No. _____

In The Supreme Court Of The United States

Michael Lawrence Cassidy - Petitioner

Vs.

Ricky D. Dixon, Secretary, Fla. Dep't of Corr. - Respondent

Appendices to Petition For Writ Of Certiorari

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-14257-BB

MICHAEL LAWRENCE CASSIDY,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

ORDER:

Michael Cassidy is a Florida prisoner serving a 35-year sentence for sexual battery. In January 2021, he filed an amended *pro se* 28 U.S.C. § 2254 petition, raising nine claims for relief. As background, in 2012, Cassidy was found guilty of 3 counts of sexual battery (Counts 1-3), and the trial court sentenced him to a total of 35 years' imprisonment on Counts 1 and 2, to be followed by 15 years' probation on Count 3. The First District Court of Appeal ("First DCA") affirmed.

Cassidy subsequently filed a Fla. R. Crim. P. 3.850 motion, arguing, in relevant part, that trial counsel failed to present his military records, which he had provided to counsel prior to trial, and which showed that he was in a different state during the time-frame alleged in Count 3. In August 2017, the state court denied in part and granted in part his Rule 3.850 motion, vacating his conviction and sentence as to Count 3, and ordering a new trial on that count. The state subsequently filed a *nolle prosequi* as to Count 3, and, on October 10, 2017, the trial court issued

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an amended judgment, which omitted any reference to Count 3, but was otherwise identical to the original judgment. In the meantime, Cassidy appealed from the partial denial of his Rule 3.850 motion, and the First DCA affirmed, issuing its mandate on March 7, 2019.

On March 6, 2020, Cassidy filed an initial § 2254 petition, and he subsequently filed the instant amended petition. As to the timeliness of his petition, he argued that: (1) the limitations period had restarted after the trial court issued its amended judgment; and (2) he was actually innocent, as he had "evidence that two [s]tate witnesses lied under oath." The state responded by moving to dismiss his § 2254 petition as time-barred, arguing that: (1) the trial court's October 10, 2017, order was a *nunc pro tunc* order, which did not restart the limitations period; and (2) Cassidy could not show that he was actually innocent, as his military records were not new evidence. Cassidy replied, largely reiterating the arguments that he made in his amended § 2254 petition. He also argued that his military records were reliable evidence of his innocence, as they affected the victim's credibility.

A magistrate judge issued a report and recommendation ("R&R"), recommending that the district court deny the state's motion to dismiss. Specifically, the magistrate judge concluded that the trial court's October 10, 2017, order restarted the limitations period, as it was a "new judgment." The magistrate judge then calculated that the limitations period remained tolled until March 7, 2019, when the First DCA issued its mandate affirming the partial denial of Cassidy's Rule 3.850 motion, and, therefore, he had until March 7, 2020, to timely file his petition. Accordingly, the magistrate judge concluded, because Cassidy had filed his initial § 2254 petition on March 6, 2020, it was timely.

The state objected to the R&R, reiterating its argument that the trial court's October 10, 2017, order did not restart the limitations period. The district court declined to adopt the R&R and

granted the state's motion to dismiss, concluding that, because the trial court's October 10, 2017, order was a *nunc pro tunc* order, it did not qualify as a new judgment for purposes of restarting the limitations period, and, therefore, Cassidy's petition was untimely.

Thereafter, Cassidy filed a notice of appeal and moved for a certificate of appealability ("COA"). The district court ultimately granted a COA on the following issues: (1) "whether the state court's order dated October 10, 2017, was a *nunc pro tunc* order under state law;" and (2) "whether the state court's vacating of one count of a multi-count judgment created a new judgment under [§] 2244(d) and [§] 2254, thereby restarting the [one] year federal clock."

Cassidy now moves to expand the COA, arguing that, because his military records exculpated him of Count 3, they also show that he is innocent of Counts 1 and 2, as they call into question the victim's credibility regarding "the other accusations." He also argues that the district court violated *Clisby v. Jones*, 960 F.2d 925 (11th Cir. 1992) (*en banc*), by not analyzing whether his actual-innocence claim was sufficient to overcome the untimeliness of his § 2254 petition.

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). Where the district court denied a habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate whether (1) the petition states a valid claim of the denial of a constitutional right, and (2) the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Under the Antiterrorism and Effective Death Penalty Act of 1996, § 2254 petitions are governed by a one-year statute of limitations that begins to run on the latest of four triggering events. 28 U.S.C. § 2244(d)(1)(A). However, under the miscarriage-of-justice exception, a petitioner may overcome the expiration of the statute of limitations and present an untimely claim if he makes "a convincing showing of actual innocence." *McQuiggin v. Perkins*, 569 U.S. 383,

386 (2013). To invoke this exception, a petitioner must show that, in light of new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. *Id.* at 386, 399.

In other words, actual-innocence claims must be supported "with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Schlup v. Delo*, 513 U.S. 298, 324 (1995). The district court must account for how "reasonable triers of fact" would use the newly presented evidence to assess the "credibility of the witnesses presented at trial." *Id.* at 330.

Here, although the district court did not specifically address Cassidy's actual-innocence claim, reasonable jurists would not debate the merits of his claim. *See Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014) (*en banc*). Although Cassidy argued that his military records would have affected the victim's overall credibility, his records were available at the time of his trial, as he admitted that he had provided them to counsel, and, therefore, they were not "new" evidence. *See McQuiggin*, 569 U.S. at 386, 399; *Schlup*, 513 U.S. at 330.

Accordingly, Cassidy's motion to expand the COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Cassidy may still proceed as to the issues identified in the district court's order granting a certificate of appealability.

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MICHAEL LAWRENCE CASSIDY,

Petitioner,

v. 4:20cv131–WS/HTC

RICKY D. DIXON,

Respondent.

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation (ECF No. 50) docketed December 22, 2021. The magistrate judge recommends that Petitioner's motion (ECF No. 43) for certificate of appealability be granted. No objections to the report and recommendation have been filed.

Having considered the record, the court finds that the magistrate judge's report and recommendation is due to be adopted.

Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation (ECF No. 50) is hereby ADOPTED and incorporated by reference into this order.

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2. Petitioner's motion (ECF No. 43) for certificate of appealability is GRANTED.

3. A certificate of appealability is GRANTED as to (1) whether the state court's order dated October 10, 2017, was a *nunc pro tunc* order under state law; and (2) whether the state court's vacating of one count of a multi-count judgment created a new judgment under 2244(d) and 2254, thereby restarting the 1 year federal clock.

DONE AND ORDERED this 7th day of February, 2022.

s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MICHAEL LAWRENCE CASSIDY,

Petitioner,

v. Case No. 4:20cv131-WS-HTC

RICKY D. DIXON,[1]

Respondent.
_____/

ORDER AND REPORT AND RECOMMENDATION

This cause is before the Court on Petitioner's Application for Certificate of Appealability, filed on December 2, 2021. ECF Doc. 43. The matter was referred to the undersigned Magistrate Judge for report and recommendation pursuant to 28 U.S.C. § 636 and N.D. Fla. Loc. R. 72.2(B). For the reasons set forth below, the undersigned recommends the Certificate of Appealability be granted.

I. LEGAL STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

Under 28 U.S.C. § 2253(c)(1), "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from . . . the final order in a habeas corpus proceeding in which the detention complained

[1] Ricky D. Dixon succeeded Mark S. Inch as Secretary of the Florida Department of Corrections and is automatically substituted as the respondent. *See* Fed. R. Civ. P. 25(d). The clerk is directed to update the case file information to reflect Ricky D. Dixon as the Respondent.

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of arises out of process issued by a State court." Section 2253(c)(2) states that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." A substantial showing of the denial of a constitutional right "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted).

In the case of a petition dismissed on procedural grounds such as untimeliness, two questions must be resolved:

> 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 only when the prisoner shows both 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.

Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (citing *Slack*, 529 U.S. at 484) (internal quotation marks omitted). Furthermore, under § 2253(c)(3), "any certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)." *See also* Rules Governing § 2254 Cases, Rule 11 ("If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)").

III. ANALYSIS

As set forth below, given the lack of any precedent from this Circuit directly on point, the undersigned finds reasonable jurists could disagree as to whether the petition was untimely, as well as whether the claims asserted have merit.

A. Whether Reasonable Jurists Could Debate the Court's Procedural Ruling

Respondent moved to dismiss the petition as untimely. The crux of the timeliness issue is whether an October 10, 2017 amended judgment vacating one count of the initial judgment and sentence[2] was an new judgment for purposes of re-starting the statute of limitations under the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Petitioner argues it did, while Respondent argues it did not.

The Court, relying upon *Osbourne v. Secretary, Florida Department of Corrections*, 968 F.3d 1261 (11th Cir. 2020), found that the amended judgment was not a new judgment, but a *nunc pro tunc* judgment which did not restart the federal habeas limitations period.[3] As the Court explained, the state trial judge "did not vacate Petitioner's original sentences of imprisonment on Counts 1 and 2, did not hold a resentencing hearing, did not alter Petitioner's overall term of imprisonment,

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[2] The state circuit court entered the amended judgment *after* a successful post-conviction motion resulted in the court vacating the judgment was to Count 3, ordering a new trial on that Count, and the State issuing a nolle prosequi as to Count 3.

[3] The Court, thus, did not adopt the Report and Recommendation, ECF Doc. 36, denying the motion to dismiss.

and did not alter Respondent's pre-existing authority to confine Petitioner." Instead, "the state trial judge indicated that the Second Amended Judgment and Sentence related back to the initial sentence imposed on August 8, 2012" by affixing his signature with the date of October 10, 2017, after the statement "Done and Ordered in open court at Okaloosa County, Florida this 8th day of August 2012 and signed day of , 2014". ECF Doc. 40 at 3-4.

Petitioner argues in the motion for certificate of appealability that reasonable jurists could debate two issues (1) whether the October 10, 2017 order was merely a *nunc pro tunc* order and (2) whether "the vacating of one count of a multi-count judgment creates a new judgment under 2244(d) and 2254, thereby restarting the 1 year Federal clock." ECF Doc. 43 at 6. The undersigned agrees that reasonable jurists could debate these issues.

First, it is debatable whether the October 2017 judgment was a *nunc pro tunc* judgment where the exclusion of Count 3 was not based on a clerical error, but a later determination by the court that the judgment as to Count 3 should be VACATED AND SET ASIDE. *See Osbourne,* 968 F.3d at 1266, *citing Boggs v. Wainwright*, 223 So.2d 316, 317 (Fla. 1969) ("a court of record may, even after the term has expired, correct clerical mistakes in its own judgments and records, nunc pro tunc, and that such corrections generally relate back and take effect as of the date of the judgment, decree, order, writ, or other record, is well settled"). Specifically,

the trial court vacated and set aside Count 3 because defense counsel was ineffective for failing to examine Petitioner's deployment/travel documents to establish that Petitioner was in New Mexico, not Florida, during the period of time during which Petitioner was alleged to have engaged in sexual battery as set forth in Count 3. ECF Doc. 31 at 369-73, 555, 559.

Second, reasonable jurists could debate whether an amended judgment that vacates one out of three counts while leaving the other two intact is a new judgment as to all counts. This circuit has not addressed this precise issue[4] in a published opinion and the circuits that have addressed the issue are split. The Second and Ninth circuits hold that an amended judgment on one count serves as a new judgment on all counts, restarting the AEDPA clock and successive petition count. *See Johnson v. United States*, 623 F.3d 41, 45–46 (2d Cir. 2010); *Wentzell v. Neven*, 674 F.3d 1124 (9th Cir. 2012); *United States v. Lopez-Alvarez*, 842 F. App'x 167, 168 (9th Cir. 2021) (citing *Wentzell*). On the other hand, the Third, Fifth and Seventh circuits have held that such a limited amended judgment does not serve as a new judgment on all counts. *See Romansky v. Superintendent Greene SCI*, 933 F.3d 293,

[4] Although the Eleventh Circuit had an opportunity to address this issue in *Cox v. Sec'y Fla. Dep't of Corr.*, 837 F.3d 1114 (11th Cir. 2016), the court did not do so because the petitioner in that case "was never sentenced on Count 3 [the vacated count]" and, thus "has never been held in custody pursuant to Count 3." *Id.* at 1118. Therefore, the court specifically noted that it "need not take sides in a split between the Fifth and Second Circuits" on how to treat amended judgments that altered only one count of a multi-count judgment. Unlike *Cox,* however, Count 3 of Cassidy's judgment carried a substantial sentence.

300 (3d Cir. 2019); *In re Lampton*, 667 F.3d 585 (5th Cir. 2012); *Turner v. Brown*, 845 F.3d 294 (7th Cir. 2017), *cert. denied*, 137 S. Ct. 2219 (2017).

Thus, the undersigned finds Petitioner has met the first prong for a certificate of appealability. *See e.g., United States v. Beverly*, 2020 WL 1873546 at *3 (N.D. Fla. April 15, 2020) (granting COA on statute of limitations issue); *United States v. Anthony*, 2017 WL 2656022 (N.D. Fla. June 17, 2017).

B. Whether Jurists of Reason Would Find It Debatable Whether the Petition States a Valid Claim of the Denial of a Constitutional Right

As stated above, the second prong to warrant a certificate of appealability requires Petitioner to show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." *Lamarca v. Sec'y Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). This does not mean Petitioner must show he will be successful on the merits, but simply that the claims asserted are debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) ("a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail").

The undersigned finds Petitioner has met that standard here. Petitioner raises the following nine claims in the amended petition: (1) prosecutorial misconduct by filing criminal charges outside the statute of limitations; conducting an unauthorized search of Petitioner's military service record; elicited false testimony from two state

witnesses and violated the court's order regarding uncharged acts; (2) his trial was fundamentally unfair because accuser and another state witness committed perjury regarding his whereabouts on the date of a charged sex act; (3) his due process and equal protection rights were violated because Florida does not define "familial or custodial authority" as used in the statute under which he was convicted; (4) State failed to establish that Petitioner was in a position of familial or custodial authority; (5) Petitioner was deprived of his right to testify in his own defense at trial when the jury was given its charge prior to the trial court inquiring into Petitioner's desire to testify or not; (6) ineffective assistance of trial counsel when counsel rested without consulting Petitioner as to whether he wished to testify; (7) prejudicial evidence of uncharged crimes, ordered to be excluded by the trial judge, was nonetheless presented to the jury during trial and given to them during deliberations; (8) court failed to give lesser-included offense jury instructions to jury; and (9) Florida's Criminal Information Charging System is unconstitutional by permitting the prosecuting authority too much power without sufficient checks upon that power. ECF Doc. 21.

While offering no prediction whether Petitioner will eventually prevail on the merits, the undersigned finds that "the issues are adequate to deserve encouragement to proceed further." *See Cockrell*, 537 U.S. at 330. The undersigned recommends that jurists of reason would find that Petitioner states one or more valid claims of

denial of constitutional rights. Indeed, the undersigned previously screened the Petition under Rules Governing § 2254 Cases, Rule 4 and found it suitable for service.

Thus, the undersigned finds Petitioner has met the second prong for the issuance of a certificate of appealability.

IV. CONCLUSION

Accordingly, it is ORDERED:

The clerk is directed to update the case file information to reflect Ricky D. Dixon as the Respondent.

Additionally, it is respectfully RECOMMENDED that:

1. The motion for certificate of appealability, ECF Doc. 43, be GRANTED.

2. That a certificate of appealability be GRANTED on the following specific issues: (1) whether the October 10, 2017 order was merely a *nunc pro tunc* order under and (2) whether the vacating of one count of a multi-count judgment creates a new judgment under 2244(d) and 2254, thereby restarting the 1-year Federal clock.

DONE AND ORDERED this 22nd day of December, 2021.

/s/ Hope Thai Cannon

HOPE THAI CANNON
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MICHAEL LAWRENCE CASSIDY,

Petitioner,

v. 4:20cv131–WS/HTC

MARK INCH,

Respondent.

ORDER OF DISMISSAL

Before the court is the magistrate judge's report and recommendation (ECF No. 36) docketed August 16, 2021. The magistrate judge recommends that Respondent's motion (ECF No. 24) to dismiss Petitioner's amended petition for writ of habeas corpus be denied. Respondent has filed objections (ECF No. 39) to the report and recommendation. For the reasons set out below, the undersigned declines to adopt the magistrate judge's report recommendation and grants Respondent's motion to dismiss Petitioner's amended habeas petition as time-barred.

I.

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On May 12, 2012, Petitioner was convicted by a jury of three counts of sexual battery while in a position of familial or custodial authority. As orally pronounced by the state trial judge at sentencing, Petitioner was sentenced to 25 years' imprisonment on Count 1, 10 years' imprisonment on Count 2, and 15 years' probation on Count 3, all sentences to be served consecutively. The written Judgment and Sentence (ECF No. 24–2, p. 4), dated August 8, 2012, correctly reflected that Petitioner was sentenced to 10 years' imprisonment on Count 2 and 15 years' probation on Count 3 but mistakenly reflected that Petitioner was sentenced to 35 years' imprisonment on Count 1.

On May 16, 2014, in response to Petitioner's motion for modification of sentence and for clarification of sentence, the state trial judge denied Petitioner's motion for modification of sentence, granted the motion for clarification, and signed an Amended Judgment and Sentence to correctly reflect that Petitioner was sentenced to 25 years' imprisonment on Count 1, for a total of 35 years' imprisonment on Counts 1 and 2. No resentencing hearing was held, and no changes were made to the sentences that were orally imposed by the trial judge at sentencing. The state trial judge indicated that the amended sentence related back to the initial sentence imposed on August 8, 2012. *See* ECF No. 24–8, p. 6 (stating: "Done and Ordered in open court at Okaloosa County, Florida this 8th day of

August 2012, and signed 16th day of May, 2014.").

On August 20, 2014, Petitioner filed a motion for postconviction relief on all three counts. By order dated August 7, 2017, the state trial judge granted Petitioner's postconviction motion as to Count 3 only, vacated the Judgment and Sentence as to Count 3 only, and granted a new trial as to Count 3 only. On October 10, 2017, after the state entered a nolle prosequi on Count 3, the state trial judge issued a Second Amended Judgment and Sentence, removing all reference to Count 3, a count that resulted in a sentence of probation rather than imprisonment. The state trial judge did *not* vacate Petitioner's original sentences of imprisonment on Counts 1 and 2, did *not* hold a resentencing hearing, did *not* alter Petitioner's overall term of imprisonment, and did *not* alter Respondent's pre-existing authority to confine Petitioner. As he did on the First Amended Judgment and Sentence, the state trial judge indicated that the Second Amended Judgment and Sentence related back to the initial sentence imposed on August 8, 2012. *See* ECF No. 24–18, p. 6 (stating: "Done and Ordered in open court at Okaloosa County, Florida this 8th day of August 2012 and signed ____ day of ____ , 2014."). Immediately below the line stating "Done and Ordered . . . this 8th day of August 2012," the trial judge affixed his electronic signature with the date "10.10.2017." *See id.*

II.

Petitioner filed his federal petition for writ of habeas corpus on March 9, 2020. The magistrate judge determined that Petitioner's federal habeas petition was untimely *if* the federal habeas limitations period started on August 8, 2012, the date of Petitioner's original Judgment and Sentence. *However*, the magistrate judge concluded that Petitioner's 2017 second amended Judgment and Sentence restarted the federal habeas limitations period, making Petitioner's petition for writ of habeas corpus timely. Respondent objects to the magistrate judge's findings and conclusion with respect to the timeliness of Petitioner's habeas corpus petition, citing as authority the Eleventh Circuit's decision in *Osbourne v. Secretary, Florida Department of Corrections*, 968 F.3d 1261 (11th Cir. 2020).

III.

In *Osbourne*, the Eleventh Circuit explained that a Florida court's amended sentence, imposed *nunc pro tunc*, did not qualify as a new judgment for purposes of restarting the federal habeas limitations period. *Osbourne*, 968 F.3d at 1267. In the Eleventh Circuit's words: "[U]nder Florida law, nunc pro tunc means 'now for then' and when a legal order or judgment is imposed nunc pro tunc it refers, not to a new or de novo decision, but to the judicial act previously taken." *Id.* at 1266; *see also Patterson v. Sec'y, Fla. Dep't of Corr.*, 849 F.3d 1321, 1327 (11th Cir. 2017) (*en banc*) (explaining that, under Florida law, "[a]n order that relates back to an

original sentence merely amends the original order and may not entitle the defendant to vacatur of the original judgment and entry of a new one"). Citing *Osbourne*, several federal district courts in Florida have determined that an amended judgment imposed *nunc pro tunc* is not a new judgment and does not restart the federal habeas limitations period. *See, e.g.*, *Heiser v. Sec'y, Dep't of Corr.*, No. 8:18cv1365–TPB–AEP, 2021 WL 4295270, at *4 (M.D. Fla. Sept. 21, 2021); *James v. Sec'y, Dep't of Corr.*, 499 F. Supp. 3d 1169, 1174 (S.D. Fla. 2020).

IV.

Here, without using the words "*nunc pro tunc*," the state trial judge expressly stated that the Second Amended Judgment and Sentence was "Done and Ordered . . . on this 8th day of August 2012," the date of the original Judgment and Sentence. He thus made clear that the Second Amended Judgment and Sentence referred "not to a new or de novo decision, but to the judicial act previously taken." *Osbourne*, 968 F.3d at 1266. Under *Osbourne*, the starting date for determining timeliness of Petitioner's habeas petition was August 8, 2012; and when using that starting date, the magistrate judge correctly determined that Petitioner's habeas petition was untimely. As a result, Respondent's motion to dismiss must be granted.

Accordingly, it is ORDERED:

1. Respondent's motion to dismiss (ECF No. 24) Petitioner's amended petition for writ of habeas corpus is GRANTED.

2. Petitioner's amended petition for writ of habeas corpus (ECF No. 21) is DISMISSED as time-barred.

3. The clerk shall enter judgment stating: "All claims are dismissed."

4. The clerk shall close the case.

DONE AND ORDERED this 12th day of October, 2021.

s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE