the Court concludes that the Petition must be denied. Because the Court may resolve the Petition based on the record, an evidentiary hearing is not warranted. *See* Rule 8, Rules Governing Habeas Corpus Petitions under Section 2254.

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## Background

The State of Florida charged Walker with burglary of a dwelling and grand theft. (Doc. 18-2 at 28). The State sought Habitual Felony Offender and Prison Releasee Reoffender enhancements. (*Id.* at 6). Walker pleaded not guilty to all charges.

At trial, witness Lee Dalton testified he saw a man walking down the sidewalk carrying a television into an abandoned home and notified law enforcement. Police responded, noticed the television through a window of the abandoned home, and searched the unlocked home. They discovered Walker—barefoot with muddy feet—hiding in a bathtub. Around this time, Terrence Leary, returned to his home nearby to discover his side French doors destroyed and a bedroom television stolen. Law enforcement observed muddy footprints from the French doors to the bedroom where the stolen television had been located. They then confirmed the stolen television was Leary's.

Witness Dalton positively identified Walker as the individual he saw carrying the television. Walker offered multiple alibis that proved false, including that he had been with his "cousin" Johnny Davis and at a Chinese restaurant where he was to begin work the next week. Florida Department of Corrections records showed Davis was incarcerated at the time. And the owner of the Chinese restaurant denied ever hiring Walker.

The jury found Walker guilty of both charges, and the Court sentenced him to a fifteen-year prison sentence for burglary of a dwelling and a concurrent five-year term for grand theft. The Second District Court of Appeal of Florida (2nd DCA) affirmed the conviction per curiam. *Walker v. State*, 191 So. 3d 470 (Fla. Dist. Ct. App. 2016).

Walker filed a series of postconviction motions. The postconviction court denied his first motion under Florida Rule of Criminal Procedure 3.850. Walker then filed two motions for rehearing and an amended postconviction motion. The postconviction court denied rehearing and dismissed the amended motion. The 2nd DCA affirmed the lower court's ruling. *Walker v. State*, 236 So. 3d 1043 (Fla. Dist. Ct. App. 2017). Walker then moved to correct, reduce, or modify his sentence. Before the postconviction court ruled, Walker sought rehearing. The postconviction court then denied the motion to modify, which Walker untimely appealed, causing dismissal. Walker then filed a petition for belated appeal and supplemental petition. The Second District denied the petition.

After his postconviction relief efforts proved fruitless, Walker filed his federal habeas Petition, arguing his sentence is excessive sentencing under the Eighth Amendment and Florida Constitution (Ground 1) and the Fourteenth Amendment (Ground 2). (Doc. 1). Respondent concedes the Petition is timely.

**Applicable Habeas Law**

## I. AEDPA

The Antiterrorism Effective Death Penalty Act (AEDPA) governs a state prisoner's petition for habeas corpus relief. 28 U.S.C. § 2254. Relief may only be granted on a claim adjudicated on the merits in state court if the adjudication:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). This standard is both mandatory and difficult to meet. *White v. Woodall*, 572 U.S. 415, 419 (2014). A state court's violation of state law is not enough to show that a petitioner is in custody in violation of the "Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Wilson v. Corcoran*, 562 U.S. 1, 16 (2010).

"Clearly established federal law" consists of the governing legal principles set forth in the decisions of the United States Supreme Court when the state court issued its decision. *White*, 572 *U.S. at 419*; *Carey v. Musladin*, 549 U.S. 70, 74 (2006) (citing *Williams v. Taylor*, 529 U.S. 362, 412 (2000)). Habeas relief is appropriate only if the state court decision was "contrary to, or an unreasonable application of," that federal law. 28 U.S.C. § 2254(d)(1). A decision is "contrary to" clearly established federal law if the state court either:

(1) applied a rule that contradicts the governing law set forth by Supreme Court case law; or (2) reached a different result from the Supreme Court when faced with materially indistinguishable facts. *Ward v. Hall*, 592 F.3d 1144, 1155 (11th Cir. 2010); *Mitchell v. Esparza*, 540 U.S. 12, 16 (2003).

A state court decision involves an "unreasonable application" of Supreme Court precedent if the state court correctly identifies the governing legal principle, but applies it to the facts of the petitioner's case in an objectively unreasonable manner, *Brown v. Payton*, 544 U.S. 133, 134 (2005); *Bottoson v. Moore*, 234 F.3d 526, 531 (11th Cir. 2000), or "if the state court either unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." *Bottoson*, 234 F.3d at 531 (quoting *Williams*, 529 U.S. at 406). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as fair-minded jurists could disagree on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011). "[T]his standard is difficult to meet because it was meant to be." *Sexton v. Beaudreaux*, 138 S. Ct. 255, 2558 (2018).

## II. Exhaustion and Procedural Default

AEDPA precludes federal courts, absent exceptional circumstances, from granting habeas relief unless a petitioner has exhausted all means of relief available under state law. Failure to exhaust occurs "when a petitioner has

not 'fairly presented' every issue raised in his federal petition to the state's highest court, either on direct appeal or on collateral review." *Pope v. Sec'y for Dep't. of Corr.*, 680 F.3d 1271, 1284 (11th Cir. 2012) (quoting *Mason v. Allen*, 605 F.3d 1114, 1119 (11th Cir. 2010)). The petitioner must apprise the state court of the federal constitutional issue, not just the underlying facts of the claim or a similar state law claim. *Snowden v. Singletary*, 135 F.3d 732, 735 (11th Cir. 1998).

> Procedural defaults generally arise in two ways:
>
> > (1) where the state court correctly applies a procedural default principle of state law to arrive at the conclusion that the petitioner's federal claims are barred; or (2) where the petitioner never raised the claim in state court, and it is obvious that the state court would hold it to be procedurally barred if it were raised now.

*Cortes v. Gladish*, 216 F. App'x 897, 899 (11th Cir. 2007). A federal habeas court may consider a procedurally barred claim if (1) petitioner shows "adequate cause and actual prejudice," or (2) if "the failure to consider the claim would result in a fundamental miscarriage of justice." *Id.* (citing *Coleman v. Thompson*, 501 U.S. 722, 749-50 (1991)).

## Discussion

### I. Ground One: Cruel and Unusual Punishment

Walker challenges his fifteen-year prison sentence, arguing it unconstitutionally violates the rule of lenity. He claims his sentence is

excessive under both Florida and United States constitutions as cruel and unusual punishment.

**A. Violation of the Florida Constitution**

Walker's claim that his sentence violates Article I, Section 17 of the Florida Constitution as excessive cannot support habeas relief. Issues of state law are not cognizable in a federal habeas action. *See Branan v. Booth*, 861 F.2d 1507, 1508 (11th Cir. 1988). Courts "have consistently held that federal courts can not review a state's alleged failure to adhere to its own sentencing procedures." *Id.* (collecting cases). Walker's argument that his sentence was excessive under the Florida Constitution is therefore not cognizable in this action.

**B. Violation of the Eighth Amendment**

Walker also contends that his sentence violates the Eighth Amendment. But the Petition lacks the requisite specific, particularized factual allegations supporting habeas relief. *See Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991) (finding vague, conclusory, speculative, and unsupported claims cannot support habeas relief). Indeed, the only "fact" Walker uses to support his claim of excessive sentencing is the statute itself. (Doc. 1 at 5).

As best the Court can understand it, Walker argues that his burglary of an unoccupied dwelling conviction under Fla. Stat. § 810.02(d) should have been treated as a burglary of an unoccupied structure or conveyance, as

described in Fla. Stat. § 810.02(4)(a)–(b). In Florida, burglary of an unoccupied dwelling is a second-degree felony, Fla. Stat. § 810.02(d), while burglary of an unoccupied structure or conveyance is a third-degree felony. Fla. Stat. § 810.02(4)(a)–(b).

Walker argues the rule of lenity should apply to resolve an apparent ambiguity in the burglary statute so that his offense is deemed a third-degree felony. But "the simple existence of some statutory ambiguity is not sufficient to warrant application of that rule, for most statutes are ambiguous to some degree." *U.S. v. McNair*, 605 F.3d 1152, 1192 (11th Cir. 2010) (cleaned up). A party must show a "grievous ambiguity" before the rule of lenity can be applied. For example, if a broad construction of a criminal statute would criminalize a broad range of apparently innocent conduct, the rule of lenity may be applied to mitigate those effects. *See id.* Walker has not identified any ambiguity, much less one so grievous it would trigger the rule of lenity's application.

Courts reviewing prison sentences for violations of the Eighth Amendment must grant "substantial deference to the broad authority" of state legislatures and sentencing courts. *Solem v. Helm*, 463 U.S. 277, 290 (1983). Walker was convicted of burglary of an unoccupied dwelling. (Doc. 18-2 at 537). This was consistent with the evidence showing that Walker broke into Leary's home and stole a television. The state court sentenced Walker to a prison term suggested by Walker's own attorney and within the statutory

range. (Doc. 18-2 at 576-77). Walker failed to allege any facts supporting habeas relief based on a violation of the Eighth Amendment.

## II. Ground Two: Fourteenth Amendment Equal Protection

As his second ground for habeas relief, Walker alleges the sentence violates his Fourteenth Amendment rights. In support, he cites to the same facts as his first ground for relief. That is, just Fla. Stat. § 810.02. Without describing how any class of prisoners or accused has been treated differently than him, Walker claims his sentence is excessive.

Respondent argues that the claim was not properly exhausted and is now procedurally barred because Walker did not raise it in state court. Though Walker asserted a procedural due process claim in state court, he failed to formulate any equal protection argument like the one he asserts here. So his claim is procedurally barred and unexhausted. *See McNair v. Campbell*, 416 F.3d 1291, 1304 (11th Cir. 2005) (finding the failure to present a federal constitutional claim in state court renders the claim unexhausted and procedurally barred).

This ground is also meritless. To plead a cognizable equal protection claim, a petitioner "must demonstrate that (1) 'he is similarly situated with other prisoners who received' more favorable treatment; and (2) his discriminatory treatment was based on some constitutionally protected interest such as race." *Jones v. Ray*, 279 F.3d 944, 946–47 (11th Cir. 2001)

(quoting *Damiano v. Fla. Parole & Prob. Comm'n*, 785 F.2d 929, 932–33 (11th Cir. 1986)). The petitioner must also show that the discriminatory treatment was the result of discriminatory intent. *Jones v. White*, 992 F.2d 1548, 1573 (11th Cir. 1993). Absent proof of discriminatory intent, a petitioner cannot show a violation of his equal protection rights. *See E & T Realty Co. v. Strickland*, 830 F.2d 1107, 1113 (11th Cir. 1987).

Walker presents no evidence of similarly situated prisoners, a constitutionally protected interest, or discriminatory intent. Ground 2 is denied.

**DENIAL OF CERTIFICATE OF APPEALABILITY**

A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability (COA). "A [COA] may issue...only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, a petitioner must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (*quoting Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or that "the issues presented were adequate to deserve encouragement to proceed further," *Miller–El v. Cockrell*, 537 U.S. 322, 335–

36 (2003) (citations omitted). Walker has not made the requisite showing here and may not have a certificate of appealability on any ground of his Petition.

Accordingly, it is now

**ORDERED:**

Petitioner Torrey D. Walker's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. 1) is **DENIED**. The Clerk of the Court is **ORDERED** to terminate any pending motions, enter judgment, and close this case.

**DONE** and **ORDERED** in Fort Myers, Florida on August 9, 2021.

SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

TORREY D. WALKER,

Petitioner,

v. Case No.: 2:19-cv-190-SPC-MRM

D. SNIDER,

Respondent.

_____/

**OPINION AND ORDER**[1]

The Eleventh Circuit Court of Appeals remanded this case so this Court could determine whether Petitioner Torrey Walker is entitled to a certificate of appealability (COA) with respect to the denial of his motion for reconsideration. A federal habeas court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, a petitioner must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (*quoting Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or that "the

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issues presented were adequate to deserve encouragement to proceed further," *Miller–El v. Cockrell*, 537 U.S. 322, 335–36 (2003) (citations omitted).

The Court denied Walker's habeas action on the merits. (Doc. 38). Walker then filed a Motion to Reconsider under Federal Rule of Civil Procedure 59. (Doc. 40). In it, Walker explained why he disagrees with the Court's denial of habeas relief. For example, Walker claims that contrary to the Court's ruling, he showed enough ambiguity in a Florida burglary statute to invoke the rule of lenity. The Court denied the Rule 59 motion because it merely rehashed arguments the Court already rejected. Walker has not shown that a reasonable jurist would find denial of his Rule 59 motion debatable or wrong, or that his Rule 59 motion presents issues that deserve encouragement to proceed further. Thus, the Court **DENIES** a COA with regard to the denial of Walker's Rule 59 motion.

**DONE** and **ORDERED** in Fort Myers, Florida on July 27, 2022.

SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1
Copies: All Parties of Record
Clerk of the Eleventh Circuit Court of Appeals

# UNITED STATES COURT OF APPEALS
# FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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January 21, 2022

Torrey Dewayne Walker
Moore Haven CF - Inmate Legal Mail
PO BOX 719001
C1 - 102 UP
MOORE HAVEN, FL 33471

Appeal Number: 22-10193-A
Case Style: Torrey D. Walker v. Warden
District Court Docket No: 2:19-cv-00190-SPC-MRM

Please use the appeal number for all filings in this court.

Electronic Filing
All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. We have received copies of the orders of the district court declining to issue a certificate of appealability and denying leave to proceed on appeal in forma pauperis.

Pursuant to Fed.R.App.P. 22(b) and 24(a), you may within thirty (30) days from this date either pay to the **DISTRICT COURT** clerk the docketing and filing fee or you may move in this court for leave to proceed on appeal as a pauper (form enclosed). See 11th Cir. R. 24-2. A motion for a certificate of appealability should be filed in this court within the same time period. The notice of appeal will be treated as a request for a certificate of appealability unless appellant files such a request within thirty (30) days from the date of this letter.

Certificate of Interested Persons and Corporate Disclosure Statement ("CIP")
Every motion, petition, brief, answer, response, and reply must contain a CIP. See FRAP 26.1; 11th Cir. R. 26.1-1. In addition:

- Appellants/Petitioners must file a CIP within 14 days after this letter's date.
- Appellees/Respondents/Intervenors/Other Parties must file a CIP within 28 days after this letter's date, regardless of whether Appellants/Petitioners have filed a CIP.

- Only parties represented by counsel must complete the web-based CIP. Counsel must complete the web-based CIP, through the Web-Based CIP link on the Court's website, on the same day the CIP is first filed.

The failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. See 11th Cir. R. 26.1-5(c).

Attorney Admissions
Attorneys who wish to participate in this appeal must be properly admitted either to the bar of this court or for this particular proceeding, See 11th Cir. R. 46-1; 46-3; 46-4. In addition, all attorneys (except court-appointed attorneys) who wish to participate in this appeal must file an appearance form within fourteen (14) days after this letter's date. The Application for Admission to the Bar and Appearance of Counsel Form are available on the Court's website. **The clerk generally may not process filings from an attorney until that attorney files an appearance form.** See 11th Cir. R. 46-6(b).

Obligation to Notify Court of Change of Addresses
Each pro se party and attorney has a continuing obligation to notify this court of any changes to the party's or attorney's addresses during the pendency of the case in which the party or attorney is participating. See 11th Cir. R. 25-7.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Toya J. Stevenson, A
Phone #: (404) 335-6188

HAB-4 Ntc of dktg COA IFP Denied DC

**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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February 14, 2022

Torrey Dewayne Walker
Moore Haven CF - Inmate Legal Mail
PO BOX 719001
C1 - 102 UP
MOORE HAVEN, FL 33471

Appeal Number: 22-10193-A
Case Style: Torrey D. Walker v. Warden
District Court Docket No: 2:19-cv-00190-SPC-MRM

NOTICE OF APPEAL FILED: January 14, 2022

After review of the district court docket entries, order and/or judgment appealed from, and the notice of appeal, it appears that this court may lack jurisdiction over this appeal. If it is determined that this court is without jurisdiction, this appeal will be dismissed.

The parties are requested to simultaneously advise the court in writing within fourteen (14) days from the date of this letter of their position regarding the jurisdictional question(s) set forth on the attached page. Counsel must submit their response electronically, and do not need to provide paper copies. The responses must include a Certificate of Interested Persons and Corporate Disclosure Statement as described in Fed.R.App.P. 26.1 and the corresponding circuit rules. Requests for extensions of time to file a response are disfavored.

After fourteen (14) days, this court will consider any response(s) filed and any portion of the record that may be required to resolve the jurisdictional issue(s). Please note that the issuance of a jurisdictional question does not stay the time for filing appellant's briefs otherwise provided by 11th Cir. R. 31-1.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Toya J. Stevenson, A
Phone #: (404) 335-6188

Enclosure(s)

JUR-1 Resp reqd JQ

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Ryan.Sydejko@myfloridalegal.com
CrimAppTPA@myfloridalegal.com

*Counsel for Appellee*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 6, 2022, a true and correct copy of the foregoing was filed with the Clerk of the Eleventh Circuit using the CM/ECF system, and was placed into U.S. Mail to Torrey D. Walker #Y11735, Moore Haven C.F., P.O. Box 719001, Moore Haven, Florida 33471.

ASHLEY MOODY
FLORIDA ATTORNEY GENERAL

/s/ Ryan Sydejko
**RYAN SYDEJKO**
**Assistant Attorney General**

CASE NUMBER 22-10193-A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

TORREY D. WALKER,

Appellant,

v.

WARDEN,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

**CERTIFICATE OF INTERESTED PERSONS**

**ASHLEY MOODY**
**FLORIDA ATTORNEY GENERAL**

**RYAN SYDEJKO**
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*Counsel for Appellee*

## CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

I HEREBY CERTIFY that the following is a list of all persons interested in the outcome of the instant case:

Chappel, Hon. Sheri Polster – United States District Judge

Gallen, Hon. Thomas – Florida Second District Court of Appeal

Kruszka, Jason – Public Defender

LaRose, Hon. Edward C. – Florida Second District Court of Appeal

Leary, Terence – Victim

Marcos, Leena M. – Assistant State Attorney

Reece, Hon. Thomas S – Lee County Circuit Court Judge

Sleet, Hon. Daniel H. – Florida Second District Court of Appeal

Steinbeck, Hon. Margaret O. – Lee County Circuit Court Judge

There are no publicly held corporations that own 10% or more interest in any party to this appeal.

Respectfully submitted,

ASHLEY MOODY
FLORIDA ATTORNEY GENERAL

/s/ Ryan Sydejko
**RYAN SYDEJKO**
**Assistant Attorney General**
Florida Bar No. 0027094
Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013

# UNITED STATES COURT OF APPEALS
# FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
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David J. Smith
Clerk of Court

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November 18, 2022

Clerk - Middle District of Florida
U.S. District Court
U.S. Courthouse and Federal Building
2110 1ST ST
FORT MYERS, FL 33901

Appeal Number: 22-10193-A
Case Style: Torrey D. Walker v. Warden
District Court Docket No: 2:19-cv-00190-SPC-MRM

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Toya J. Stevenson, A
Phone #: (404) 335-6188

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

Additional material from this filing is available in the Clerk's Office.