

APPENDIX A

In the
United States Court of Appeals
for the Eleventh Circuit

No. 23-10369

ISAIAH L. DUNBAR,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:20-cv-00598-KKM-JSS

ORDER:

Isaiah Dunbar is a Florida prisoner serving a term of 20 years' imprisonment for burglary of a structure with assault. On March 20, 2020, he filed a *pro se* 28 U.S.C. § 2254 petition, arguing that the jury convicted him of a crime not charged in the information. The district court dismissed the petition as untimely. Subsequently, Dunbar filed three Fed. R. Civ. P. 60(b)(6) motions, which the district court denied.

Dunbar now appeals the district court's denial of his third Rule 60(b)(6) motion. He moves this Court for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP").

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). Review of a Rule 60(b) motion is limited to a determination of whether the district court abused its discretion in denying the motion, and it shall not extend to the validity of the underlying judgment. *Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996). A habeas petitioner seeking relief for "any other reason" under subsection (b)(6) must demonstrate "extraordinary circumstances" justifying the reopening of the final judgment. *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (citations omitted).

Here, reasonable jurists would not debate whether the district court abused its discretion in denying Dunbar's third Rule 60(b)(6) motion, as he has failed to show that extraordinary circumstances would justify relief under Rule 60(b)(6). See *Gonzalez*, 545 U.S. at 535. As an initial matter, Dunbar merely reraised the same arguments already presented in his second Rule 60(b)(6) motion. See *Wilchcombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009).

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In any event, his assertion that the district court had misapplied the statute of limitations in denying his petition as untimely is without merit. Dunbar misreads the Supreme Court's decision in *Artuz v. Bennett*, 531 U.S. 4 (2000), and both the Supreme Court and this Court have explicitly held that a state post-conviction motion, which is dismissed as untimely, is not properly filed and cannot toll the statute of limitations. See *Pace v. DiGulielmo*, 544 U.S. 408, 417 (2005); *Jones v. Sec'y, Fla. Dep't of Corr.*, 906 F.3d 1339, 1352 (11th Cir. 2018).

Accordingly, Dubar's motion for a COA is DENIED. His motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Adalberto Jordan

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ISAIAH L. DUNBAR,

Petitioner,

v.

Case No. 8:20-cv-598-KKM-JSS

SECRETARY, DEPARTMENT

OF CORRECTIONS, *et al.*,

Respondents.

ORDER

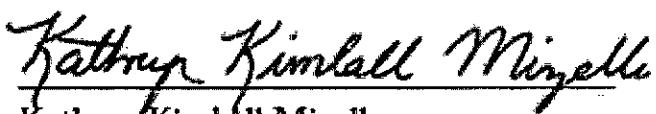
An earlier order dismissed as time-barred Isaiah L. Dunbar's pro se Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 and denied a certificate of appealability. (Doc. 26.) Dunbar appealed, (Doc. 28), and the court of appeals denied Dunbar a certificate of appealability, (Doc. 35).

This Court denied Dunbar's motion under Rule 60(b), Federal Rules of Civil Procedure, for relief from the order of dismissal and denied a certificate of appealability. (Doc. 38.) Dunbar appealed, (Doc. 39), and the court of appeals denied a certificate of appealability, (Doc. 43). The Court also denied Dunbar's second Rule 60(b) motion. (Doc. 46.)

Dunbar now files a third Rule 60(b) motion, (Doc. 47), and moves for leave to proceed in forma pauperis, (Doc. 48). In his third motion, Dunbar raises the same argument that the Court rejected in the earlier orders. (Docs. 26, 38, and 46.) For the reasons outlined in those orders, Dunbar fails to demonstrate extraordinary circumstances that justify relief under Rule 60(b). Consequently, his third Rule 60(b) motion (Doc. 47) is **DENIED** and his motion for leave to proceed in forma pauperis (Doc. 48) is **DENIED** as moot.

Dunbar neither makes a substantial showing of the denial of a constitutional right nor shows that reasonable jurists would find debatable both the merits of the underlying claims and the procedural issues he seeks to raise. Therefore, a certificate of appealability and leave to appeal in forma pauperis are **DENIED**. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

ORDERED in Tampa, Florida, on January 23, 2023.



Kathryn Kimball Mizelle
United States District Judge