

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 23-10205-H

CARMEN A. ZAMMIELLO,

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

Before: ROSENBAUM, JILL PRYOR, and BRASHER, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Carmen Zammiello appeals from the magistrate judge's January 5, 2023, order denying his motion to amend his petition for a writ of habeas corpus. Because the order had not been rendered final by the district court at the time of the filing of the notice of appeal, it was not directly appealable. *See United States v. Schultz*, 565 F.3d 1353, 1359 (11th Cir. 2009) (noting that we lack jurisdiction to hear appeals directly from magistrate judges); *McNab v. J & J Marine, Inc.*, 240 F.3d 1326, 1327-28 (11th Cir. 2001) (explaining that, absent consent to adjudication by a magistrate judge, decisions by a magistrate judge pursuant to 28 U.S.C. § 636(b) are not final orders and may not be appealed until rendered final by a district court). Furthermore, any subsequent order by the district court

would not cure the premature notice of appeal. *See Perez-Priego v. Alachua Cnty. Clerk of Ct.*, 148 F.3d 1272, 1273 (11th Cir. 1998) (noting that the court's subsequent adoption of a magistrate judge's report and recommendation does not cure the premature notice of appeal); *Bogle v. Orange Cnty. Bd. of Cnty. Comm'rs*, 162 F.3d 653, 661 (11th Cir. 1998) (explaining that a notice of appeal must designate an already existing judgment or order, not one that is merely expected to be entered).

All pending motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CARMEN A. ZAMMIELLO,

Petitioner,

v.

Case No. 8:21-cv-2714-CEH-JSS

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER

This matter is before the court on Petitioner's motion to amend his petition for the writ of habeas corpus (Dkt. 27). Because Petitioner's habeas petition was dismissed as an unauthorized successive petition (*see* Dkt. 3), and this case was closed in November 2021, there is no pending petition to amend. Accordingly, the motion to amend (Dkt. 27) is **DENIED**.

ORDERED in Tampa, Florida, on January 5, 2023.



JULIE S. SNEED
UNITED STATES MAGISTRATE JUDGE

Copy to: Petitioner, *pro se*

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CARMEN A. ZAMMIELLO,

Petitioner,

-vs-

Case No. 8:21-cv-2714-CEH-JSS

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER

Petitioner filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 (“petition”) challenging a state court conviction entered in 2005 in case number 04-04372 (Doc. 1). The Court has undertaken the preliminary review mandated by Rule 4, Rules Governing Section 2254 Cases, and concludes that the petition is subject to summary dismissal, without prejudice.

Because Petitioner filed his request for federal habeas relief after the enactment date of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), the petition is governed by the provisions thereof. *See Wilcox v. Singletary*, 158 F.3d 1209, 1210 (11th Cir. 1998), *cert. denied*, 531 U.S. 840 (2000). The AEDPA contains several habeas corpus amendments, one of which established a “gatekeeping” mechanism for the consideration of “second or successive habeas corpus applications” in the federal courts, *see* 28 U.S.C. §

2244(b). *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 641-42 (1998). Section 2244(b) provides, in pertinent part, that before a second or successive application for habeas corpus relief is “filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

Petitioner has previously sought federal habeas relief in this Court regarding the conviction he challenges in this action. *See Zammiello v. Secretary, Department of Corrections*, Case No. 8:13-cv-2285-T-30TGW (M.D.Fla.) (petition dismissed as time-barred April 14, 2014).¹ The instant petition therefore is a successive petition. Petitioner, however, has not shown that he has received authorization from the court of appeals to file a successive habeas petition. Consequently, this Court lacks jurisdiction to grant Petitioner relief. *See Gilreath v. State Bd. of Pardons & Paroles*, 273 F.3d 932, 933 (11th Cir. 2001). Therefore, under § 2244(b)(3), this case will be dismissed without prejudice to Petitioner to seek authorization from the Eleventh Circuit Court of Appeals to file a successive habeas corpus petition in this Court.


Accordingly:

¹ Petitioner has since filed several petitions challenging the same conviction, all of which have been dismissed as unauthorized second or successive petitions. *See Zammiello v. Sec’y, Dep’t of Corr.*, case no. 8:15-cv-1747-T-35JSS; *Zammiello v. Sec’y, Dep’t of Corr.*, case no. 8:15-cv-2127-T-33AEP; *Zammiello v. Sec’y, Dep’t of Corr.*, case no. 8:16-cv-2542-T-36JSS; *Zammiello v. Sec’y, Dep’t of Corr.*, case no. 8:17-cv-1446-T-23TBM; *Zammiello v. Sec’y, Dep’t of Corr.*, case no. 8:18-cv-1142-T-23MAP; *Zammiello v. Sec’y, Dep’t of Corr.*, case no. 8:18-cv-2877-T-36AAS; and *Zammiello v.*

1. Petitioner's petition for a writ of habeas corpus (Doc. 1) is **DISMISSED** without prejudice as an unauthorized successive petition.

2. The **Clerk** is directed to send to Petitioner the Eleventh Circuit's form for second or successive habeas corpus petitions under 28 U.S.C. § 2244(b), terminate all pending motions, and close this case.

ORDERED in Tampa, Florida, on November 30, 2021.


Charlene Edwards Honeywell
United States District Judge

Copy to: Pro se Petitioner

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