No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL MAXWELL — PETITIONER
(Your Name)

VS.

SECRETARY
FLA. DEPT. OF CORR. — 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):

US. DISTRICT COURT
SOUTHERN DISTRICT OF 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.

Daniel W Maxwell
(Signature)

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

I, DANIEL MAXWELL, 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 | $ Ø | $ | $ Ø | $ |
| Self-employment | $ Ø | $ | $ Ø | $ |
| Income from real property (such as rental income) | $ Ø | $ | $ Ø | $ |
| Interest and dividends | $ Ø | $ | $ Ø | $ |
| Gifts | $ Ø | $ | $ Ø | $ |
| Alimony | $ Ø | $ | $ Ø | $ |
| Child Support | $ Ø | $ | $ Ø | $ |
| Retirement (such as social security, pensions, annuities, insurance) | $ Ø | $ | $ Ø | $ |
| Disability (such as social security, insurance payments) | $ Ø | $ | $ Ø | $ |
| Unemployment payments | $ Ø | $ | $ Ø | $ |
| Public-assistance (such as welfare) | $ Ø | $ | $ Ø | $ |
| Other (specify): | $ Ø | $ | $ Ø | $ |
| **Total monthly income:** | $ Ø | $ | $ Ø | $ |

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 |
|---|---|---|---|
| N/A | | | $ |
| | | | $ |
| | | | $ |

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 |
|---|---|---|---|
| N/A | | | $ |
| | | | $ |
| | | | $ |

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 |
|---|---|---|
| | $ | $ |
| N/A | $ 0 | $ 0 |
| | $ | $ |

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

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value

☐ Motor Vehicle #2
Year, make & model N/A
Value

☐ Other assets
Description N/A
Value

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 |
|---|---|---|
| | $ | $ |
| N/A | $ N/A | $ 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 |
|---|---|---|
| | | |
| N/A | N/A | N/A |
| | | |

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)<br>Are real estate taxes included? ☐ Yes ☐ No<br>Is property insurance included? ☐ Yes ☐ No | $ Ø | $ |
| Utilities (electricity, heating fuel, water, sewer, and telephone) | $ Ø | $ |
| Home maintenance (repairs and upkeep) | $ Ø | $ |
| Food | $ Ø | $ |
| Clothing | $ Ø | $ |
| Laundry and dry-cleaning | $ Ø | $ |
| Medical and dental expenses | $ Ø | $ |

| | You | Your spouse |
|---|---|---|
| Transportation (not including motor vehicle payments) | $ Ø | $ |
| Recreation, entertainment, newspapers, magazines, etc. | $ Ø | $ |
| Insurance (not deducted from wages or included in mortgage payments) | | |
| Homeowner's or renter's | $ Ø | $ |
| Life | $ Ø | $ |
| Health | $ Ø | $ |
| Motor Vehicle | $ Ø | $ |
| Other: _____ | $ Ø | $ |
| Taxes (not deducted from wages or included in mortgage payments) | | |
| (specify): _____ | $ Ø | $ |
| Installment payments | | |
| Motor Vehicle | $ Ø | $ |
| Credit card(s) | $ Ø | $ |
| Department store(s) | $ Ø | $ |
| Other: _____ | $ Ø | $ |
| Alimony, maintenance, and support paid to others | $ Ø | $ |
| Regular expenses for operation of business, profession, or farm (attach detailed statement) | $ Ø | $ |
| Other (specify): _____ | $ Ø | $ |
| **Total monthly expenses:** | $ Ø | $ |

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? N/A

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? N/A

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.

INCARCERATED FOR THE PAST 8 1/2 YEARS. NO INCOME OR JOBS AVAILABLE IN PRISON

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

Executed on: August 30, 2022

Daniel W Maxwell

(Signature)

No._____

---

IN THE

SUPREME COURT OF THE UNITED STATES

---

DANIEL W. MAXWELL – PETITIONER

VS.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

DANIEL W. MAXWELL, DC# M88059

SOUTH FLORIDA RECEPTION CENTER – SOUTH UNIT

13910 N.W. 41st Street

DORAL, FLORIDA 33178-3014

## QUESTION(S) PRESENTED

On August 7, 2010 the defendant was illegally arrested by officer Fleites at the scene of the homicide because Mr. Maxwell was a material witness who wanted to leave the area. The moment Fleites handcuffed the defendant and placed him in the back of the police vehicle, Mr. Maxwell was seized for Fourth Amendment purposes. A short time later, Mr. Maxwell complied with detective Godoy's request that he be transported to the police station in acquiescence to a show of official authority.

The statements that Mr. Maxwell gave at the station on August 7, 2010, were impermissibly tainted by his illegal arrest. Since there was no intervening circumstances to purge the taint, the defendant's multiple statements should have been suppressed. The failure to exclude these statements was harmful because they served to undermine the credibility of the defendant's self defense theory at trial.

## LIST OF PARTIES

[►] All parties appear in the caption of the Case on the cover page.

[ ] 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:

## RELATED CASES

Maxwell v. Secretary, Florida Department of Corrections, 2020 U.S. App. Lexis 5304.

Maxwell v. Secretary, Florida Department of Corrections, 2019 U.S. App. Lexis 4428.

Maxwell v. Secretary, Florida Department of Corrections, 2018 U.S. App. Lexis 14745.

Maxwell v. Secretary, Florida Department of Corrections, 2018 U.S. App. Lexis 18447

## TABLE OF CONTENTS



## INDEX TO APPENDICES

## TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States Court of appeals at Appendix __A__ to
The petition and is

[X] reported at *Maxwell v. FDC*, 2020 U.S. App. Lexis 5304; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States District Court appears at Appendix __B__ to
The petition and is

[X] reported at *Maxwell v. FDC*, 2019 U.S. App. Lexis 4428; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from State Courts:

The opinion of the highest state Court to review the merits appears at
Appendix ___C__ to the petition and is

[X] reported at *Maxwell v. State*, 2016 Fla. Lexis 1738; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Third District Court of Appeal
Appears at Appendix ___D__ to the petition and is

[X] reported at *Maxwell v. State*, 170 So.3d 915 (3rd DCA 2015); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

## JURISDICTION [1]

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case

was May 17, 2022.

[X] No petition for rehearing was timely filed in my Case.

[ ] A timely petition for rehearing was denied by the United States Court of appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ___E___.

[ ] An extension of time to file the petition for a Writ of Certiorari was granted to and including _____ (date) on _____ (date) in application No. ____A_____.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

[X] For cases from **State courts**:

The date on which the highest state Court decided my Case was March 15, 2022.
A copy of that decision appears at Appendix ___F____.

[ ] A timely petition for rehearing was thereafter denied on the following date:_____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a Writ of Certiorari was granted to and including _____(date) on _____ (date) in application No._____A_____.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

---

1 Petitioner's 90-day window for the timely filing of this petition for a Writ of Certiorari was delayed due a FDC department needs transfer between institutions on June 1, 2022 and the subsequent Covid-19 quarantine for 14-days which deprived petitioner access to the Law Library, Research materials, Law Clerk assistance and delivery of his Active Legal Materials Box from the previous institution.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I- Fourth amendment violations.

II- illegal arrest.

III - suppression of illegally obtained statements.

IV - Miranda violations.

## STATEMENT OF THE CASE

Daniel Maxwell, who was a middle-aged homeless man at the time of the incident, was found guilty of second-degree murder and sentenced to Life imprisonment. The defendant sought to suppress the custodial statements he made at the police station on August 7, 2010. The motion argued that the statements were tainted by the defendant's illegal arrest at the scene.

On the morning in question, Officer Orlando Fleites was dispatched to a bus-way on U.S. 1 and 104th Street where a dead body had been reported. Mark Branthoover, the deceased, was lying on the street with visible head trauma. Fleites spotted Mr. Maxwell sitting on a nearby bus bench with a beer in his hand. Maxwell said that earlier that morning he was awakened and observed two black males beating up Branthoover. The defendant grabbed a stick and chased them away, the he called 911. Fleites asked Maxwell to remain on the scene, but the defendant became upset and complained that he was tired, that he did not want to get involved and wanted to leave. When the defendant started walking away, Fleites detained and handcuffed him for "officer safety". The defendant was then confined in the backseat of the police vehicle against his will. The defendant was later driven to the homicide bureau. Thereafter, Mr. Maxwell was *Mirandized* and he gave a homicide detective three inconsistent statements which were later used to incriminate him at trial. After the interrogation, the homicide detective released the defendant.

On August 11, 2010, Mr. Maxwell agreed to return to the police station and give another statement. Post-*Miranda*, the detective told Mr. Maxwell that the physical evidence did not match his account and it would be better if he told the truth. The defendant said that while he was asleep Branthoover started hitting his legs with a pipe. When Maxwell tried to get up from his cot, Branthoover swung and hit him in the head. The defendant dropped down to one knee and tackled the deceased who fell into the bushes. He punched Branthoover in the face until Branthoover lost consciousness. Maxwell then picked up the pipe and struck the deceased several times in the head. After the fight, the defendant placed the pipe in Branthoover's hand.

At trial, Maxwell argued that he acted in self-defense in response to Branthoover's unprovoked attack. The inconsistent August 7 statements were used by the State to undermine the defendant's self-defense claim.

## REASONS FOR GRANTING THE PETITION

The trial court erred in admitting into evidence the statements that Mr. Maxwell gave at the police station on August 7, 2010 after he had been illegally arrested and transported to the homicide bureau.

Under the Fourth Amendment, a person is detained when the police restrict his freedom to leave, or to avoid police contact. "although there is no litmus-paper test for distinguishing a consensual encounter is that the officer cannot hinder or restrict the person's freedom to leave or freedom to refuse to answer inquiries, and the person may not be detained without a well-founded and articulable suspicion of criminal activity". *Popple v. State,* 626 So.2d 185, 187-88 (Fla. 1993). In this case, because there was no probable cause, or reasonable suspicion to arrest/detain Mr. Maxwell, he had every right to walk away from the police and choose not to remain in the area. See *United States v. Mendenhall*, 446 U.S. 544, 556 (1980); *Florida v. Royer*, 460 U.S. 491, 498 (1983). Officer Fleites thus illegally seized the defendant when he handcuffed him and placed him in the back of his squad car. See *Williams v. State*, 993 So.2d 1179 (Fla. 4th DCA 2008) (handcuffing a defendant during a traffic stop constituted an unlawful arrest).

Courts have upheld the use of handcuffs where it is reasonable necessary to protect an officer's safety in circumstances where the police have reasonable suspicion to detain a suspect. See *Reynolds v. State,* 592 So.2d 1082, 1084-85 (Fla. 1992). Here, Fleites had no reasonable suspicion that Mr. Maxwell was involved in criminal activity. Moreover, the trial court erroneously relied on *Keeton v. State,*

427 So.2d 231 (Fla. 3rd DCA 1983), in denying the motion. *Keeton,* which is a very short opinion, is distinguishable from the present case because this court found that police developed probable cause to arrest Keeton at the crime scene. Here, the police lacked probable cause to arrest Mr. Maxwell.

It is obvious from the record that Mr. Maxwell was detained solely because he was a material witness who did not want to cooperate further with the investigation. The defendant's detention as a witness was patently illegal. In Florida, a material witness may be arrested and held on bond only in cases where "a defendant is held to answer on a charge for a crime punishable by death or life imprisonment, the trial court judge at the preliminary hearing may require each material witness to enter into a written recognizance to appear at the trial or forfeit a sum fixed by the trial court judge. Additional security may be required in the discretion of the trial judge". §902.15, Fla. Stat. (2014). This can only occur after charges have been filed against an accused. See *Rodriguez v. Sandstorm,* 382 So.2d 778 (Fla. 3rd DCA 1980)(trial judge lacks authority to hold material witness before formal charges have been filed against a defendant). Similarly, a writ of bodily attachment can only be issued against a witness who has been subpoenaed to appear in a criminal case and who disregards the order. §914.03, Fla. Stat. (2014); see *Sims v. State,* 867 So.2d 1208 (Fla. 3rd DCA 2004) (generally discussing the nature of the compulsory appearance of a witness in a criminal case).

Mr. Maxwell expression of anger at Fleites' insistence that he remain in site, which included the defendant balling up his fists, did not give Fleites the authority

to handcuff him and secure him in the police car against his will. Mr. Maxwell's actions did not rise to the level of an assault because assault requires an overt act directed toward the victim, which creates a well-founded fear that violence in imminent. See *Butler v. State,* 632 So.2d 684 (Fla. 5th DCA 1994); Johnson *v. Brooks,* 567 So.2d 34 (Fla. 1st DCA 1990); *H.W. v. State,* 79 So.3d 143, 145 (Fla. 3rd DCA 2012). at no point did Mr. Maxwell threaten, or physically attack the officer.

The defendant's angry protestations were also insufficient to support the seizure. Merely expressing anger at the police does not constitute obstruction as verbal protests against police authority is protected speech. See *S.D. v. State,* 627 So.2d 1261 (Fla. 3rd DCA 1993); *D.G. v. State,* 661 So.2d 75 (Fla. 2nd DCA 1995) (verbal protests in the absence of physical opposition to police does not constitute obstruction). Furthermore, "no Florida court has found probable cause to arrest a person for obstruction solely on the basis of a refusal to answer questions related to an ongoing investigation" *Frias v. Demings,* 823 F. Supp. 1279, 1286 (M.D. Fla. 2011).

In addition to being handcuffed and secured in a squad car, Mr. Maxwell's transportation to the police station was a further constraint which established that he was under arrest for Fourth Amendment purposes. It is also significant that at no time was Mr. Maxwell advised that he was free to leave and go about his business. See *Kaupp v. Texas,* 538 U.S. 626 (2003)(defendant's transportation to police station constituted an illegal arrest where defendant taken to crime scene and then to interrogation room at the police station with no indication he was free

to decline); *Dunaway v. New York*, 442 U.S. 200 (1979)(defendant's transportation to police station constituted an illegal arrest where defendant was picked up for questioning, driven to police headquarters, placed in interrogation room, and never was informed he was free to go).

The Third District's decision in this case is in conflict with Florida decisions which have held that the handcuffing and confinement of a suspect in a police vehicle requires probable cause. *A fortiori,* there are no Florida cases which justify the seizure of a material witness in the absence of reasonable suspicion, or probable cause.

In *Reynolds v. State,* 592 So.2d 1082, 1085 (Fla. 1992), this court held that the use of handcuffs is not prohibited during an investigatory stop, *which is supported by reasonable suspicion,* "where the circumstances reasonably warrant such action". In this case, however, the defendant's handcuffing and confinement in the police vehicle were unsupported by reasonable suspicion, or probable cause and thus constituted an illegal arrest. It is undisputed that when Officer Fleites arrived on the scene, there was no reasonable suspicion, or probable cause to believe that Mr. Maxwell had been involved in Branthoover's death.[2] It is also clear that Fleites handcuffed and detained the defendant solely because he was an uncooperative witness to the crime. Florida courts have held that the handcuffing of a suspect, in cases where there was reasonable suspicion justifying an investigatory stop, transforms the stop into a *de facto* arrest. See Baggett v. State, 849 So.2d 1154,

2 The absence of probable cause in this case is underscored by the fact that the homicide detective released Mr. Maxwell after the August 7 interrogation.

1157 (Fla. 2nd DCA 2003); *Williams v. State,* 993 So.2d 1179 (Fla. 4th DCA 2008). Confinement in the back of a police car also requires probable cause. See *Clinton v. State,* 780 So.2d 960, 962 (Fla. 5th DCA 2001).

The Third District's justification of Maxwell's illegal arrest incorrectly relies on *Keeton v. State,* 427 So.2d 231 (Fla. 3rd DCA 1983). *Keeton,* which is a very short opinion, does not stand for the proposition that the police may *sua sponte* arrest witnesses during homicide investigations. The defendant in *Keeton* had observed a murder and during police questioning on the scene. *"probable cause developed to effect an arrest". Id.* At 232 (emphasis added) (citation omitted).

Maxwell's illegal arrest tainted the statements he made at the police station on august 7, 2010, as there no significant intervening circumstances which would have severed the chain of illegality. *See Brown v. Illinois,* 422 U.S. 590 (1975). The statements, therefore, should have been suppressed.

The taint of an illegal arrest is not purged by the administration of *Miranda* warnings alone. See *Taylor v. Alabama,* 457 U.S. 687 (1982); *Brown v. Illinois,* 422 U.S. 590 (1975); *Adams v. State,* 830 So.2d 911, 914 (Fla. 3rd DCA 2002). The salient factors to be considered in determining whether intervening events broke the chain of illegality are, "the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct". *Brown v. Illinois,* 422 U.S. At 603; See also, *Connor v. State,* 803 So.2d 598, 609 (Fla. 2001)

In the case *sub judice,* Mr. Maxwell was confined in an interview room approximately an hour after Fleites illegally arrested him. During the next several hours, he was interrogated by detective Godoy and he gave varying accounts of the homicide. No intervening events occurred throughout this process and therefore the statements should have been suppressed.

The standard for establishing that the improper admission of a defendant's statements is harmless was defined by the Florida Supreme Court as follows:

> "The harmless error test places the burden on the State, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to a verdict adverse to a defendant or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction. Application of the test requires an examination of the entire record by the appellate court including a close examination of the permissible evidence on which the jury could have legitimately relied, and in addition an even closer examination of the impermissible evidence which might have possibly influenced the jury verdict."

*State v. DiGuilio,* 491 So.2d 1129, 1138 (Fla. 1986) (citations omitted)(emphasis added)

In this case, the introduction of the several accounts Mr. Maxwell gave of the incident on August 7, 2010, was harmful because it served to undermine the credibility of his self-defense theory at trial. In closing argument, the prosecutor used the august 7 statements to rebut Maxwell's defense:

> [THE STATE]: In the defendant's statement – look at them. Look at both of them, because there are some things that are true in the statement that he gave on the 7th. He gave several versions of events. Of course he has to blame some black guys. Whatever. He has to do anything he can to get the responsibility off himself.

(T. 1207).

It cannot be shown beyond a reasonable doubt that the jury did not interpret the false accounts Mr. Maxwell gave on august 7 as evidence of his consciousness of guilt, thus causing the jury to reject the self-defense account he gave several days later. As such, Mr. Maxwell's conviction and sentence must be overturned and he must be granted a new trial in which the illegally obtained statements are excluded from evidence.

## CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

David W Maxwell

Date: 8-30-22

No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

DANIEL W. MAXWELL – PETITIONER

VS.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS – RESPONDENT(S)

PROOF OF SERVICE

I, DANIEL W. MAXWELL, do swear or declare that on this date, August 31, 2022, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A Writ OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States Mail properly addressed to each of them and with first-class postage paid, or by delivery to a third party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

US Supreme Court, Office of the Clerk, Washington DC 20543
Secretary FLA DOC, 501 South Calhoun St, Tallahassee, FL 32399

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

Executed on August 31, 2022

Daniel W Maxwell
(Signature)

*APPENDIX "A"*

DANIEL W. MAXWELL, Petitioner-Appellant, versus ATTORNEY GENERAL, STATE OF FLORIDA, SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondents-Appellees. UNITED STATES COURT OF APPEALS FOR THE ELEVENTH Circuit 2020 U.S. App. LEXIS 5304 No. 19-13754-F February 20, 2020, Decided
Editorial Information: Prior History

{2020 U.S. App. LEXIS 1}Appeal from the United States District Court for the Southern District of Florida. Maxwell v. Jones, 2017 U.S. Dist. LEXIS 140122 (S.D. Fla., Aug. 29, 2017)

Counsel Daniel W. Maxwell, Petitioner - Appellant, Pro se, Florida City, FL. For Attorney General, State of Florida, Secretary, Department of Corrections, Respondents - Appellees: Christina L. Dominguez, Ashley Moody, Attorney General's Office, Miami, FL.

Judges: Britt C. Grant, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Britt C. Grant

Opinion

ORDER:

Daniel W. Maxwell's motion for a certificate of appealability 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).

/s/ Britt C. Grant

UNITED STATES CIRCUIT JUDGE

*APPENDIX "B"*

DANIEL W. MAXWELL, Petitioner-Appellant, versus ATTORNEY GENERAL, STATE OF FLORIDA, DEPARTMENT OF CORRECTIONS, Respondents-Appellees. UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT 2019 U.S. App. LEXIS 4428 No. 18-13909-D February 13, 2019, Decided Editorial Information: Prior History

{2019 U.S. App. LEXIS 1} Appeal from the United States District Court for the Southern District of Florida. Maxwell v. Jones, 2017 U.S. Dist. LEXIS 140122 (S.D. Fla., Aug. 29, 2017)

Counsel Daniel W. Maxwell, Petitioner - Appellant, Pro se, Florida City, FL. For Department of Corrections, Respondent - Appellee: Christina L. Dominguez, Attorney General's Office, Miami, FL.

Judges: Adalberto Jordan, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Adalberto Jordan

Opinion

ORDER:

Daniel Maxwell, a Florida prisoner, has filed a motion for a certificate of appealability ("COA"), as construed from his notice of appeal, in order to appeal the district court's denial of his *pro se* "Motion of Constitutional Violation Due Process of Appeal." Maxwell has also filed a motion for clarification in this Court, in which he in which he appears to argue that a COA was unnecessary to appeal the denial of his original 28 U.S.C. 2254 petition.

As background, Maxwell filed his original 2254 petition in the district court, raising two grounds for relief: (1) "Manual Alvarez my state appointed attorney filed improperly in the Supreme Court"; and (2) "The statement that was given to Det. Goody at the police station." A magistrate judge entered an order requiring Maxwell to re-file his 2254 petition in order to clarify his claims, explaining that failure to comply with the order{2019 U.S. App. LEXIS 2} could result in a dismissal without prejudice. After filing an amended petition, that was materially the same as his original petition. Maxwell filed a second amended petition, stating "Case 3013-0318 the petition on jurisdiction (brief) SC.15.1559 the writ of habeas corpus filed by Manual Alvarez."

The magistrate judge entered a report and recommendation ("R&R"), recommending that the case be dismissed without prejudice pursuant to Fed. R.

Civ. P. 41(b). Maxwell objected, arguing that he had complied with the magistrate judge's prior orders to the best of his ability. The district court adopted the R&R over Maxwell's objections, denied his 2254 petition, and denied him a COA. Maxwell appealed and filed an unsuccessful motion for a COA in this Court.

Nearly a year after the judgment denying his 2254 petition, Maxwell filed the instant "Motion of Constitutional Violation Due Process of Appeal." He argued that he "did in fact comply with the district court's orders", and his "right of appeal process [had] been violated." The district court summarily denied the motion. The district court also denied him a COA.

Maxwell now seeks a COA to appeal the denial of his "Motion of Constitutional Violation Due Process of Appeal." {2019 U.S. App. LEXIS 3}1 In order 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). The movant 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, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (quotations omitted).

We review the district court's denial of a Fed. R. Civ. P. 60(b) motion for an abuse of discretion, and review does not extend to the validity of the underlying judgment *per se. Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996). Rule 60(b) allows a party to seek relief or reopen his case based upon the following limited circumstances: (1) mistake or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been discharged; and (6) "any other reason that justifies relief." Fed. R. Civ. P. 60(b).

Here, the district court did not abuse its discretion in denying Maxwell's "Motion of Constitutional Violation Due Process of Appeal." *Rice*, 88 F.3d at 918-19. Initially, it appears that Maxwell was seeking relief under Rule 60(b), as the motion challenged the district court's denial of his second amended 2254 petition for failure to comply with the orders requiring him to clarify his claims. Thus, because it requested {2019 U.S. App. LEXIS 4} relief from the final judgment, the motion essentially acted as a Rule 60(b) motion. *See United States v. Jordan*, 915 F.2d 622, 624-25 (11th Cir. 1990) (noting that federal courts have an "obligation to look behind the label of a motion filed by a *pro se* [party] and determinate whether the motion is, in effect, cognizable under a different remedial statutory framework"). However, the district court did not abuse its discretion in denying the motion, as Maxwell did not assert any ground warranting relief under Rule 60(b). Accordingly, his motion for a COA is DENIED.

Additionally, Maxwell's motion for clarification is DENIED because it does not seek clarification of any order by this Court and does not seek any cognizable relief

/s/ Adalberto Jordan

UNITED STATES CIRCUIT JUDGE

Footnotes

1

As noted above, we already have denied Maxwell a COA to appeal from the district court's order denying his underlying 2254 petition.

*APPENDIX "C"*

DANIEL MAXWELL, Petitioner(s) vs. STATE OF FLORIDA, Respondent(s)
SUPREME COURT OF FLORIDA 2016 Fla. LEXIS 1738 CASE NO.: SC15-1559
August 9, 2016, Decided
Notice:

DECISION WITHOUT PUBLISHED OPINION

Editorial Information: Prior History

Lower Tribunal No(s): 3D14-318; 132010CF0235190001XX. Maxwell v. State, 170 So. 3d 915, 2015 Fla. App. LEXIS 11338 (Fla. Dist. Ct. App. 3d Dist., July 29, 2015)

Judges: LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, and PERRY, JJ., concur.

Opinion

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d) (2).

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, and PERRY, JJ., concur.

*APPENDIX "D"*

Daniel Maxwell, Appellant, vs. The State of Florida, Appellee. COURT OF APPEAL OF FLORIDA, THIRD District 170 So. 3d 915; 2015 Fla. App. LEXIS 11338; 40 Fla. L. Weekly D 1796 No. 3D14-318 July 29, 2015, Decided
Editorial Information: Subsequent History

Review denied by Maxwell v. State, 2016 Fla. LEXIS 1738 (Fla., Aug. 9, 2016) Writ of habeas corpus denied Maxwell v. State, 211 So. 3d 1049, 2016 Fla. App. LEXIS 14605 (Fla. Dist. Ct. App. 3d Dist., Aug. 30, 2016) Magistrate's recommendation at, Habeas corpus proceeding at Maxwell v. Jones, 2017 U.S. Dist. LEXIS 124327 (S.D. Fla., Aug. 4, 2017)

Editorial Information: Prior History
Lower Tribunal No. 10-23519. An Appeal from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Counsel Carlos J. Martinez, Public Defender, and Manuel Alvarez, Assistant Public Defender, for appellant. Pamela Jo Bondi, Attorney General, and Douglas J. Glaid, Senior Assistant Attorney General, for appellee.

Judges: Before ROTHENBERG, LOGUE, and SCALES, JJ. ROTHENBERG, J.

CASE SUMMARY Trial court properly denied defendant's motion to suppress his post-Miranda exculpatory statements to a detective regarding a murder because, based on defendant's injuries and conflicting stories, the detective had reasonable suspicion that authorized him to detain defendant for further investigation under 901.151(2), Fla. Stat.

OVERVIEW: ISSUE: Whether the trial court erred in denying defendant's motion to suppress his post-Miranda exculpatory statements to a detective regarding a murder. HOLDINGS: [1]-Defendant's statements were not tainted by an illegal detention, as his temporary handcuffing and detention during the murder investigation was reasonable under the Fourth Amendment because he became aggressive towards the responding officer; [2]-Based on defendant's injuries and conflicting stories, the detective had reasonable suspicion that authorized him under 901.151(2), Fla. Stat., to detain defendant for further investigation; [3]-Any error in denying defendant's motion to suppress was harmless as his exculpatory statements to the detective were mere variations of those he had made to the officer, and the statement that resulted in his arrest and conviction was the incriminating statement he made four days later.

OUTCOME: The judgment was affirmed.

LexisNexis Headnotes

*Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Scope of Protection*

Both the Fourth Amendment to the United States Constitution and Fla. Const. art. I, 12 protect people only against unreasonable searches and seizures.

*Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops*

See 901.151(2), Fla. Stat. (2010).

*Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops*

The existence of a reasonable suspicion is based upon specific and articulable facts, and the rational inferences that may be drawn from those facts. In determining whether a police officer possesses reasonable suspicion to justify an investigatory stop, the court must consider the totality of the circumstances viewed in light of a police officer's experience and background.)

Opinion

Opinion by: ROTHENBERG

Opinion

{170 So. 3d 915} ROTHENBERG, J.

The defendant, Daniel Maxwell, was tried and convicted for the second-degree murder beating death of Mark Branthoover ("the victim"). During the investigation, the defendant made various statements to law enforcement regarding the murder: (1) pre-*Miranda*1 exculpatory statements made on August 7, 2010, to Officer Orlando Fleites, the officer who initially responded to the scene of the homicide; (2) subsequent post-*Miranda* exculpatory statements to Detective Raul Godoy on August 7, 2010, at the homicide office; and (3) post-*Miranda* incriminating statements made on August 11, 2010. The defendant sought to suppress only the {170 So. 3d 916} post-*Miranda* exculpatory statements made to Detective Godoy on August 7, 2010, and the only issue raised in this appeal is the trial court's denial of the defendant's motion to suppress these statements. We affirm.

The facts relied on by the trial court are as follows. On the morning of August 7, 2010, Officer Fleites was dispatched to a bus-way on U.S. 1 and 104th Street in reference to a dead body. Upon Officer Fleites' arrival, he observed the defendant, who he knew from prior interactions, drinking a beer while seated on a bus bench

near the body. Officer Fleites asked the defendant what happened to his friend. The defendant immediately responded that he had seen "the whole thing" and that he was the one who had called the police. When Officer Fleites asked the defendant what he saw, the defendant explained that he had been sleeping and was awakened by a noise. He then saw two black males attacking the victim, at which point he grabbed a stick he found on the ground and scared the attackers away. The defendant then called 911.2

Believing the defendant was a material witness to the homicide, Officer Fleites told the defendant that he needed to remain on the scene to speak with the homicide investigators, who were on their way. The defendant, who said he was tired and did not want to stay, became belligerent, irate, agitated, and disruptive. He began screaming at Officer Fleites and tried to leave the scene. When Officer Fleites continued to try to talk to him, the defendant walked aggressively towards the officer with his hands balled into fists. Officer Fleites told the defendant that he needed to calm down, explained that the homicide detectives would be there soon, handcuffed the defendant for officer safety, and placed the defendant in the backseat of his police car. Officer Fleites further explained that the defendant is "a tall man," while he is only 5'6", and in his prior encounters with the defendant, which were in response to reports of disorderly conduct, the defendant was not easy to deal with. Officer Fleites told the defendant that he would remove the defendant's handcuffs when he calmed down, and apparently the defendant did calm down, because shortly thereafter, when Detective Godoy arrived, the defendant was no longer handcuffed.

Detective Godoy testified that when he approached the defendant it was his understanding that the defendant was a witness to the homicide. The defendant was calm and he was not in handcuffs. When Detective Godoy began speaking with the defendant, he noticed that the defendant had blood on his shirt and on his forehead, which aroused his suspicions. He asked the defendant if he was hurt, and the defendant stated that he was not, which further heightened his suspicion because he noticed a fresh abrasion or cut on the defendant's knuckles, which Detective Godoy testified appeared to him as though the defendant had hit something with his fists. Detective Godoy told the defendant that he needed to speak with him and that he would like to conduct the interview at the homicide office. The defendant, who was homeless, was initially concerned about the safety of his property (he had a metal kiosk nearby which contained some of his property and a book bag), but after Detective Godoy assured the defendant that the uniformed officers had secured the scene and would protect his property until they returned, the defendant agreed {170 So. 3d 917} to go with Detective Godoy to the homicide office.

Upon arriving at the homicide office, the defendant was advised of his *Miranda* rights in a printed form, and the defendant executed the rights waiver

form agreeing to speak with Detective Godoy without an attorney being present. The defendant did not and does not contest the voluntariness of his waiver or that he was properly advised of his rights. Thereafter, the defendant gave Detective Godoy various conflicting accounts of what he allegedly witnessed in regard to the murder, and he eventually provided a taped statement. While these statements varied from the statements the defendant gave earlier to Officer Fleites on the scene, these statements, like his earlier statements, were all exculpatory.

Initially, the defendant told Detective Godoy that he was awakened by loud screams, and when he opened his eyes, he saw the victim being attacked by three black males, not two as he had stated earlier. The defendant said he located a pipe usually carried by the victim and used the pipe to fight off the assailants. During the fight, the defendant was struck in the back of the head. After the assailants fled, the defendant checked the victim, who appeared to have been badly injured, and then the defendant went to sleep. When the defendant awoke the following morning, he tried to wake the victim, but when the victim did not respond, the defendant called the police because he was unable to detect a heartbeat.

After additional questioning, the defendant's story changed again. In this later version of the events, the defendant stated that one of the black males actually had the pipe, and after the defendant disarmed him, the assailants ran away. The defendant also told Detective Godoy that the victim owed some black males money for some crack cocaine they had given the victim on credit.

The defendant was given coffee and lunch, and although the defendant's story continued to change, he consistently claimed that the victim had been attacked by black male assailants and that the defendant fought with the assailants and was struck in the back of the head during the fight. After Detective Godoy interviewed the defendant, the defendant was driven back to 104th Street as promised by Detective Godoy.

The police continued with their investigation. Several days later, on August 11, Detective Godoy asked the defendant if he would come back to the police station, and the defendant agreed to go. After the defendant was readvised of and again voluntarily waived his *Miranda* rights, Detective Godoy told the defendant that the physical evidence was inconsistent with his account of the events. In response, the defendant told Detective Godoy that while he was sleeping that night, the victim began hitting his legs with a pipe. The defendant also said that when he tried to get up, the victim hit him in the head, so the defendant tackled the victim, the victim fell into the bushes, and the defendant punched the victim in the face until the victim lost consciousness. After the victim lost consciousness, the defendant picked up the pipe and struck the victim several times in the head and then he placed the pipe in the victim's hand. After providing this statement, the defendant was arrested and charged with second-degree murder.

The defendant does not dispute that he was properly advised of his rights per *Miranda* and that he freely and voluntarily waived his rights. He does not allege any infringement of his constitutional rights as to his first pre-*Miranda*, on-the-scene exculpatory statements to Officer Fleites on August 7, or his final post-*Miranda* {170 So. 3d 918} inculpatory statements to Detective Godoy on August 11. His sole argument below and on appeal is that the post-*Miranda* exculpatory statements he gave to Detective Godoy at the homicide station on August 7 were tainted by his illegal detention and/or arrest by Officer Fleites on the scene. Essentially, the defendant contends that when Officer Fleites did not allow him to leave the scene and placed him in handcuffs without probable cause to believe he was involved in the victim's murder, he was illegally arrested or detained.

We begin our analysis by recognizing that both the Fourth Amendment to the United States Constitution and Article I, Section 12 of the Florida Constitution protect people only against unreasonable searches and seizures. Based on the totality of the circumstances, we do not find that the temporary handcuffing and detention of the defendant by Officer Fleites was unreasonable within the meaning of the Fourth Amendment. *See Keeton v. State*, 427 So. 2d 231, 232 (Fla. 3d DCA 1983) ("It was not unreasonable for police, responding immediately to the scene of a felony-murder, to detain appellant, who was confronted in a closed park, adjacent to the parking lot where the crime occurred shortly before midnight, after appellant told police officers that he had witnessed the flight of persons fitting the description of the alleged perpetrators.").

The reasonableness of the defendant's temporary restraint is, however, not dispositive. That is because when Detective Godoy began speaking with the defendant, the defendant was no longer being restrained; while speaking with the defendant, Detective Godoy developed reasonable suspicion that the defendant was involved in the beating death of the victim; the defendant freely and voluntarily agreed to provide Detective Godoy with his statement at the homicide office after being assured that his property would be safe in his absence; the statements he provided to Detective Godoy on August 7 were made after being fully advised of his rights (and specifically that he did not have to speak with Detective Godoy if he did not want to); these statements were exculpatory, and they were simply modified versions of the statements the defendant voluntarily gave to Officer Fleites on the scene; and after providing these statements to Detective Godoy, the defendant was returned to his neighborhood3 as promised.

When Detective Godoy arrived, the defendant had already calmed down and was no longer in handcuffs. Detective Godoy testified that the defendant was actually "chatty", and he seemed eager to tell him what had happened. However, as soon as Detective Godoy introduced himself to the defendant, Detective Godoy noticed that the defendant had blood on his shirt, a cut on his forehead, and bruised knuckles.

But when he asked the defendant if he was injured, the defendant said "no." The victim had been brutally beaten to death and was covered with blood. Detective Godoy testified that based on the defendant's injuries, the defendant's earlier demeanor (which was belligerent and aggressive), and the defendant's initial conflicting accounts of the events to Officer Fleites, he became suspicious. We conclude Detective Godoy's suspicions were reasonable, and thus, based on his reasonable suspicion, he was legally authorized to detain the defendant for further investigation. *See* 901.151(2), Fla. Stat. (2010) ("Whenever {170 So. 3d 919} any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state . . . the officer may temporarily detain such person . . ."); *Baptiste v. State*, 995 So. 2d 285, 290 (Fla. 2008) (holding that "the existence of a reasonable suspicion is based upon specific and articulable facts, and the rational inferences that may be drawn from those facts"); *State v. Lennon*, 963 So. 2d 765, 768 (Fla. 3d DCA 2007) ("[I]n determining whether a police officer possesses reasonable suspicion to justify an investigatory stop, the court must consider the totality of the circumstances viewed in light of a police officer's experience and background."); *Hernandez v. State*, 784 So. 2d 1124, 1126 (Fla. 3d DCA 1999).

Thus, although the defendant was no longer being restrained when Detective Godoy began speaking to him, to the extent the defendant may not have felt free to terminate his encounter with law enforcement (there is no evidence in the record that at this point the defendant was not free to leave), Detective Godoy possessed the reasonable suspicion necessary under the Fourth Amendment to temporarily detain the defendant. We also note that the unrefuted evidence was that when Detective Godoy arrived, the defendant was "chatty" and very eager to speak with the Detective, he agreed to speak with Detective Godoy at the homicide office, and he freely and voluntarily waived his rights in writing and provided the statements under review.

Additionally, and importantly, Detective Godoy told the defendant he would return the defendant to his "home", and Detective Godoy kept his promise. The record also reflects that after this August 7 contact with the police, the defendant continued to assist Detective Godoy with his investigation. On a later date he accompanied Detective Godoy to help him try to locate the individuals he had told Detective Godoy about on August 7, and he voluntarily returned to the homicide office on August 11 to speak further with Detective Godoy. It was only after the August 11 statements, which the defendant does not claim were unconstitutionally obtained, that the defendant admitted his involvement in the homicide and was arrested. We therefore find that based on the totality of the circumstances, the trial court did not err by denying the defendant's motion to suppress his August 7 exculpatory statements made to Detective Godoy at the homicide office.

We also find that any error in denying the defendant's motion to suppress the August 7 exculpatory statements to Detective Godoy is harmless beyond a reasonable doubt. As stated earlier, the defendant does not dispute that his initial exculpatory statements to Officer Fleites on August 7 were constitutionally obtained. The defendant's subsequent exculpatory statements to Detective Godoy on August 7, after the defendant had been briefly detained, were simply varying versions of the exculpatory statements the defendant made to Officer Fleites: that when he was awakened by a commotion, he discovered the victim being attacked by black male assailants, he then assisted the victim and chased the assailants away. The statement that resulted in his arrest and conviction was the incriminating statement he made four days later on August 11.

The recorded statement the defendant made on August 11, which the defendant did not seek to suppress, reflects the following. While the defendant was asleep the victim began hitting his legs with a pipe, and when he tried to get up, the victim swung at him and hit him in the {170 So. 3d 920} head. The defendant tackled the victim and punched him in the face until the victim lost consciousness. The defendant admitted that while the victim lay unconscious in the bushes where he had fallen, the defendant picked up the pipe and struck the victim several times on the head with the pipe because he was "really mad" at the victim. After he realized what he had done, he placed the pipe in the victim's hand. Based on the defendant's admissions that he struck the victim several times on the head with a pipe after the victim was unconscious and clearly incapacitated, killing the victim, there is no reasonable possibility that any error in admitting the August 7 exculpatory statements to Detective Godoy contributed to the jury's verdict. *See Stein v. State*, 632 So. 2d 1361, 1365 (Fla. 1994) (finding that any error in the admission of Stein's statements was harmless given the incriminating evidence against him); *Traylor v. State*, 596 So. 2d 957, 973 (Fla. 1992).

Affirmed.

Footnotes

1
*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
2
The defendant apparently provided a subsequent conflicting version of the events to Officer Fleites, but Officer Fleites did not provide the details of that statement during the motion to suppress.
3
The defendant was homeless. He was therefore returned to the area where he kept his belongings.

*APPENDIX "E"*

# 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

For rules and forms visit
www.ca11.uscourts.gov

May 17, 2022

Daniel W. Maxwell
Dade CI - Inmate Legal Mail
19000 SW 377TH ST
FLORIDA CITY, FL 33034-6409

Appeal Number: 21-13011-J
Case Style: Daniel Maxwell v. Secretary, Florida Department of Corrections
District Court Docket No: 1:20-cv-24097-DMM

Notice of receipt: Motion for Cognizable/Relief as to Appellant Daniel W. Maxwell. NO ACTION WILL BE TAKEN this case is closed.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Davina C Burney-Smith, J
Phone #: (404) 335-6183

MP-1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

---

No. 21-13011-J

---

DANIEL W. MAXWELL,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

---

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

---

Before: NEWSOM and BRANCH, Circuit Judges.

BY THE COURT:

Daniel Maxwell has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's March 4, 2022 order, denying a certificate of appealability. Upon review, Maxwell's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

---

No. 21-13011-J

---

DANIEL W. MAXWELL,

Petitioner - Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

---

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

---

ORDER:

Daniel Maxwell's motion for a certificate of appealability is DENIED because he has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

UNITED STATES CIRCUIT JUDGE

*APPENDIX "F"*

DANIEL K. MAXWELL, Petitioner(s) vs. STATE OF FLORIDA, Respondent(s)SUPREME COURT OF FLORIDA 2022 Fla. LEXIS 447 CASE NO.: SC21-213 March 15, 2022, Decided
Notice:

DECISION WITHOUT PUBLISHED OPINION

Editorial Information: Prior History

Lower Tribunal No(s): 1D19-3314; 652015CF000213CFAXMX. Maxwell v. State, 309 So. 3d 716, 2021 Fla. App. LEXIS 162, 2021 WL 45655 (Fla. Dist. Ct. App. 1st Dist., Jan. 6, 2021)

Judges: LABARGA, LAWSON, MUIZ, COURIEL, and GROSSHANS, JJ., concur.

Opinion

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d) (2).

LABARGA, LAWSON, MUIZ, COURIEL, and GROSSHANS, JJ., concur.