

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-11198-G

CEDRICK L. JONES,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
Mark S. Inch, Secretary Florida Department of Corrections,

Respondent-Appellee.

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

ORDER:

Cedrick Jones, a Florida prisoner serving a life sentence for two counts of armed robbery and four counts of sexual battery, moves for a certificate of appealability (“COA”) and leave to proceed *in forma pauperis* (“IFP”) from the denial of his 28 U.S.C. § 2254 petition as time-barred and motion for reconsideration. In his § 2254 petition, Jones alleged that his sentencing judge, Judge Hubert Lindsey, had not been placed under a loyalty oath at the time when the judge rendered his sentence, in violation of his constitutional rights and the judicial code of conduct.

To obtain a COA, a petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the district court denied a habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the

petitioner states a valid claim alleging the denial of a constitutional right, and (2) whether the district court's procedural ruling was correct. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Generally, a state prisoner's conviction becomes final when the U.S. Supreme Court denies *certiorari*, issues a decision on the merits, or when the 90-day period in which to file a *certiorari* petition expires. *Nix v. Sec'y for Dep't of Corr.*, 393 F.3d 1235, 1236- 37 (11th Cir. 2004). The 90-day period for seeking *certiorari* runs from the entry of the judgment. *Chavers v. Sec'y, Fla. Dep't of Corr.*, 468 F.3d 1273, 1275-76 (11th Cir. 2006) (applying the 90-day period from the date of the Florida appellate court's judgment when determining when the statute of limitations period began). The limitation period is statutorily tolled during the pendency of "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim." 28 U.S.C. § 2244(d)(2). However, a state post-conviction motion that is filed following the expiration of the limitation period cannot toll that period because there was no period remaining to be tolled. *Tinker v. Moore*, 255 F.3d 1331, 1333 (11th Cir. 2001).

Here, reasonable jurists would not debate the district court's conclusion that Jones' § 2254 petition was time-barred. Jones' Palm Beach convictions became final on August 1, 2006, after the 90-day period to file a *certiorari* petition in the U.S. Supreme court expired. *See Chavers*, 468 F.3d at 1275-76. Thus, absent any statutory or equitable tolling, Jones had one year, or until August 2, 2007, to file a § 2254 petition. *See* 28 U.S.C. § 2244(d)(1)(A). Jones did not file his Rule 3.850 motion until May 14, 2008, when the entirety of his one-year limitation period had already run. *See Tinker*, 255 F.3d at 1333. Jones also did not file his state habeas petition until August 8, 2019, which was also after the entirety of his one-year limitation period had run. *See id.* Accordingly, his § 2254 petition, filed on January 11, 2021, over 13 years after August 2, 2007,

was untimely. *See* 28 U.S.C. § 2244(d)(1)(A). Additionally, Jones did not assert that his petition was subject to equitable tolling or the miscarriage-of-justice exception.

Reasonable jurists would also not debate the denial of Jones' Fed. R. Civ. P. 59(e) motion. Jones did not point to any newly discovered evidence to support his Rule 59(e) motion, but rather, alleged that the underlying claim itself was based on newly discovered evidence. *See Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) ("The only grounds for granting a Rule 59(e) motion are newly discovered evidence or manifest errors of law or fact."). While Jones explained that he did not find out until August 2019 that Judge Lindsey had failed to take an appropriate oath, he did not assert why he could not have obtained the information sooner, with the use of due diligence. As such, he failed to sufficiently trigger 28 U.S.C. § 2244(d)(1)(D)'s one-year statute of limitations based on newly discovered evidence. *See* 28 U.S.C. § 2241(d)(1)(D).

Accordingly, Jones' motion for a COA is DENIED and his motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11198

CEDRICK L. JONES,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
Mark S. Inch, Secretary Florida Department of Corrections,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cv-80089-RAR

Before: JORDAN AND NEWSOM, Circuit Judges.

BY THE COURT:

Cedrick Jones has moved for leave to file an out-of-time motion for reconsideration of this Court's March 28, 2022, order denying him a certificate of appealability and leave to proceed *in forma pauperis* on appeal from the denial of his 28 U.S.C. § 2554 petition as time-barred and denial of his motion for reconsideration. He has also filed a motion for reconsideration.

Jones' motion for leave to file an out-of-time motion for reconsideration is GRANTED. Because Jones has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, his motion for reconsideration is DENIED.

U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:21-cv-80089-RAR

Jones v. Florida Department of Corrections
Assigned to: Judge Rodolfo A. Ruiz, II
Case in other court: USCA, 21-11198-G
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 01/15/2021
Date Terminated: 01/31/2021
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Plaintiff**Cedrick L. Jones**represented by **Cedrick L. Jones**

640843
Everglades Correctional Institution
Inmate Mail/Parcels
1599 SW 187th Avenue
Miami, FL 33194
PRO SE

V.

Defendant

Florida Department of Corrections
*Mark S. Inch, Secretary Florida
Department of Corrections*

represented by **Noticing 2254 SAG Broward and North**
Email:
CrimAppWPB@MyFloridaLegal.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/15/2021	<u>1</u>	APPLICATION/PETITION (Complaint) for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254. Filing fee \$ 5.00. IFP Filed, filed by Cedrick L. Jones.(daa) (Entered: 01/15/2021)
01/15/2021	<u>2</u>	Clerks Notice of Judge Assignment to Judge Rodolfo A. Ruiz, II. (daa) (Entered: 01/15/2021)
01/15/2021	<u>3</u>	MOTION for Leave to Proceed in forma pauperis by Cedrick L. Jones. (daa) (Entered: 01/15/2021)
01/31/2021	<u>4</u>	Order Dismissing Case. Signed by Judge Rodolfo A. Ruiz, II on 1/29/2021. <i>See attached document for full details.</i> (Attachments: # <u>1</u> Exhibit Palm Beach County Docket, # <u>2</u> Exhibit 4th DCA Online Docket 4D04-4381, # <u>3</u> Exhibit 4th DCA Online Docket 4D09-3967, # <u>4</u> Exhibit 4th DCA Online Docket 4D19-2901, # <u>5</u> Exhibit

		Florida Supreme Court SC04-1217) (kbm) (Entered: 01/31/2021)
02/25/2021	<u>5</u>	MOTION to Alter or Amend Judgment re <u>4</u> Order Dismissing Case, by Cedrick L. Jones. Responses due by 3/11/2021 (cds) (Entered: 02/25/2021)
03/23/2021	<u>6</u>	PAPERLESS ORDER denying <u>5</u> Motion to Alter or Amend Judgment. Liberally construed, Petitioner claims that the underlying State court judgment authorizing his custody is void because the trial court judge in his criminal case never took an oath of office prior to entering orders. See Motion to Alter or Amend Judgment [ECF No. <u>5</u>]. Petitioner then extrapolates that his discovery of this (alleged) error is "newly discovered evidence" capable of restarting his federal limitations period pursuant to 28 U.S.C. § 2244(d)(1)(D). See id. at 34. Petitioner's argument, however, rests on a misreading of that provision. In truth, § 2244(d)(1)(D) states that "[t]he limitation period shall run from... the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." Consequently, even if Petitioner's allegations were true, he fails to explain when he discovered this information. Nor has he explained why he could not uncover the "newly discovered evidence" prior to the date his judgment became "final" under § 2244(d)(1)(A). Therefore, the Motion is DENIED. To the limited extent Petitioner might later contend that his judgment never became "final" because the underlying judgment was void ab initio, such an argument would implicitly concede that this action is premature. And, in any event, he does not appear to disagree with any other aspect of this Court's dismissal for lack of timeliness. Accordingly, this action remains CLOSED and DISMISSED for untimeliness. Signed by Judge Rodolfo A. Ruiz, II (bca) (Entered: 03/23/2021)
04/13/2021	<u>7</u>	Notice of Appeal as to <u>6</u> Order on Motion to Alter Judgment, Order on Motion to Amend/Correct by Cedrick L. Jones. FILING FEE: (NOT PAID). Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (COA shall NOT ISSUE per DE <u>4</u> Order.) (apz) (Entered: 04/13/2021)
04/13/2021		Transmission of Notice of Appeal, Order under appeal and Docket Sheet to US Court of Appeals re <u>7</u> Notice of Appeal, Notice has been electronically mailed. (apz) (Entered: 04/13/2021)
04/13/2021	<u>8</u>	CLERK'S NOTICE of Mailing Pro Se Instructions to Cedrick Jones re <u>7</u> Notice of Appeal. (apz) Modified text on 4/13/2021 (apz). (Entered: 04/13/2021)
04/14/2021	<u>9</u>	Acknowledgment of Receipt of NOA from USCA re <u>7</u> Notice of Appeal, filed by Cedrick L. Jones. Date received by USCA: 4/13/2021. USCA Case Number: 21-11198-G. (apz) (Entered: 04/16/2021)
04/23/2021	<u>10</u>	TRANSCRIPT INFORMATION FORM by Cedrick L. Jones re <u>7</u> Notice of Appeal. No Transcript Requested. (apz) (Entered: 04/23/2021)
04/30/2021	<u>11</u>	MOTION for Leave to Proceed in forma pauperis on appeal by Cedrick L. Jones. (cds) (Entered: 04/30/2021)
05/12/2021	<u>12</u>	PAPERLESS ORDER denying as moot <u>11</u> Motion for Leave to Proceed in District Court Without Prepaying Fees and, in the alternative, denying <u>11</u> construed Motion for Leave to Proceed In Forma Pauperis on Appeal. Petitioner filed a copy of the prescribed form for prisoners who seek to proceed in forma pauperis ("IFP") at the district court level. See Petitioner's IFP Motion [ECF No. <u>11</u>] ("IFP Mot."). But this case is closed.

		<p>See Order Dismissing Petition [ECF No. 4]. Thus, the IFP Motion is DENIED as moot. To the extent Petitioner might later argue that he meant to file a motion for leave to proceed IFP on appeal, the outcome is the same. A motion to proceed IFP on appeal requires (1) an affidavit that (2) shows in detail the party's inability pay or to give security for fees and costs, (3) claims an entitlement to redress, and (4) states the issues that the party intends to present on appeal. See Fed. R. App. Proc. 24(a)(1). Here, based on what was presented, Petitioner has not satisfied the third and fourth requirements. See IFP Mot. Accordingly, regardless of how the Court construes the IFP Motion, it is DENIED. Signed by Judge Rodolfo A. Ruiz, II (bca) (Entered: 05/12/2021)</p>
08/16/2021	<u>13</u>	NOTICE of Inquiry (Copy of Docket Sheet Mailed) by Cedrick L. Jones (cds) (Entered: 08/16/2021)
12/20/2021	<u>14</u>	ORDER of LIMITED REMAND of USCA, this case is hereby REMANDED on a limited basis so that the district court may consider whether a COA should issue as to the Rule 59(e) motion. Should the district court determine that a COA should issue, it should so rule, setting forth the issues certified for appeal. Should the district court determine that a COA should not issue, it is directed to "state the reasons" (see order for details) as to <u>7</u> Notice of Appeal, filed by Cedrick L. Jones, USCA # 21-11198-G (hh) (Entered: 12/21/2021)
12/21/2021	<u>15</u>	<p>PAPERLESS ORDER denying a Certificate of Appealability. A Certificate of Appealability ("COA") is required to appeal the denial of a Rule 59(e) motion. See Perez v. Sec'y, Fla. Dep't of Corr., 711 F.3d 1263, 1264 (11th Cir. 2013). "Where a district court has disposed of claims... on procedural grounds, a COA will be granted only if the court concludes that 'jurists of reason' would find it debatable both 'whether the petition states a valid claim of the denial of a constitutional right' and 'whether the district court was correct in its procedural ruling.'" Eagle v. Linahan, 279 F.3d 926, 935 (11th Cir. 2001) (quoting Franklin v. Hightower, 215 F.3d 1196, 1199 (11th Cir. 2000)). Reasonable jurists would not find the Court's resolution of Petitioners Rule 59(e) Motion, which the Court reviewed under a de novo standard, debatable.</p> <p>This is because Petitioner plainly failed to identify why the alleged newly discovered evidence could not have been discovered before the date of finality so as to establish the timeliness of this action. See Motion [ECF No. 5]. To illustrate, although the alleged information was newly discovered to Petitioner in 2019, that information existed and was likely available during Petitioner's 2004 trial. See generally <i>id.</i> Petitioner relies only on 28 U.S.C. § 2244(d)(1)(D). That provision provides that the limitations period may run from "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." § 2244(d)(1)(D). Since Petitioner never clarifies why it took him 15 years to discover the alleged information, or why due diligence made it impossible for him to discover it before the date of finality, he has not shown that provision pushes the limitations period beyond the trigger date applicable under § 2244(d)(1)(A). Petitioner does not rely on any other statutory provision or on any equitable exception. Nor does he dispute the Court's calculation of the limitations period under § 2244(d)(1)(A). A COA is, in short, DENIED. Signed by Judge Rodolfo A. Ruiz, II (bca) (Entered: 12/21/2021)</p>
03/28/2022	<u>16</u>	ORDER of Dismissal of USCA, Appellant's motion for a certificate of appealability is DENIED (see order for details) as to <u>7</u> Notice of Appeal, filed by Cedrick L. Jones, USCA # 21-11198-G (hh) (Entered: 03/28/2022)

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