

A) Federal Court

1) Appendix(A) USCA 11 Case: 22-12636 Document: 39 Filed: 5/26/2023
Page 1 of 2

Appendix(A)

Page 1 of 2
USCA 11 Case: 22-12636 Document: 39 Filed: 5/26/2023

Appendix(A)

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12636

HOWARD L. THOMPSON,

Petitioner-Appellant,

versus

STATE OF FLORIDA,
SHERIFF, SAINT LUCIE COUNTY, FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:22-cv-14169-CMA

Before: JILL PRYOR, BRANCH, and GRANT, Circuit Judges.

BY THE COURT:

Howard Thompson has filed a motion for leave to move for reconsideration out of time and a motion for reconsideration of this Court's March 28, 2023, order denying leave to proceed *in forma pauperis*. Because he has established good cause for his untimely filing, his motion for leave to file out of time is GRANTED. However, his motion for reconsideration is DENIED because he has offered no new evidence or argument of merit.

A) Federal Courts

Appendix(B)USCA11Case:22-12636,Document:33-2 Filed:3/28/23

Page 1 of 2

Appendix(B)

Page (7) (b) (6) (b) (7) (C)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. [REDACTED]

HOWARD L. THOMPSON,

Petitioner - Appellant,

versus

STATE OF FLORIDA,
SHERIFF, SAINT LUCIE COUNTY, FLORIDA,

Respondents - Appellees.

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

Before: JILL PRYOR, BRANCH, and GRANT, Circuit Judges.

BY THE COURT:

Howard Thompson, a Florida pre-trial detainee, has filed motions for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP"). He filed a petition written on the district court's standard 28 U.S.C. § 2241 petition form. However, the petition raised challenges only to the legality of his 1993 conviction for sexual battery, not his present detainment for failure to register as a sex offender.

The district court dismissed the petition, concluding that it was properly construed as a 28 U.S.C. § 2254 petition, and finding that it was impermissibly successive. The court found that Mr. Thompson had filed three previous § 2254 petitions, one of which had been dismissed as time-barred and two others of which had been dismissed as successive.

A § 2254 petitioner does not require a COA to appeal a district court's order dismissing a petition as impermissibly successive, because such a dismissal is not a "final order in a habeas corpus proceeding." *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004) (quoting 28 U.S.C. § 2253) (quotation marks omitted). Because Mr. Thompson is indigent and seeks leave to proceed IFP from this Court, his appeal is subject to a frivolity determination. See 28 U.S.C. § 1915(e)(2). An action "is frivolous if it is without arguable merit either in law or fact." *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

Here, because the district court dismissed Mr. Thompson's petition as impermissibly successive, no COA is necessary. *See Hubbard*, 379 F.3d at 1247. However, because that conclusion was inarguably correct, based on his prior habeas filings, this appeal is frivolous. See Bilal, 251 F.3d at 1349. Accordingly, Mr. Thompson's motion for a COA is DENIED as unnecessary, his motion for IFP is GRANTED, and the appeal is DISMISSED as frivolous.

152
152
304

A) Federal Courts

Appendix(C) USCA11 Case: 22-12636 Court Order of Dismissal As The
Mandate of This Court, Dated: 3/28/2023

Appendix(C)

Page 8
8

Appendix(c)

**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

March 28, 2023

Clerk - Southern District of Florida
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 22-12636-J
Case Style: Howard Thompson v. State of Florida, et al
District Court Docket No: 2:22-cv-14169-CMA

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
New / Before Briefing Cases:	404-335-6135	Capital Cases:	404-335-6200
Cases in Briefing / After Opinion:	404-335-6130	CM/ECF Help Desk:	404-335-6125
Cases Set for Oral Argument:	404-335-6141		

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

A) Federal Courts

Appendix(D) ELSD Docket Case: 2:22-CV-14169-CMA Document #: 17

Filed: 8/10/22 Page 1 of 3

Appendix(D)

(9)
Page 9 of 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-14169-CIV-ALTONAGA

HOWARD L. THOMPSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ORDER

THIS CAUSE came before the Court on Petitioner Howard Thompson's Petition for an Order Authorizing the District Court to Consider the Petition for Writ of Habeas Corpus or in the Alternative Petition for a Certificate of Appealability [ECF No. 14], filed on August 8, 2022,¹ and Motion and Declaration for Leave to Proceed In Forma Pauperis [ECF No. 15], docketed on August 10, 2022. The Court construes the filings as a motion for a certificate of appealability and a motion for leave to proceed *in forma pauperis* on appeal.²

I. Certificate of Appealability

A certificate of appealability is not required when a district court dismisses a 28 U.S.C. section 2254 petition for a lack of subject-matter jurisdiction, as the Court did here. *See Hubbard v. Campbell*, 379 F.3d 1245, 1246–47 (11th Cir. 2004); *Scotton v. United States*, Nos. 17-10541 & 17-12715, 2017 WL 7511339, at *2 (11th Cir. Nov. 22, 2017). Therefore, Petitioner need not

¹ "Under the 'prison mailbox rule,' a *pro se* prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." *Williams v. McNeil*, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009) (citations omitted).

² Although Petitioner appears to seek authorization to file a successive habeas petition from the Eleventh Circuit, this Court is not the Eleventh Circuit, so it lacks the power to grant Petitioner that requested relief. Nothing in this Order should be understood as impairing Petitioner's right to seek the Eleventh Circuit's authorization to file a successive petition.

obtain a certificate of appealability to appeal.

II. Motion for Leave to Proceed *In Forma Pauperis* on Appeal

“Applications to appeal *in forma pauperis* are governed by 28 U.S.C. [section] 1915 and Federal Rule of Appellate Procedure 24.” *Woodson v. Sec’y Dep’t of Corr.*, No. 02-21921-Civ, 2020 WL 5819808, at *2 (S.D. Fla. Sept. 29, 2020) (alteration added). “An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “A party demonstrates good faith by seeking appellate review of any issue that is not frivolous when examined under an objective standard.” *Ghee v. Retailers Nat’l Bank*, 271 F. App’x 858, 859 (11th Cir. 2008) (citation omitted). “An appeal filed *in forma pauperis* is frivolous when it appears the plaintiff has little or no chance of success, meaning that the factual allegations are clearly baseless or that the legal theories are indisputably meritless.” *Daniels v. Florida*, No. 19-62464-Civ, 2019 WL 8888208, at *1 (S.D. Fla. Dec. 5, 2019) (quotation marks and citations omitted).

The Court finds that Petitioner is not entitled to proceed *in forma pauperis* on appeal because there are no non-frivolous issues to raise in an appeal of the Court’s dismissal Order [ECF No. 10]. The Petition was obviously successive. Additionally, Petitioner’s appeal is untimely. *See* Fed. R. App. P. 4(a)(1)(A).


Nonetheless, because Petitioner has filed an appeal, the Court must assess the appellate filing fee of \$505.00 against Petitioner. *See* 28 U.S.C. § 1915(b)(1) (“Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee.”).

Accordingly, it is **ORDERED AND ADJUDGED** that Petitioner Howard Thompson’s Petition for an Order Authorizing the District Court to Consider the Petition for Writ of Habeas Corpus or in the Alternative Petition for a Certificate of Appealability [ECF No. 14] is **DENIED**

CASE NO. 22-14169-CIV-ALTONAGA

to the extent that it seeks a certificate of appealability; and Petitioner's Motion and Declaration for Leave to Proceed In Forma Pauperis [ECF No. 15] is **DENIED**. Petitioner is assessed the \$505.00 appellate filing fee for this matter.

DONE AND ORDERED in Miami, Florida, this 10th day of August, 2022.


CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: Petitioner, *pro se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-14169-CIV-ALTONAGA

HOWARD L. THOMPSON,

Petitioner,

v.

STATE OF FLORIDA, *et al.*,

Respondents.

_____ /


ORDER

THIS CAUSE came before the Court *sua sponte*. On April 13, 2022, *pro se* Petitioner, Howard Thompson, filed a Petition for Writ of Habeas Corpus [ECF No. 1] under 28 U.S.C. section 2254. A mandatory \$5 filing fee applies to section 2254 actions. *See* 28 U.S.C. § 1914(a). So, when filing a section 2254 action, the petitioner must pay the \$5 fee or file a proper motion for leave to proceed *in forma pauperis* (“IFP motion”). *See* Rule 3(a), Rules Governing § 2254 Cases (“Section 2254 Rules”).

Here, Petitioner did not pay the filing fee or file an IFP motion. Thus, he improperly filed this action.

Accordingly, it is **ORDERED AND ADJUDGED** that the case is **DISMISSED without prejudice**. The Clerk is instructed to mark the case as **CLOSED**, and any pending motions are **DENIED** as moot.

DONE AND ORDERED in Miami, Florida, this 13th day of May, 2022.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: Petitioner, *pro se*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 22-14169-CIV-ALTONAGA

HOWARD L. THOMPSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____ /

ORDER

THIS CAUSE is before the Court *sua sponte*. On April 13, 2022, Petitioner filed a Petition for Writ of Habeas Corpus Under 28 U.S.C. [Section] 2241 [ECF No. 1].¹ He did not pay the \$5 filing fee or file a proper motion for leave to proceed *in forma pauperis*, so the Court dismissed his case without prejudice on May 13, 2022. (See May 13, 2022 Order [ECF No. 3]). On June 9, 2022, the Court ordered Petitioner to file a legally sufficient motion to proceed *in forma pauperis*. (See June 9, 2022 Order [ECF No. 7] 2–3). The following day, the Clerk docketed another letter from Petitioner, which contains a motion to proceed *in forma pauperis*. (See June 2, 2022 Letter [ECF No. 9]). That motion will be denied as moot because the Court has screened the Petition for legal sufficiency, as required by 28 U.S.C. section 1915(e)(2)(B) and concludes dismissal is required. Accordingly, the Court’s Order of May 13, 2022, will not be disturbed, and this case shall remain closed. (See May 13, 2022 Order).

The instant Petition ostensibly challenges Petitioner’s pretrial detention in St. Lucie County case 2020CF001865A, in which he is charged with failure to register as a sex offender. (See Pet.

¹ “Under the ‘prison mailbox rule,’ a *pro se* prisoner’s court filing is deemed filed on the date it is delivered to prison authorities for mailing.” *Williams v. McNeil*, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009) (citations omitted).

1–2).² Petitioner does not allege any constitutional violation with respect to his pretrial detention in that case. (*See generally id.*). Each of the Petition’s four grounds asserts errors relating to his conviction in Broward County case 93-14625CF10A, the case in which he was adjudged a sex offender in 1993. (*See id.* 6–7, 10–21). He requests relief from that decades-old judgment of conviction, a declaratory order that he is no longer subject to Florida’s laws governing sexual offenders, and an injunction directing his immediate release. (*See id.* 7).

“Federal courts have long recognized that they have an obligation to look behind the label of a motion filed by a *pro se* inmate and determine whether the motion is, in effect, cognizable under a different remedial statutory framework.” *United States v. Jordan*, 915 F.2d 622, 624-25 (11th Cir. 1990) (citation omitted). Although the Petition is written on the section 2241 form, its substance is plainly a collateral attack on Petitioner’s 1993 judgment of conviction. *See Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1351 (11th Cir. 2008). Petitioner therefore “must satisfy the procedural requisites of [section] 2254[.]” *Id.* (alterations added); *see also Thomas v. Crosby*, 371 F.3d 782, 787 (11th Cir. 2004) (“A state prisoner cannot evade the procedural requirements of [section] 2254 by filing something purporting to be a [section] 2241 petition.” (alterations added)).

In three prior cases, Petitioner attempted to seek relief from his 1993 conviction under section 2254. The first was denied as time barred and the others were dismissed as unauthorized successive petitions. *See Thompson v. Fourth Dist. Ct. of Appeals*, No. 03-cv-60440, Order [ECF No. 22] filed August 21, 2003 (S.D. Fla. 2003); *Thompson v. Fourth Dist. Ct. of Appeals*, No. 12-61652, Order [ECF No. 5] filed December 14, 2012 (S.D. Fla. 2013); *Thompson v. Jones*, No. 15-cv-21991, Order [ECF No. 34] filed September 15, 2015 (S.D. Fla. 2016).

² The Court relies on the pagination generated by the Case Management/Electronic Case Files system, which appears as a header on all filings.

CASE NO. 22-14169-CIV-ALTONAGA

“[T]he Antiterrorism and Effective Death Penalty Act of 1996 . . . provides that, before a petitioner may file a second or successive [section] 2254 habeas petition, the petitioner first must obtain an order from th[e] [Eleventh Circuit] authorizing the district court to consider the petition.” *Osbourne v. Sec’y, Fla. Dep’t of Corr.*, 968 F.3d 1261, 1264 (11th Cir. 2020) (alterations added; citing 28 U.S.C. § 2244(b)(3)(A)). Absent authorization from the Eleventh Circuit, the Court lacks jurisdiction to consider a second or successive habeas petition. *See Wallace v. Att’y Gen. of Ala.*, 825 F. App’x 737, 738 (11th Cir. 2020) (citation omitted).

Petitioner has not sought authorization from the Eleventh Circuit to rechallenge his conviction in case 93-14625CF10A. As such, the Court is without jurisdiction to entertain a collateral attack on that case. Accordingly, it is **ORDERED AND ADJUDGED** that the Order of dismissal will not be disturbed, and this case shall remain closed. (See May 13, 2022 Order [ECF No. 3]). Petitioner’s motion to proceed *in forma pauperis* is **DENIED** as moot. (See June 2, 2022 Letter [ECF No. 9]).

DONE AND ORDERED in Miami, Florida, this 17th day of June, 2022.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record
Petitioner, *pro se*

B) State Courts

Appendix(A) Supreme Court of Florida Case No: SC21-1711, Lower

Tribunal No(s): 562020CF0001865AXXXX; 1993-CF-14625

Dated: 1/4/2022 Page 1, 2

Appendix(A)

Page (10)

Supreme Court of Florida

TUESDAY, JANUARY 4, 2022

CASE NO.: SC21-1711

Lower Tribunal No(s):

562020CF001865AXXXX; 1993-CF-14625

1/13 File!
3/2/22 Dec'd
HOWARD L. THOMPSON

vs. KEN J. MASCARA, SHERIFF

Petitioner(s)

Respondent(s)

Petitioner filed an "Amended Petition for Writ of Habeas Corpus or in the Alternative Petition for Discretionary Jurisdiction" with this Court on January 3, 2022. The petition is treated as an amendment to the petition for writ of habeas corpus, filed with the Court on December 14, 2021, and is hereby stricken. Petitioner may file, on or before January 19, 2022, a motion to amend the petition for writ of habeas corpus accompanied by an amended petition that fully complies with Florida Rule of Appellate Procedure 9.100. Rule 9.100 requires that petitions to invoke this Court's original writ jurisdiction shall not exceed 50 pages in length and shall contain all of the petitioner's argument as to the basis for invoking the Court's jurisdiction, as well as argument in support of the petition and appropriate citations of authority. See Fla. R. App. P. 9.100(g).

If petitioner files a motion and amended petition and the motion is granted, petitioner's petition for writ of habeas corpus

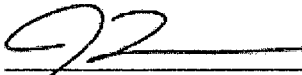
CASE NO.: SC21-1711

Page Two

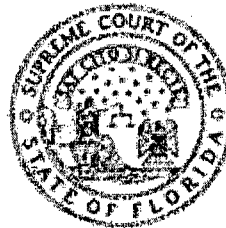
filed December 14, 2021, will be stricken, and the amended petition will be submitted to the Court. If petitioner does not file a motion and amended petition on or before January 19, 2022, the petition for writ of habeas corpus filed on December 14, 2021, will be submitted to the Court.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



dl

Served:

HOWARD L. THOMPSON
KEN J. MASCARA, SHERIFF

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