No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

RAYMOND TORRES — PETITIONER
(Your Name)

VS.

SECRETARY, FLORIDA DEPT. OF CORRECTIONS; AND ATTORNEY GENERAL, STATE OF FLORIDA — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☑ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

- 13TH JUDICIAL CIRCUIT COURT, HILLSBOROUGH COUNTY, TAMPA FLORIDA
- SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____, or

☐ a copy of the order of appointment is appended.

/s/ Raymond Torres
(Signature)

RAYMOND TORRES, D/C # R43731
MARION CORRECTIONAL INSTITUTION
P.O. BOX 158
LOWELL, FL 32663-0158

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, RAYMOND TORRES, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse (*)	You	Spouse (*)
Employment	$ 0	$ N/A	$ 0	$ N/A
Self-employment	$ 0	$ N/A	$ 0	$ N/A
Income from real property (such as rental income)	$ 0	$ N/A	$ 0	$ N/A
Interest and dividends	$ 0	$ N/A	$ 0	$ N/A
Gifts	$ 50.00	$ N/A	$ 50.00	$ N/A
Alimony	$ 0	$ N/A	$ 0	$ N/A
Child Support	$ 0	$ N/A	$ 0	$ N/A
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ N/A	$ 0	$ N/A
Disability (such as social security, insurance payments)	$ 0	$ N/A	$ 0	$ N/A
Unemployment payments	$ 0	$ N/A	$ 0	$ N/A
Public-assistance (such as welfare)	$ 0	$ N/A	$ 0	$ N/A
Other (specify): NONE	$ 0	$ N/A	$ 0	$ N/A
Total monthly income:	$ 50.00	$ 50.00	$ 0	$ N/A

(*) SPOUSE = NOT APPLICABLE ("N/A").

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE - PETITIONER	HAS BEEN INCARCERATED	SINCE 2010	$ -0-
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NOT APPLICABLE	NOT APPLICABLE	NOT APPLICABLE	$ -0-
			$
			$

4. How much cash do you and your spouse have? $ -0-
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
INMATE TRUST ACCOUNT	$ 929.40	$ N/A
	$	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value -0-

☐ Other real estate
Value -0-

☐ Motor Vehicle #1
Year, make & model NOT APPLICABLE
Value -0-

☐ Motor Vehicle #2
Year, make & model NOT APPLICABLE
Value -0-

☐ Other assets
Description NONE
Value -0-

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE.	$ 0	$ N/A
	$	$
	$	$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
NONE.	NONE.	NOT APPLICABLE.

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ 0	$ N/A
Are real estate taxes included? ☐ Yes ☐ No	✓ N/A	
Is property insurance included? ☐ Yes ☐ No	✓ N/A	
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ N/A
Home maintenance (repairs and upkeep)	$ 0	$ N/A
Food	$ 15.00	$ N/A
Clothing	$ 5.00	$ N/A
Laundry and dry-cleaning	$ 0	$ N/A
Medical and dental expenses	$ 0	$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$ N/A
Recreation, entertainment, newspapers, magazines, etc.	$ 10.00	$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ N/A
Life	$ 0	$ N/A
Health	$ 0	$ N/A
Motor Vehicle	$ 0	$ N/A
Other: NONE.	$ 0	$ N/A
Taxes (not deducted from wages or included in mortgage payments)		
(specify): NONE.	$ 0	$ N/A
Installment payments		
Motor Vehicle	$ 0	$ N/A
Credit card(s)	$ 0	$ N/A
Department store(s)	$ 0	$ N/A
Other: NONE.	$ 0	$ N/A
Alimony, maintenance, and support paid to others	$ 0	$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ N/A
Other (specify): HYGIENE ITEMS	$ 20.00	$ N/A
Total monthly expenses:	$ 50.00	$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? ~~_____~~ -0-

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? ~~_____~~ -0-

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

THE PETITIONER HAS BEEN INCARCERATED SINCE 2010 AND DOES NOT HAVE A PAYING JOB AT HIS INSTITUTION.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____, 2022

/s/ Raymond Torres

RAYMOND TORRES, DC# R43731
MARION CORRECTIONAL INSTITUTION
P.O. BOX 158
LOWELL, FL 32663-0158

FLORIDA DEPARTMENT OF CORRECTIONS
TRUST FUND ACCOUNT STATEMENT
FACILITY: 304 - MARION C.I.
FOR: 01/01/2022 - 01/31/2022

ACCT NAME: TORRES, RAYMOND
BED: B2126U
PO BOX:

ACCT#: R43731
TYPE: INMATE TRUST

BEGINNING BALANCE 01/01/22 $1,220.27

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	+/-	AMOUNT	BALANCE
01/03/22	137	PROCESSING FEE	WEEKLY DRAW	000		-	$0.04	$1,220.23
01/06/22	063	CANTEEN SALES	30420220105	000		-	$7.12	$1,213.11
01/07/22	061	CANTEEN SALES	30420220106	000		-	$21.20	$1,191.91
01/10/22	063	CANTEEN SALES	30420220109	000		-	$28.24	$1,163.67
01/10/22	133	PROCESSING FEE	WEEKLY DRAW	000		-	$0.57	$1,163.10
01/12/22	165	JPAY MEDIA W/D	000121025870	000		-	$20.00	$1,143.10
01/13/22	061	CANTEEN SALES	30420220112	000		-	$33.35	$1,109.75
01/17/22	061	CANTEEN SALES	30420220116	000		-	$40.10	$1,069.65
01/17/22	129	PROCESSING FEE	WEEKLY DRAW	000		-	$0.73	$1,068.92
01/20/22	063	CANTEEN SALES	30420220119	000		-	$8.18	$1,060.74
01/24/22	063	CANTEEN SALES	30420220123	000		-	$41.19	$1,019.55
01/24/22	133	PROCESSING FEE	WEEKLY DRAW	000		-	$0.49	$1,019.06
01/25/22	063	CANTEEN SALES	30420220124	000		-	$11.47	$1,007.59
01/29/22	063	CANTEEN SALES	30420220128	000		-	$77.30	$930.29
01/31/22	133	PROCESSING FEE	WEEKLY DRAW	000		-	$0.89	$929.40

ENDING BALANCE 01/31/22 $929.40

(7)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAYMOND TORRES – PETITIONER

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; and
ATTORNEY GENERAL, STATE OF FLORIDA – RESPONDENTS

On Petition for Writ of Certiorari to
The United States Court of Appeals for the 11th Circuit

PETITION FOR WRIT OF CERTIORARI

Submitted by:

Raymond Torres, Pro Se
D/C # R43731
Marion Correctional Institution
P.O. Box 158
Lowell, FL 32663-0158
Tel. No. : None Available

QUESTION(S) PRESENTED

1. **Does Florida's jury instructions on 2nd-degree murder violate the Due Process Clause when the State is relieved of its burden to prove the element of malice (ill will, hatred, spite or an evil intent) in regards to an unintentional victim?**

   In the instant case, it is undisputed that the perpetrators of a drive-by shoot-up of the exterior of a business acted recklessly and with malice towards the owner of the property. However, the perpetrators did not even know or have any malice towards a victim that was unseen and unintentionally shot and killed while sitting in his car in the parking lot. There is a reasonable conclusion that the jury erroneously transferred the malice the shooters had towards the property owners onto the victim despite the fact the killing was done inadvertently and unknowingly by the perpetrators. However, at Torres' trial, there was no jury instruction given on transferred intent. This Court has previously held that when a jury instruction relieves the State from proving an essential element of the crime charged, and the jury may likely rested its verdict on such error, it violates a defendant's right to due process under the 14th Amendment of the United States.

LIST OF PARTIES

____ All parties appear in the caption of the case on the cover page.

X All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Battles, Hon. Emmett Lamar	Trial Judge
Brown, Christine	3.850 Motion Asst. State Attorney
Harrison, Julie M.	Trial Prosecutor (Asst. State Atty)
Hopkins, Kimberly Nolen	Direct Appeal (Appellate Counsel)
Hubbard, Aaron W.	Trial Prosecutor (Asst. State Atty)
Jung, Hon. William F.	U.S. District Court Magistrate Judge
McKeever, Dalton	Trial Defense Counsel
Moody, Hon. Ashley B.	Postconviction (3.850) Judge
Sims-Bohnenstiehl, Linsey	Asst. Atty General (Dir App/Fed Habe Resp)
Torres, Raymond	Appellant/Petitioner/Defendant
Wilson, Hon. Thomas G.	U.S. District Judge

RELATED CASES

- *Torres v. State of Florida*, No. 08-CF-002809, 13th Judicial Circuit Court, in and for Hillsborough County, Florida. Conviction entered April 22, 2010 (Trial). Sentence issued May 21, 2010.

- *Torres v. State of Florida*, No. 2D10-2773, Second District Court of Appeal, Lakeland, Florida. Opinion entered August 24, 2011. Mandate issued September 22, 2011. (Direct Appeal). *Torres v. State*, 69 So.3d 287 (Fla. 2nd DCA 2011).

- *Torres v. State of Florida*, No. 2D12-2747, Second District Court of Appeal, Lakeland, Florida. Summary denial order on the merits entered June 12, 2012 (Rule 9.141(d) Petition Alleging Ineffective Assistance of Appellate Counsel). On August 8, 2012, the Motion for Rehearing was denied making this judgment final.

- *Torres v. State of Florida*, No. 08-CF-002809, 13th Judicial Circuit Court, in and for Hillsborough County, Florida. Partial and Summary denial order on the merits entered October 22, 2013. (Rule 3.850 Motion for Postconviction Relief).

- *Torres v. State of Florida*, No. 08-CF-002809, 13th Judicial Circuit Court, in and for Hillsborough County, Florida. Final denial order on the merits entered July 15, 2016, after an evidentiary hearing had been held. (Rule 3.850 Motion for Postconviction Relief).

- *Torres v. State of Florida*, No. 2D16-0281 Second District Court of Appeal, Lakeland, Florida. Per Curiam Affirmed Opinion entered December 1, 2017. Mandate issued December 28, 2017. (3.850 Motion Appeal). *Torres v. State*, 240 So.3d 681 (Fla. 2nd DCA 2017).

- *Torres v. Secretary, Florida Department of Corrections, et al.*. No. 8:18-cv-1116-WFJ-TGW, U.S. District Court for the Middle District of Florida. District Court Order denying Torres' Petition for Writ of Federal Habeas Corpus and issuance of a COA entered on April 7, 2021. U.S. District Court Order denying Torres' Rule 59(e) Motion to Amend Judgment entered on April 27, 2021.

- *Torres v. Secretary, Florida Department of Corrections, et al.*, No. 21-11699-C, U.S. Court of Appeals for the Eleventh Circuit. COA denied October 4, 2021.

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TABLE OF AUTHORITIES

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CASES

STATUTES

RULES

OTHER

OPINIONS BELOW

X For cases from **Federal** courts:

The opinion of the 11th U.S. Circuit Court of Appeals appears at **Appendix A** to the petition and:

[ ] reported at _____.

[ ] has been designated for publication but is not yet reported; or

[**X**] is unpublished.

The opinion of the United States District Court appears at **Appendix B-C** to the petition and is:

[**X**] reported at *Torres v. Sec'y. Fla. Dept. of Corr.*, 2021 U.S. Dist. LEXIS 67462 (M.D. (Fla.) 2021).

[ ] has been designated for publication but is not yet reported; or

[ ] is unpublished.

JURISDICTION

This Honorable Court has jurisdiction under Title 28 U.S.C. §1254(1) to rule on this petition and to review the final judgment rendered on October 4, 2021 via the Eleventh U.S. Circuit Court Order denying issuance of a Certificate of Appealability. U.S. Supreme Court Rule 13 holds that a petition for a writ of certiorari to review a judgment issued by a United States Court of Appeals in a criminal case is timely when filed with the Clerk within 90 days after entry of the judgment. A March 19, 2020 U.S. Supreme Court Order extended the filing deadline of a petition for a writ of certiorari to 150 days (in this case, on or before March 3, 2022).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Issues Involved

The Fourteenth Amendment of the U.S. Constitution provides, in pertinent part, as follows:

> "No State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of the law; nor deny any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The Petitioner was charged by Information with Count 1 Second-Degree Murder with a Firearm, and Count 2 Shooting at, within, or into a Building involving an incident that occurred in Tampa, Florida in the early morning of January 20, 2008. The Information charged Torres and his co-defendant for returning to an after-hours "Bottle Club" and indiscriminately firing shots at the bar and vehicles parked in the lot hours after he had been involved in a fight and had been ejected. One random shot hit a person that was outside sitting in his car, resulting in death.

On April 22, 2010, a trial by jury concluded whereby the jury returned a verdict of guilty as charged as to both Count 1 and Count 2.

On May 21, 2010, the Petitioner was issued a Life sentence as to Count 1 (with a 20-year minimum mandatory), and to a 15-year prison sentence in Count 2, to run concurrently with each other. A timely notice of appeal was filed.

On August 24, 2011, the Second District Court of Appeal ("DCA") per curiam affirmed the judgment (see *Torres v. State*, 69 So.3d 287 (Fla. 2nd DCA 2011)). The mandate issued on September 22, 2011.

On May 2, 2018, the Petitioner filed his instant timely Petition for Writ of Federal Habeas Corpus pursuant to 28 U.S.C. §2254.

On April 7, 2021, Hon. U.S. District Court Judge William F. Jung issued his Order denying the Petition and declining to issue a Certificate of Appealability.

On April 22, 2021, the Petitioner filed his Motion to Alter or Amend a Judgment pursuant to Fed.R.Civ.P. Rule 59(e).

On April 27, 2021, Hon. U.S. District Court Judge William F. Jung issued his Order denying the Motion to Alter or Amend a Judgment.

On May 14, 2021, the Petitioner filed his timely Notice of Appeal.

On October 4, 2021, the 11th Circuit U.S. Court of Appeals issued its Order denying issuance of a Certificate of Appealability.

Because the 11th Circuit Court summarily denied Torres' request for the issuance of a COA, the April 7, 2021 Order denying the Petition and declining to issue a Certificate of Appealability issued by Hon. U.S. District Court Judge William F. Jung was the last court to give a reasoned explanation for the denial of Torres' Federal Petition for Writ of Habeas Corpus.

REASONS FOR GRANTING THE PETITION

Does Florida's jury instruction on 2nd-degree murder violate the Due Process Clause when the State is relieved of its burden to prove the element of malice (ill will, hatred, spite or an evil intent) in regards to an unintentional victim?

A. The 11th U.S. Circuit Court of Appeals has decided this important federal question differently than the United States Supreme Court has on a set of materially indistinguishable facts.

In *Tatara v. Sec'y. Fla. Dept. of Corr.*, 2020 U.S. Dist. LEXIS 7584 *LEXIS 38-39 (M.D. (Fla.) 2020), the U.S. District Court held, "A conviction for second-degree murder in Florida requires that the defendant kill 'by an act imminently dangerous to another and evincing a depraved mind regardless of human life, although without premeditated design' Fla. Stat. §782.04(2). The Florida Supreme Court has defined an 'act imminently dangerous to another and evincing a depraved mind' as 'an act or series of acts that: (1) a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another; and (2) is done

from ill will, hatred, spite, or an evil intent; and (3) is of such a nature that the act itself indicates an indifference to human life' (citing *State v. Montgomery*, 39 So.3d 252, 255-56 (Fla. 2010) quoting *Bellamy v. State*, 977 So.2d 682, 683 (Fla. 2nd DCA 2008)) .... Maliciously is defined as 'wrongfully, intentionally, and without legal excuse.' 2007 Fla. Stat. §827.03(1)(c). Florida courts have equated depravity of mind required for second-degree murder with malice in the commonly understood sense of 'ill will, hatred, spite, or an evil intent.' See *Ramsey v. State*, 154 So.855, 856 (Fla. 1934); and see *Manuel v. State*, 344 So.2d 1317, 1319 (Fla. 2nd DCA 1977)."

"But to establish that the defendant acted with a depraved mind, the State must present evidence of circumstances showing more than an 'impulsive overreaction' to an attack" (citing *Wiley v. State*, 60 So.3d 588, 591 (Fla. 4th DCA 2011); and see *Dorsey v. State*, 74 So.3d 521, 522 (Fla. 4th DCA 2011)). "Although exceptions exist, the crime of second-degree murder is normally committed by a person who knows the victim and has had time to develop a level of enmity toward the victim" (see *Light v. State*, 841 So.2d 623, 626 (Fla. 2nd DCA 2003)).

In this instant case, Torres was charged and convicted of 2nd-degree murder for returning to an after-hours "Bottle Club" with his co-defendant and indiscriminately firing shots at the bar and vehicles parked in the lot hours after he had been involved in a fight and had been ejected. One random shot hit a person that was outside sitting in his car, resulting in death. The State presented the theory that after instigating a bar fight and being escorted out of the bar by the managers, Torres and his co-defendant over-reacted by returning and causing damage by randomly shooting up the property and parking lot in a drive-by shooting. Unfortunately, one of the bullets hit a victim that was both unseen and unknown to the shooters at the time of the incident.

Here, the jury found Torres guilty of the element that he committed an act that was done from ill will, hatred, spite, or an evil intent (i.e. maliciously). While it can be argued that if Torres was the shooter, he acted with ill will, hatred, spite, or an evil intent towards the owner of the bar when he sought to cause damage to the owner's property by randomly shooting up the exterior. However, there was no evidence submitted to the jury that Torres knew the victim of the shooting or had time to develop a level of enmity toward the victim as required to find the Petitioner guilty of the necessary element of second-degree murder involving malice. Case law from this Honorable Court holds that because the jury was not instructed on a transferred intent theory, this Court is barred from treating any evidence of malice towards the owners of the bar as evidence to support the necessary finding of malice in the killing of the victim. Therefore, the jury instruction on second-degree murder in Torres case that required a finding of malice was not harmless error as it cannot be said that the jurors rested their finding of malice on any evidence save the impermissible presumption of transferred intent. Accordingly, Torres right to due process under the U.S. Constitution was violated by this error.

By denying Torres any postconviction relief on this issue, both the State and Federal courts to date the State court have decided Torres' case differently than the United States Supreme Court has on a set of materially indistinguishable facts.

In *Jackson v. Virginia*, 443 U.S. 307, 61 L.Ed.2d 560, 99 S.Ct 2781 (1979), the U.S. Supreme Court held, "in a challenge to a State court conviction under 28 U.S.C. §2254, the applicant is entitled to habeas corpus relief, assuming settled procedural prerequisites for such a claim have otherwise been satisfied, if it is found that upon the record evidence adduced at trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt in terms of the substantive elements of the criminal offense as defined by State law" (emphasis added).

See also *Yates v. Evatt*, 111 S.Ct. 1884, 1887 (1991) ("While an examination of the entire record reveals clear evidence of Davis' intent to kill Willie Wood, the jury was not instructed on a transferred intent theory, and thus this Court is barred from treating such evidence as underlying the necessary finding of intent to kill Mrs. Wood. The specific circumstances of Mrs. Wood's death do not indicate Davis' malice in killing her so convincingly that it can be said beyond a reasonable doubt that the jurors rested a finding of his malice on that evidence exclusive of the presumptions.... The record reveals only that she joined in a struggle and died from a single stab wound, which Davis could have inflicted inadvertently."

CONCLUSION

Due to the importance of the issue involving whether Florida's jury instruction on 2nd-degree murder violates the Due Process Clause when the State is relieved of its burden to prove the element of malice (ill will, hatred, spite or an evil intent) in regards to an unintentional victim, this Court should grant the instant writ of certiorari.

OATH

Under penalty of perjury, I certify that all of the facts and statements contained in this document are true and correct and that on the 3rd day of March 2022, I handed this document and exhibits to a prison official for mailing out to this Court and the appropriate Respondents for mailing out U.S. mail.

/s/ Raymond Torres

Raymond Torres, DC #R43731
Marion Correctional Institution
P.O. Box 158
Lowell, FL 32663-0158

APPENDIX

A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-11699-C

RAYMOND TORRES,

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:

Raymond Torres moves for a certificate of appealability in order to appeal the denial of his habeas corpus petition, pursuant to 28 U.S.C. § 2254, and denial of his motion to alter or amend the judgment, pursuant to Fed. R. Civ. P. 59(e). His motion 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). His motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.

UNITED STATES CIRCUIT JUDGE

APPENDIX

B

MIME-Version:1.0
From:cmecf_flmd_notification@flmd.uscourts.gov
To:cmecf_flmd_notices@localhost.localdomain
Bcc:
--Case Participants:
--Non Case Participants:
--No Notice Sent:

Message-Id:<20825278@flmd.uscourts.gov>
Subject:Activity in Case 8:18-cv-01116-WFJ-TGW Torres v. Secretary, Department of Corrections et al (Hillsborough County) Order on Motion to Alter Judgment
Content-Type: text/plain
This is an automatic e-mail message generated by the CM/ECF system.
Please DO NOT RESPOND to this e-mail because the mail box is unattended.
NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Middle District of Florida

Notice of Electronic Filing
The following transaction was entered on 4/27/2021 3:03 PM EDT and filed on 4/27/2021

Case Name: Torres v. Secretary, Department of Corrections et al (Hillsborough County)

Case Number: 8:18-cv-01116-WFJ-TGW
https://ecf.flmd.uscourts.gov/cgi-bin/DktRpt.pl?349980

Filer:

WARNING: CASE CLOSED on 04/08/2021

Document Number: 25

Copy the URL address from the line below into the location bar of your Web browser to view the document:
25(No document attached)

Docket Text:
ENDORSED ORDER denying [24] Motion to Alter Judgment. The Motion restates the issues brought in the Petition and argues that the District Court decided them wrongly. The Motion suggests the paramour witness was not cross-examined about her probation revocation status. That portion of the record can be found at Doc. 9-3 at 136-1137, 151-156. The Motion does not add anything to the Petition, which was decided adversely to the Petitioner on all issues presented.. Signed by Judge William F. Jung on 4/27/2021. (Jung, William)

8:18-cv-01116-WFJ-TGW Notice has been electronically mailed to:
Linsey Corrine Sims-Bohnenstiehl linsey.simsbohnenstiehl@myfloridalegal.com, CrimAppTPA@myfloridalegal.com, marci.maddron@myfloridalegal.com

8:18-cv-01116-WFJ-TGW Notice has been delivered by other means to:

Raymond Torres
R43731
Marion Correctional Institution
P.O. Box 158
Lowell, FL 32663-0158

APPENDIX

C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAYMOND TORRES,

Petitioner,

v. Case No: 8:18-cv-1116-WFJ-TGW

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

ORDER DENYING PETITION FOR HABEAS RELIEF

Petitioner Raymond Torres is serving two concurrent prison sentences. He is serving a life (20-year minimum) sentence for second degree murder, concurrent with a 15-year sentence for shooting into a building. He was sentenced in 2010 in the Thirteenth Judicial Circuit of Florida (Hillsborough County) after adverse jury verdicts in a short trial. He brings this petition for habeas corpus relief under 28 U.S.C. § 2254. After careful review of the record, materials presented, and written submissions, the Court denies the petition.

FACTUAL BACKGROUND:

A "bottle club" is an after-hours establishment that avoids liquor license regulations as to "closing time" by permitting attendees to purchase mixers but bring their own alcohol. Petitioner and friends were attending the Groovy Mule

Bottle Club on Dale Mabry Highway in Tampa, in the early morning of January 20, 2008. A fight broke out with Petitioner and his friends fighting other patrons. The fight started over a female, Ms. Gonzalez, who was the co-defendant's girlfriend at the time. Ex. 1e at 652, 658, 663, 667.[1] Ms. Gonzalez testified Petitioner started the fight and it involved about 30 people. *Id.* at 658. Apparently, Petitioner got the worst of the affray, and was bleeding, with a swollen eye, "busted lip," and his "faced got messed up." Ex. 1e at 672–673; Ex. 1f 690–691. After the fight broke up, Petitioner and his friends, in his words, "were put in their SUV and asked to leave" the bottle club. Doc. 1 at 4.

After Petitioner and his friends were ejected from the bottle club, about 30 to 40 minutes later at roughly 6:00 a.m. a minivan drove by the bottle club, and those in the van shot at the club through an adjacent parking lot. The Groovy Mule, which opened at 3:00 a.m., Doc. 1 at 9, was still open at the time. A patron sitting in his car was shot in the head, fatally, with the bullet consistent with one fired from a .357 revolver. Doc. 13 at 65; Ex. 9a at 52–53. Petitioner was convicted as one of the shooters.

An acquaintance of Petitioner, Tony Harris, testified at trial that Petitioner told the Harris about the fight over a girl at the bottle club where they got

[1]The underlying trial and appellate record is found on the electronic docket at entry 9 and is comprised of Exhibits, cited hereafter as Ex. __ at __.

"jumped." Petitioner was "bruised like he had been beat on." Ex. 1f at 714. And Petitioner said he and his friend (a co-defendant convicted separately) drove back to the club in the friend's van and they shot at the bottle club with Petitioner firing a .357 magnum pistol and the co-defendant firing an assault rifle. Doc. 1 at 5; Ex. 1f at 717-722. This witness testified that after the drive-by shooting, Petitioner and he stashed the revolver and assault rifle under the witness' couch cushions. *Id.* This witness then threw the guns in the Hillsborough River and later told the police where they were located. The police retrieved them and matched the pistol to projectiles removed from a building in the line of fire near the parking lot and also to the bullet in the decedent's head. Doc. 1 at 5; Doc. 13 at 66.

The female from the fight, Ms. Gonzalez, testified that they all went to her boyfriend's (the co-defendant's) apartment after the fight, and she saw Petitioner and the co-defendant leaving in what she believed to be a minivan, prior to the drive-by shooting. Ex. 1e 660–661, 667–669. She claims to have seen the co-defendant with a gun then. Doc. 1 at 4; Ex. 1e at 661, 670–671. She testified that prior to leaving in the minivan, Petitioner and his colleagues were angry and "loud, mad." Ex. 1e at 659. A third witness testified that after ejectment from the club the witness, Petitioner, and the co-defendant who went with Petitioner in the minivan, talked about "getting them" at the club. This witness saw the co-defendant with a rifle. Doc. 1 at 4.

Petitioner's paramour and mother of his children, Ms. Johnson, testified that on that morning she noticed missed phone calls from Petitioner. Ex. 1f at 689. Petitioner left a voicemail that sounded scared, stating that he did something wrong, and needed her to come get him. Ex. 1f at 689–690. She called Petitioner back and he admitted that he got injured in a fight at the Groovy Mule and left, then returned to the Mule and exchanged fire. *See* Doc. 13 at 25; Ex. 1f at 690–691. This witness was subject to trial impeachment due to drug usage, and alleged favor and threats from the authorities. Ex. 1f at 696–704.

Petitioner's co-defendant, Max Jasper, was charged identically as Petitioner. He went to jury trial in a severed case a month before Petitioner. He was convicted of the same charges as Petitioner.[2]

GROUND ONE: [3]

In Ground One Petitioner contends that his conviction for second degree murder should be reversed with instructions to reduce it to third degree, because there was no proof that he was aware of anyone in the parking lot at the time the state witnesses allege he shot into it. Doc. 1 at 5. As a preliminary matter the

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[2] *See* www.dc.state.fl.us/OffenderSearch/Search.aspx?TypeSearch=AI (last consulted April 7, 2021).

[3] Respondent makes a case that the petition is time-barred unless Petitioner can demonstrate the applicability of equitable tolling, *see Holland v. Florida*, 560 U.S. 631, 645 (2010), or his actual innocence, *see McQuillan v. Perkins*, 569 U.S. 383, 386 (2013). Dkt. 8 at 9–11. Petitioner alleges no equitable grounds. Even assuming the petition timely, it is without merit as set forth in this order.

Court notes that although this issue was brought on direct appeal, it was couched as a state law evidentiary issue, relating to Florida classification of degrees of murder and state evidence sufficiency issues.[4] The plain and unadorned federal constitutional point was not squarely and sufficiently presented in the state direct appeal below. "[I]t is not the province of a federal habeas court to examine state-court determinations on state-law questions." *Estelle v. McGuire,* 502 U.S. 62, 67–68 (1991).

In any event, if one granted Petitioner the doubt here[5] and considered this matter exhausted, it founders on the merits. Under the United States Constitution, a claim of insufficient evidence in a federal habeas proceeding requires understandable deference to the jury, who heard and weighed all the evidence and its inferences. Congress has sought "to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law." *Bell v. Cone,* 535 U.S. 685, 693 (2002). The state court's handling of this issue must result in a decision contrary to, or an unreasonable application of, clearly established federal law. The only exception to this is a decision based on unreasonable determination of facts in light of the evidence presented in the state

[4] On direct appeal, the state appellate court affirmed his conviction and sentence. *Torres v. State,* 69 So. 3d 287 (Fla. 2d DCA 2011).

[5] The reference to the federal constitutional standard for sufficiency *was* made to the state appellate court in Petitioner's writ of habeas corpus based on ineffective assistance of appellate counsel, but very perfunctorily. *See, e.g.* Doc. 13 at 35.

proceeding. 28 U.S.C. §2254(d)(1)-(2). In such a situation Petitioner must rebut the presumption of factual correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

This Court "may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury." *Jackson v. Virginia*, 443 U.S. 307 (1979). The facts at trial show Petitioner was ejected from a late night drinking spot after a fight, and his group vowed to "get them." He and his colleague armed themselves, drove by the still-open bar, Ex. 9d at 721, in a plan to attack it, and shot it up indiscriminately with high-powered weaponry. Then Petitioner hid the guns. He confessed to these acts to at least two persons, including admitting returning to the bar where he "exchanged fire." Based on his admissions and the .38 bullet excavated from the decedent's brain, Petitioner fired the death strike. A rational jury could convict Petitioner of this crime: He certainly perpetrated "an act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premediated design to effect the death of any particular individual." Fla. Stat. § 782.04(2) (defining second degree murder). The United States Constitution requires no more.

GROUNDS TWO THROUGH SIX:

In Grounds Two through Six, Petitioner brings sundry ineffective assistance of counsel claims. The Court need not repeat here the very familiar standards of *Strickland v. Washington,* 466 U.S. 668, 687 (1984). Suffice it to say, Petitioner must first establish a performance so deficient that counsel was not functioning as a lawyer guaranteed by the Sixth Amendment. *Id.* at 687. Second, he must prove a reasonable probability that but for this defalcation the result of the proceeding would have been different. *Id.* at 694. A defendant is entitled to reasonable counsel, not error-free counsel. *Lancaster v. Newsome,* 880 F.2d 362, 375 (11th Cir. 1989). In adjudicating this matter, "it is not enough to convince a federal habeas court that, in its independent judgment, the state court applied *Strickland* incorrectly. Rather, [Petitioner] must show that the [state court] applied *Strickland* to the facts of his case in an objectively unreasonable manner." *Cox v. Donnelly,* 387 F.3d 193, 197 (2d Cir. 2004), citing *Bell v. Cone,* 535 U.S. 685 (2002).

GROUND TWO:

Petitioner states that his trial lawyer was ineffective by misleading him as to the prosecutor's ability to cross-examine him about the details of his prior convictions. Petitioner contends he was misled to believe that if he testified the prosecutor could inquire into the specific details of those priors, thus impeaching him about them. This kept Petitioner off the stand, he argues, and denied him that

key trial right of testifying on his own behalf. Petitioner also argues this prohibited him from putting on an alibi defense or contradicting State witnesses. Doc. 1 at 7.

In rebuttal the Respondent argues, first, that Petitioner's decision not to take the stand in his defense was addressed on the record at trial, in a colloquy with the trial judge. In that colloquy with the trial judge, Ex. 1f at 756-759, Petitioner stated under oath that he had discussed the matter thoroughly with his lawyer, did not need more time to talk to his lawyer, and freely waived his right to take the stand.

Respondent also argues that this matter was brought before the post-conviction court upon review, and Petitioner's trial lawyer testified at the ensuing evidentiary hearing. The trial lawyer rebutted Petitioner's Ground Two entirely. *See* Ex. 9e at 1311–1315. The trial lawyer testified that he did not advise his clients in the manner Petitioner stated, erroneously telling the client that the State could inquire as to the specific, underlying details of prior convictions. Further, Petitioner told this trial lawyer at the time that Petitioner had no alibi. *Id.* at 1313–1315.

Petitioner also testified at the post-conviction evidentiary hearing. *See id.* at 1035–1037. Petitioner was concerned at trial because his prior record included an attempted murder charge from Michigan in 1998, a later battery on law

enforcement conviction in violation of Fla. Stat. § 784.03, and a drug possession charge in violation of Fla. Stat. § 893.13. Ex. 9a at 42. Petitioner contended that trial counsel led him erroneously to believe that the details of the priors could be inquired of upon cross-examination. And the factual similarity of his prior record to the Groovy Mule shooting led Petitioner to avoid testifying. Ex. 9e at 1035–1037.

The post-conviction court found that the lawyer's testimony was more credible and accepted it. The court found no ineffectiveness in the way Petitioner was advised about his trial testimony; thus, the first prong of *Strickland* was not met. *Id.* This finding of the trial court upon collateral review is neither an unreasonable application of the law not an unreasonable finding of fact. Ground Two is denied.

GROUND THREE:

In this ground Petitioner claims his trial lawyer was ineffective for failing to investigate and call as witnesses his father, mother, and cousin. These persons could have established his alibi and placed him at home during the time of the shooting. They could have contradicted what Petitioner argues is a weak and shaky case based on oral witness, and not physical, testimony. Doc. 1 at 8–9. In effect, these three witnesses could have established Petitioner's alibi, that he was at home preparing to attend work with his father when the shooting occurred.

The state circuit court, upon collateral review, held an evidentiary hearing on this ground. The first fault in the ground is, as discussed above, that the trial lawyer testified Petitioner told him Petitioner had no alibi, and that was reflected in the trial lawyer's dated, contemporaneous notes. Ex. 9e at 1149–1152; 1164–1165 ("my client told me he had no alibi"). In fact, the Petitioner "shifted several times" in what he told his lawyers as to the facts. *Id.* at 1147. The circuit judge credited this lawyer's testimony, a finding of fact that is not unreasonable based upon this record and which Petitioner has not rebutted.

Petitioner's mother passed away a year before his trial, Ex. 9e at 1137, 1286, so assertions about her are irrelevant. The trial lawyer testified he was never made aware of the cousin. *Id.* at 1165. The father and cousin testified at the post-conviction hearing. Their testimony illustrated why defense counsel did not offer them as alibi witnesses. They both stated Petitioner had returned home, preparing for work, by 5:00 a.m., which was well before the fight at the bottle club, which both sides agreed the bruised and bloody Petitioner had attended. Ex. 9e at 1136, 1195–1196. The alibi they might have offered failed for other reasons illustrated at the post-conviction hearing.[6] Specifically, the post-conviction court found that the

[6] At the risk of getting into too much detail: The father and cousin defeated the alibi by their clear mistakes in time. The alibi defense Petitioner sought to show at the evidentiary hearing suffered from other real flaws. At about 6:15 a.m. there was a police disturbance call at the co-defendant's apartment, and Petitioner was noted present. That required Petitioner to explain, implausibly, how he could have been with the co-defendant at the fight (roughly 5:35 a.m.) but

cousin's testimony was uncertain and did not appear grounded in actual recollection of the events. Ex. 9e at 1042. The state court's denial of relief on this ground was not an unreasonable application of law or improper consideration of the facts.

GROUND FOUR:

Ground Four criticizes a failure to investigate the ex-paramour who testified to Petitioner's telephonic confession the morning of the shooting. Petitioner contends that defense counsel should have subpoenaed phone records, which would show the inculpatory calls never happened. Moreover, trial counsel allegedly failed to disclose to the jury that the ex-paramour received favorable treatment from authorities for her testimony. Doc. 1 at 11.

The defense lawyer deposed the paramour before trial. Ex. 9e at 1149. It does appear that a large number of phone records were provided to the defense

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home preparing for work with his father at 6:00 a.m. (when the shooting happened, Ex. 9e at 1233–1244) but then the co-defendant for some unknown reason came to the father's house and picked him up at 6:05 am so he was back at the co-defendant's apartment about 6:15 am (for the police encounter), and then immediately back home so his father could pick him up in a work truck and they both could attend work. Ex. 9e at 1108–1128. In addition, during this time span Petitioner attended the 7-Eleven store (when the co-defendant was on video committing an armed robbery). Petitioner also contended that within this timeframe he alone then visited a RaceTrac filling station where opponents from the fight were present and challenged him. (Case discovery mentioned a RaceTrac video showing some—not Petitioner—from the fight gathered there after the fight, at the time of the shooting.) The proffered alibi simply could not bear this conflicting weight and appeared contrived to get Petitioner away from the co-defendant at the time of the 6:00 a.m. shooting but immediately back with the co-defendant for the police encounter at about 6:15 a.m. The inability of this alibi to cohere might have been why Petitioner told his lawyer he had no alibi.

before trial. Ex. 9e at 1028. The trial counsel made the decision as to approach to take to cross-examine the paramour and he determined that phone records were not necessary. *Id.* at 1316, 1045. The defense lawyer conducted a workmanlike cross-examination of this witness, who stated her phone was unavailable as it fell into the commode. Ex. 1e at 568–577. Her biases were apparent in this cross. The post-conviction court concluded that this ground was speculative, as Petitioner made no effort to obtain those phone records to illustrate his point that they would have helped impeach the witness.

The Court agrees with Respondent that based upon the trial lawyer's testimony, the adequate cross-examination of the ex-paramour which did show her biases, and the failure of Petitioner to bear his burden of proof as to these records, the state court appropriately denied relief on this ground, or was not unreasonable in doing so or in derogation of clearly established Supreme Court precedent. No prejudice was shown of the impact required under *Strickland.*

GROUND FIVE:

The penultimate ground asserts that trial counsel was ineffective for failing to obtain surveillance videos from various businesses in the relevant area during the times surrounding the shooting. Doc. 1 at 13. The post-conviction court's order outlined this issue well. Ex. 9e at 1046–1048. The prime tape that Petitioner complains about is one from the 7-Eleven store, where Petitioner attended after the

fight. Also present was the armed co-defendant, who was videotaped jumping over the counter and robbing the store of a carton of cigarettes. Both Petitioner and the co-defendant smoked the same cigarette brand. Ex. 9b at 710. At the evidentiary hearing the trial lawyer testified that he had indeed reviewed this tape, and it put Petitioner in the company of the co-defendant/shooter (whom witnesses had testified bore the rifle) near the time of the shooting. Ex. 9e at 1050. The minivan from which the shots were fired can be seen in the tape. *Id.* Also, playing the tape could show the armed robbery by the co-defendant with Petitioner nearby. Exs. 9 at 61; 9e at 1049–1050, 1164–1168, 1185; 1317–1318. The post-conviction court quite properly found that the non-use of this videotape was a reasonable, indeed wise, defense tactic.

Petitioner also contends that there was tape from the co-defendant's apartment and from the RaceTrac gas station that should have been played. Petitioner alluded to these tapes but failed to produce them at the hearing to show they were exculpatory. There is no indication in this record that any tape from the co-defendant's apartment exists.

As to the RaceTrac tape, this was tied into Petitioner's very weak and problematic alibi defense, *see* pages 7–9 and footnote 6 of this order, and the only evidence in this record is that Petitioner was not on this tape. Others who fought Petitioner at the bar were on the RaceTrac premises tape at the time of the

shooting, thus exonerating them from the shooting. Ex. 1c at 351–356. Petitioner did not obtain this RaceTrac tape or try to obtain the tape for the hearing. There is no evidence it was exculpatory and no indication it even existed at the time of the post-conviction hearing. Based on the trial transcript, defense counsel's testimony about his strategy and adequate trial presentation, and given only speculation offered by Petitioner at the hearing, Ex. 9e at 1046–1052, as to the tapes and the entire lack of real prejudice, the state court did not commit an unreasonable application of federal law in denying relief after a hearing.

GROUND SIX:

In the final ground Petitioner complains of insufficient and lax cross-examination of Tony Harris, the acquaintance. This is the witness to whom Petitioner confessed while they stashed the guns in Harris' couch. Petitioner states the plan to aggressively cross-examine Harris and pin the shooting on him was an agreed-upon defense strategy that trial counsel abandoned. According to the petition "counsel and Petitioner agreed that the focus of the trial strategy to be employed was that Tony Harris, in fact, committed this crime and lied constantly [in the earlier co-defendant shooter trial] to cover up his own involvement." Doc. 1 at 17.

In effect, Petitioner contends that cross-examination of Harris was weak. Ground Six states that Harris did admit before Petitioner's jury that he told lies in

prior statements to assist the co-defendant in his earlier trial. But "the specific of these lies were not elicited allowing a misrepresentation of the facts necessary for the jury to consider when evaluating the credibility of the State's man [sic] witness [Harris]." *Id.* Petitioner argues that "[c]ounsel did not lay a factual foundation through aggressive cross examination and impeachment to advance the viable defense theory that Tony Harris has lied from the beginning to cover up his own involvement. Defense counsel also did not advance this viable defense theory throughout his closing argument as agreed upon prior to trial." *Id.* In addition to poorly setting the stage that witness Harris might have been the shooter, Petitioner also asserts trial counsel failed to impeached Harris on his dislike of Petitioner and his affinity for the co-shooter who was convicted in an earlier trial.

In other words, the plan to lay the blame on Harris was not carried out by trial counsel with sufficient aggression. Petitioner asserts this was a "viable defense theory."

This claim was addressed, and "aired out" at the post-conviction evidentiary hearing. Trial counsel testified that the defense at trial was Petitioner was not involved in the shooting. Counsel viewed the theory that Harris was involved as lacking evidentiary support. *See* Ex. 9e at 1297, 1301, 1315, 1326. Good lawyers know that arguing about non-facts is like arguing about air.

Moreover, Harris' dislike of Petitioner and the impeachment of Harris based on prior inconsistent statements to assist the co-defendant did come out clearly at trial. *Id.* at 1300–1301, 1325–1326; Ex. 1f at 731–743 (counsel gets Harris to admit to prior sworn false statements to help co-defendant). The jury also heard clearly that Harris considered the co-defendant his "brother" but did not care much for Petitioner. *Id.*

The post-conviction court found that Petitioner had failed to show any constitutional insufficiency in counsel' performance in this regard, nor was prejudice established. Ex. 93 at 1029. The undersigned has read the trial transcript and the post-conviction court hearing transcript. The post-conviction court's conclusions are not an unreasonable application of the law and are consistent with a fair reading of the facts. No doubt Petitioner wishes his trial lawyer had been better or somehow there could be more to pin on Harris. In the real world of trial work, though, one can only work with what the facts present. Harris was not present at the bar for the fight; he was not bloody and vowing revenge. The evidence of Harris as the shooter was thin on this record. Trial counsel handled Harris adequately with what he had to work with, exceeding *Strickland's* minimum.

The petition (Dkt. 1) is denied and the Clerk is directed to enter judgment for Respondent and close the file.

The petition neither presents a reasonable argument suggesting denial of a federal constitutional right nor makes any substantial showing of such denial. 28 U.S.C. § 2253(c)(2). Reasonable jurists would not disagree. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing 28 U.S.C. § 2253(c)); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). Accordingly, the Court does not provide a certificate of appealability. No grounds, therefore, exist for proceeding further *in forma pauperis* because any appeal would not be taken in good faith.

DONE AND ORDERED at Tampa, Florida, on April 7, 2021.

WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

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