# In the
# United States Court of Appeals
## For the Eleventh Circuit

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No. 23-11587

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JERRY MEANS,

Petitioner-Appellant,

*versus*

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,
OKALOOSA CI WARDEN,

Respondents-Appellees.

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Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:06-cv-00403-TJC-MCR

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App. A

ORDER:

Jerry Means is a Florida prisoner serving a life sentence for sexual battery of a person less than 12 years old. He moves for a certificate of appealability ("COA"), in order to appeal the district court's denials of his Fed. R. Civ. P. 60(b) motion, which sought to reopen his 28 U.S.C. § 2254 proceedings, and his Fed. R. Civ. P. 59(e) motion, which sought relief from the denial of his Rule 60(b) motion. He also requests appointment of counsel and leave to proceed *in forma pauperis* ("IFP") on appeal.

A COA is required to appeal from the denial of a Rule 59(e) or 60(b) motion arising from a habeas proceeding. *Perez v. Sec'y, Fla. Dep't of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013); *Jackson v. Crosby*, 437 F.3d 1290, 1294 (11th Cir. 2005). To obtain a COA, Means must demonstrate 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." *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

Here, reasonable jurists would not debate the district court's denials of Means's Rule 60(b) and 59(e) motions. *See id.* To the extent that he sought relief from the denial of his § 2254 petition under Rule 60(b)(3) & (b)(6), the district court properly exercised its discretion in denying his motion as untimely. *See Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2005). His request for relief under Rule 60(b)(3) had to be made within a year of the judgment denying his § 2254 petition, and, given that the district court denied

his § 2254 petition in 2010, he sought relief under Rule 60(b)(3) more than ten years too late. *See* Fed. R. Civ. P. 60(c)(1).

Similarly, the district court did not commit a "clear error of judgment," nor apply the wrong legal standard, in determining that he failed to timely seek relief under Rule 60(b)(6). *See United States v. Abreu*, 406 F.3d 1304, 1306 (11th Cir. 2005). It properly considered whether he had requested relief under Rule 60(b)(6) within a "reasonable time," and, in light of his failure to explain why he delayed more than ten years in bringing his motion, nothing suggests that it committed a clear error of judgment in finding the delay to be unreasonable. *See id.*; Fed. R. Civ. P. 60(c)(1).

Moreover, although the "reasonable time" standard did not apply to Means's request for relief under Rule 60(b)(4), he still could not show that the district court erred in declining to afford him relief under that provision. "Voidness for purposes of a 60(b)(4) motion contemplates" that the district court either lacked jurisdiction to enter the judgment denying Means's § 2254 petition, or that a defect in due process deprived him "of notice or an opportunity to be heard," and Means could not establish either of those grounds. *See Stansell v. Revolutionary Armed Forces of Colombia*, 771 F.3d 713, 737 (11th Cir. 2014). The district court possessed jurisdiction to entertain his § 2254 petition, given that he sought federal habeas relief on the ground that his state custody violated the Constitution, and he could not establish that his due process rights were violated during his § 2254 proceedings, because he had an opportunity to be heard on his claims and an opportunity to object to

the denial of his claims. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010); 28 U.S.C. § 2254(a).

Lastly, given the absence of error in the district court's decision to denying Means's Rule 60(b) motion, he could not show that it abused its discretion in denying his Rule 59(e) motion for relief from the denial of his Rule 60(b) motion. *See Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). Because reasonable jurists would not debate the district court's denials of Means's Rule 60(b) and 59(e) motions, his motion for a COA is DENIED, and his motions for IFP status and appointment of counsel are DENIED AS MOOT. *See Slack*, 529 U.S. at 484.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

Before ROSENBAUM and NEWSOM, Circuit Judges.

BY THE COURT:

Jerry Means has filed a motion for leave to file an out-of-time motion for reconsideration, requesting leave to file out-of-time on the ground that he timely filed his initial motion for reconsideration, but inadvertently failed to attach a Certificate of Interested Persons. He attaches his motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's September 25, 2023, order denying him a certificate of appealability, *in forma pauperis*, and appointment of counsel, following the district court's denials of his Fed. R. Civ. P. 60(b) and 59(e) motions for relief, which were filed in his 28 U.S.C. § 2254 proceedings.

Because the interests of justice warrant considering the merits of Means's motion for reconsideration, his motion for leave to file out-of-time is GRANTED. However, upon review, Means's motion for reconsideration is DENIED because he has offered no meritorious arguments to warrant relief.

App. B

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

JERRY MEANS,

Petitioner,

vs. Case No. 3:06-cv-403-TJC-MCR

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

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**ORDER**

This cause is before the Court on Petitioner's Motion for Relief from Judgment or Order (Doc. 125), filed under "Rules 60(b)(4), 60(b)(6), 60(d)(3), and 9(b)" of the Federal Rules of Civil Procedure. "A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1) [mistake or excusable neglect], (2) [newly discovered evidence], and (3) [fraud or misconduct by an opposing party] no more than a year after the entry of the judgment[.]" Fed. R. Civ. P. 60(b)(1)-(3), (c)(1). The Court denied Petitioner's Amended Petition and dismissed this case with prejudice on January 15, 2010. Doc. 104. Judgment was entered and this case was closed on January 19, 2010. Doc. 105. The Eleventh Circuit Court of Appeals affirmed the Court's Order on July 12, 2011. See Means v. Sec'y, Dep't of Corr., 433 F. App'x. 852 (11th Cir. 2011). Thus, the

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Court finds that the Rule 60(b) motion was not filed within a reasonable time and/or within one year of the entry of judgment.

Alternatively, even if Petitioner's request were timely filed, after reviewing and considering the file as a whole, the Court finds that Petitioner is not entitled to the relief he seeks.

Therefore, it is now

**ORDERED AND ADJUDGED:**

1. Petitioner's Motion for Relief from a Judgment or Order (Doc. 125) is **DENIED**. If Petitioner appeals the Court's denial of his Rule 60(b) Motion, the Court denies a certificate of appealability.[1] Because this Court has determined that a certificate of appealability is not warranted, the **Clerk of Court** shall terminate from the pending motions report any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial of the motion.

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[1] This Court should issue a certificate of appealability only if the Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this substantial showing, Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further.'" Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)). Here, after consideration of the record as a whole, the Court will deny a certificate of appealability.

2. Petitioner's Motion to Dismiss (Doc. 126) the Court's Order dismissing his Amended Petition and Petitioner's Motion to Supplement Motion to Dismiss (Doc. 127) are **DENIED**.

3. Petitioner's Motion for the Appointment of Counsel (Doc. 129) is **DENIED**. This case is closed and neither due process nor the interests of justice warrant the appointment of counsel.

**DONE AND ORDERED** at Jacksonville, Florida, this 11th day of August, 2022.

Timothy J. Corrigan

TIMOTHY J. CORRIGAN
United States District Judge

Jax-7
c:
Jerry Means, #J08714
Counsel of Record

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

JERRY MEANS,

Petitioner,

vs. Case No. 3:06-cv-403-TJC-MCR

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

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**ORDER**

The Court denied Petitioner's Amended Petition and dismissed this case with prejudice on January 15, 2010. Doc. 104. Judgment was entered and this case was closed on January 19, 2010. Doc. 105. The Eleventh Circuit Court of Appeals affirmed the Court's Order on July 12, 2011. See Means v. Sec'y, Dep't of Corr., 433 F. App'x. 852 (11th Cir. 2011). On August 11, 2022, the Court denied Petitioner's Federal Rule of Civil Procedure 60(b) motion. Doc. 130.

Before the Court is Petitioner's "Motion to Alter or Amend Judgment under Rule 59(e) Federal Rule of Civil Procedure" (Doc. 131), in which Petitioner asks that the Court reconsider its August 11, 2022, Order. In its August 11, 2022, Order, the Court denied Petitioner's motion because it found the Rule 60(b) motion was untimely filed. See id. ("[T]he Court finds that the

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Rule 60(b) motion was not filed within a reasonable time and/or within one year of the entry of judgment."). The Court further found that even if the motion were timely filed, Petitioner was not entitled to the relief he seeks. Id. The Court declines to reconsider its denial.

Accordingly, it is

**ORDERED AND ADJUDGED:**

1. Petitioner's "Motion to Alter or Amend Judgment under Rule 59(e) Federal Rule of Civil Procedure" (Doc. 131) is **DENIED**.

**DONE AND ORDERED** at Jacksonville, Florida, this 13th day of April, 2023.

Timothy J. Corrigan

TIMOTHY J. CORRIGAN
United States District Judge

Jax-7
c:
Jerry Means, #J08714
Counsel of Record

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

JERRY MEANS,

Petitioner,

vs. Case No. 3:06-cv-403-TJC-MCR

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

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**ORDER**

On August 11, 2022, the Court denied Petitioner's "Motion for Relief from a Judgment or Order," "Motion to Dismiss," "Motion to Supplement Motion to Dismiss," and "Motion for Appointment of Counsel" (Doc. 130). On April 13, 2023, the Court denied Petitioner's "Motion to Alter or Amend Judgment under Rule 59(e) Federal Rule of Civil Procedure" (Doc. 133). Before the Court is Petitioner's Notice of Appeal (Doc. 134) seeking review of the Court's Orders (Docs. 130, 133), and request to proceed in forma pauperis on appeal (Doc. 135). This Court should issue a certificate of appealability only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). To make this substantial showing, Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the

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constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)). Upon due consideration, this Court denies a certificate of appealability. Because this Court has determined that a certificate of appealability is not warranted, Petitioner's request to proceed in forma pauperis on appeal (Doc. 135) is **DENIED.**

**DONE AND ORDERED** at Jacksonville, Florida, this 10th day of May, 2023.

Timothy J. Corrigan

TIMOTHY J. CORRIGAN
United States District Judge

caw 5/10
c:
Jerry Means, #J08714
Counsel of Record