No: _____

IN THE
SUPREME COURT OF THE UNITED STATES

ARNOLD ANCRUM
Petitioner

Vs.

RESPONDENT(S)

APPENDIX

A

Ground 3: The defendant claims he was denied effective assistance of counsel when his attorney prevented him from testifying and asserting an insanity defense. [1]

First, the record is clear (T.1770-1771) that the defendant, himself, expressed his desire not to testify. Secondly, there is no evidence that the defendant was legally insane at the time of the crime. In fact, the defendant does not allege any facts to support such a defense.

Ground 4: The defendant claims he was denied effective assistance of counsel when his attorney failed to object to the court's instruction to the jury on first degree felony murder.

The Court finds, as a matter of law, that the instruction was proper. The defendant is confused about the law of felony murder and the principal theory.

Ground 5: The defendant claims he was denied effective assistance of counsel because his attorney failed to move for a judgment of acquittal on the charge of attempted felony murder.

This case was tried in March 1992, three years before the Florida Supreme Court decided in State v. Gray, 654 So.2d 552 (Fla.1995) that attempted felony murder is not a criminal offense. Counsel cannot be found ineffective for failing to challenge a law that had been routinely accepted by the courts. See Knight v. State, 394 So.2d 997 (Fla.1981); Henderson v. Singletary, 617 So.2d 313 (Fla.1992).

Ground 6: The defendant claims he was denied effective assistance of counsel for failing to call Emanuel Miller to testify at trial.

All of the evidence at trial showed that Emanuel Miller was with the deceased when they were both attacked and robbed by the defendant and his cohorts. Mr. Miller was himself, shot and seriously wounded by the robbers. There is no reason to believe that his testimony would have been helpful to the defendant. A transcript of his deposition is attached hereto. See also, the testimony of the firearms examiners, James Carr (T.1477-1500) and Ray Freeman (T.1512-1538).

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[1] *The defendant also makes reference to an alibi defense, but must have inadvertently included that reference, in his pro se motion.*

B

Subject:Activity in Case 1:20-cv-21363-DPG Ancrum v. Department of Corrections Order Dismissing Case
This is an automatic e-mail message generated by the CM/ECF system.
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U.S. District Court
Southern District of Florida

Notice of Electronic Filing
The following transaction was entered on 11/8/2021 3:29 PM EST and filed on 11/8/2021

Case Name: Ancrum v. Department of Corrections

Case Number: 1:20-cv-21363-DPG

Filer:

WARNING: CASE CLOSED on 11/08/2021

Document Number: 28

Docket Text:
ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS. The Clerk is directed to CLOSE this case. Signed by Judge Darrin P. Gayles on 11/8/2021. <I>See attached document for full details.</I> (jas)

1:20-cv-21363-DPG Notice has been electronically mailed to:
Noticing 2254 SAG Miami-Dade/Monroe CrimAppMIA@MyFloridaLegal.com

Brian Hernan Zack
brian.zack@myfloridalegal.com

1:20-cv-21363-DPG Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:
Arnold Ancrum
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Service list page 1 only

U.S. District Court - Southern District of Florida

Arnold Ancrum 444523
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Inmate Mail/Parcels
Post Office Box 628
Lake Butler, FL 32054

Case: 1:20-cv-21363-DPG #28 14 pages Mon Nov 8 15:52:24 2021

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

Note: This is NOT a request for information.

Do NOT include personal identifiers in documents filed with the Court, unless specifically permitted by the rules or Court Order. If you MUST include personal identifiers, ONLY include the limited information noted below:

- Social Security number: last four digits only
- Taxpayer ID number: last four digits only
- Financial Account Numbers: last four digits only
- Date of Birth: year only
- Minor's name: initials only
- Home Address: city and state only (for criminal cases only).

Attorneys and parties are responsible for redacting (removing) personal identifiers from filings. The Clerk's Office does not check filings for personal information. Any personal information included in filings will be accessible to the public over the internet via PACER.

For additional information, refer to Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1. Also see the CM/ECF Administrative Procedures located on the Court's website www.flsd.uscourts.gov.

IMPORTANT: REQUIREMENT TO MAINTAIN CURRENT MAILING ADDRESS AND CONTACT INFORMATION

Pursuant to Administrative Order 2005-38, parties appearing pro se and counsel appearing pro hac vice must file, in each pending case, a notice of change of mailing address or contact information whenever such a change occurs. If court notices sent via the U.S. mail are returned as undeliverable TWICE in a case, notices will no longer be sent to that party until a current mailing address is provided.

IMPORTANT: ADDITIONAL TIME TO RESPOND FOR NON-ELECTRONIC SERVICE

Additional days to respond may be available to parties serviced by non-electronic means. See Fed.R.Civ.P.6(d), Fed.R.Crim.P.45(c) and Local Rule 7.1(c)(1)(A). Parties are advised that the response deadlines automatically calculated in CMECF do NOT account for and may NOT be accurate when service is by mail. Parties may NOT rely on response times calculated in CMECF, which are only a general guide, and must calculate response deadlines themselves.

See reverse side

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:20-cv-21363-GAYLES

ARNOLD ANCRUM,

Petitioner,

v.

MARK S. INCH,

Respondent.

ORDER DENYING
PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE comes before the court on Petitioner Arnold Ancrum's *pro se* Amended Petition for Writ of Habeas Corpus (the "Amended Petition") brought pursuant to 28 U.S.C. § 2254. [ECF No. 1].[1] Petitioner is challenging the constitutionality of his conviction and sentence entered following a jury trial in the Eleventh Judicial Circuit of Florida, Case No. F90-354-b. For its consideration of the Amended Petition, the Court has received the State's Response [ECF No. 17] to the Court's order to show cause, along with a supporting appendix and state court transcripts [ECF Nos. 18, 19], Petitioner's reply [ECF No. 24], and Petitioner's supplemental appendix [ECF No. 26].

The Petition presents the following three claims for relief:

1. Counsel was ineffective "in failing to subpoena the attempted murder victim, Emanuel Miller, to testify who possessed, brandished, and fired another .22 weapon during the case shooting" ("claim one"). (Am. Pet. at 6.)

---

[1] The Court liberally construes the claims raised in the Petition because Petitioner proceeds *pro se*. *Winthrop-Redin v. United States*, 767 F.3d 1210, 1215 (11th Cir. 2014) ("[Courts] liberally construe pro se filings . . . ." (citation omitted)).

2. Petitioner is actually innocent of first-degree felony murder ("claim two"). (*Id.* at 8.)

3. Counsel was ineffective for failing "to object to the court's erroneous jury instruction on first degree felony murder" under § 782.04(2)(b), Florida Statutes ("claim three"). (*Id.* at 8.)

This matter is ripe for review. For the reasons stated in this Order, the Petition is DENIED because Petitioner is not entitled to relief on the merits.

I. Factual and Procedural History

Petitioner was charged with first degree murder, attempted first degree murder, armed robbery, conspiracy to commit armed robbery, and unlawful display of a firearm while engaged in a criminal offense. [ECF No. 18-1 at 14-16]. On April 2, 1992, a jury convicted Petitioner of the crimes as charged. *Id.* at 18-22. Petitioner appealed, challenging (1) the denial of a motion to sever his trial from that of his co-defendant; (2) the imposition of consecutive minimum mandatory sentences; (3) the denial of a motion to suppress his confession; (4) the denial of certain evidentiary rulings; and (5) his conviction for possession of a firearm during the commission of a felony. *Clarington v. State*, 636 So. 2d 860, 861 (Fla. 3d DCA 1994). The appellate court summarized the evidence as follows:

> On December 30, 1989, five young men staged an armed assault on a bolita house as the day's money was being removed from the premises. During the assault shots were fired and one of the money couriers was killed. The police heard rumors and started rounding up suspects. Defendant Ancrum was implicated by others and the police asked him to come down to the station and give a statement, which he voluntarily did. Ancrum arrived at the police station at about 3:30 p.m. on January 2, 1990; he was not under arrest at that time. While Ancrum was at the station another suspect confessed. The police compared Ancrum's statement to the other suspect's statement and decided to re-interview Ancrum. He was given a Miranda warning at 9:10 p.m. and he signed a waiver form at that time. At 12:50 a.m., a formal statement was taken and Ancrum signed it after review.
>
> Five young men were charged with first degree murder, attempted first degree murder, armed robbery, conspiracy to commit armed robbery, and unlawful possession of a firearm while engaged in a criminal offense. Each of the defendants gave an incriminating statement to the police in which they also implicated their

> fellow defendants. Two of the young men plead guilty and agreed to testify against the remaining defendants. Defendants Ancrum and Clarington were tried together. Each planned to assert his fifth amendment privilege not to testify and each moved for severance, which the trial court granted absent redaction from their statements information which would implicate the other. The state offered redacted statements which both defendants found unacceptable. The trial court, after a hearing, ordered a joint trial and overruled the defendant's objections to the use of the redacted statements.
>
> Defendant Ancrum moved to suppress his statement and confession arguing that they were involuntarily made and the result of an illegal detention. After a hearing on the merits the trial court denied Ancrum's motion to suppress.
>
> During the trial, one of the state's witnesses (former defendant Howard) had a severe memory lapse. His memory was refreshed by reference to his deposition. Ancrum's attorney objected to the use of the deposition as substantive evidence and requested a limiting instruction, which the trial court denied.
>
> During closing argument Ancrum's attorney sought to comment upon the absence of various witnesses. The trial court ruled that Ancrum's attorney could not comment upon the absence of any witnesses.

Id. The court reversed Petitioner's conviction for possession[2] of a firearm during the commission of a felony on double jeopardy grounds because his sentences on the other charges had been enhanced by the use of a firearm. *Id.* at 863. The court also reversed the imposition of consecutive minimum mandatory sentences but affirmed the convictions on the remaining charges. *Id.*

Petitioner then filed a motion for post-conviction relief in the state court. [ECF No. 18-1 at 33-89]. Petitioner presented five claims, only one of which is relevant to the instant proceedings. In his fourth claim, he argued that trial counsel was ineffective for failing to object to the erroneous instruction on first degree felony murder. *Id.* at 83-88. Petitioner later filed a supplemental allegation, arguing that counsel was ineffective for failing to call victim Emanuel Miller to testify that he was in possession of a .22 caliber firearm and in all probability was the actual shooter of the deceased. *Id.* at 91-97.

[2] The Indictment and the jury's verdict both reference the illegal display of the firearm.

The trial court denied the motion without an evidentiary hearing. *Id.* at 99-101. In denying the fourth claim, the court found, as a matter of law, that there was no error in the felony murder instruction. *Id.* at 100. In denying the supplemental claim, the court found that "the evidence at trial showed that Emanuel Miller was with the deceased when they were both attacked and robbed by [Petitioner] and his cohorts." *Id.* The court concluded that there was "no reason to believe that [Miller's] testimony would have been helpful to [Petitioner]." *Id.* The denial was affirmed on appeal. *Ancrum v. State*, 681 So. 2d 287 (Fla. 3d DCA 1996) (table).

Petitioner then filed his first federal habeas petition. [ECF No. 18-1 at 113-120]. Of relevance to the instant petition was Petitioner's claim that his counsel was ineffective for failing to call Emanuel Miller at trial to testify that he shot the deceased victim. *Id.* at 118. This claim was denied as the court found it to be "specious." *Id.* at 188. The magistrate judge found that Miller, along with the decedent, was robbed at gunpoint by Petitioner and his codefendants. *Id.* The magistrate also noted that Miller had been shot and there was no reason to expect that Miller would have confessed to shooting the decedent or offered any testimony that would have been helpful to Petitioner. *Id.* The Eleventh Circuit Court of Appeals denied Petitioner a certificate of appealability, finding that he had failed to make a substantial showing of the denial of a constitutional right. *Id.* at 204. The Eleventh Circuit denied Petitioner's motion for rehearing. *Id.* at 220. The Supreme Court denied certiorari review. *Id.*

Over the ensuing years, Petitioner filed multiple post-conviction challenges. On October 29, 2014, the state trial court vacated Petitioner's concurrent forty-year sentences as to counts 2, 3, and 4. *Id.* at 303. The sentences on those counts were reduced to twenty-seven years. *Id.* at 305. Petitioner appealed his resentencing. *Id.* at 344.

After the new sentence was imposed, Petitioner filed a petition for writ of habeas corpus

in the state trial court. *Id.* at 315-333. Among other issues, Petitioner argued that the evidence was insufficient to establish his guilt for first degree felony murder. *Id.* at 330. The petition was denied as time barred and procedurally barred. *Id.* at 339-342. Petitioner appealed the denial of the petition. *Id.* at 346.

The Third District Court of Appeal consolidated the appeal of the sentence and the appeal of the denial of the habeas petition and appointed the Office of the Public Defender to represent Petitioner. *Id.* at 348-350. The public defender filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1067). *Id.* at 352-353. The motion was granted. *Id.* at 364-365. The appellate court per curiam affirmed the resentencing and the denial of the habeas petition. *Id.* at 367. The motion for rehearing was denied. *Id.* at 379.

Petitioner returned to the trial court and filed a motion for post-conviction relief. *Id.* at 383-392. The claim raised in that motion is not relevant to the instant Petition. The motion was denied without a hearing. *Id.* at 394. The denial was affirmed on appeal. *Id.* at 398. The Florida Supreme Court declined to exercise discretionary jurisdiction. *Id.* at 419. Petitioner next filed a state habeas petition challenging Florida sentencing law, again raising issues which are not relevant to the instant Petition. *Id.* at 421-434. That petition was denied. *Id.* at 436-441. The denial was affirmed on appeal. *Id.* at 501-502. The Florida Supreme Court declined to exercise discretionary jurisdiction. *Id.* at 550.

II. Preliminary Considerations

Although the Petitioner is challenging a conviction that was originally entered nearly thirty years ago, the State has conceded that the Petition is timely and not a second or successive petition. The State's concession is accepted because Petitioner was resentenced and his new sentence became final on December 27, 2016. The State has conceded that claims one and three have been

exhausted in state court. The State argues that claim two was not exhausted because the state court found the claim to be procedurally barred and did not address the merits of the claim.

An applicant's federal writ of habeas corpus will not be granted unless the applicant exhausted his state court remedies. *See* 28 U.S.C. § 2254(b), (c). A claim must be presented to the highest court of the state to satisfy the exhaustion requirement. *See O'Sullivan v. Boerckel*, 526 U.S. 838 (1999); *Richardson v. Procunier*, 762 F.2d 429, 430 (5th Cir. 1985). In a Florida non-capital case, this means the applicant must have presented his claims in a district court of appeal. *See Upshaw v. Singletary*, 70 F.3d 576, 579 (11th Cir. 1995). The claims must also be presented in state court in a procedurally correct manner. *Id.*

"In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991) (internal quotations omitted).

Petitioner acknowledges that he did not raise claim two in state court. [ECF No. 24 at 9]. He argues that his procedural default should be excused under the actual innocence exception. *Id.* To succeed on a claim of actual innocence, however, the petitioner "must establish that, in light of new evidence, 'it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.'" *House v. Bell*, 547 U.S. 518, 536-37 (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). "Actual innocence" requires the petitioner to show "factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998). As discussed below in the merits section, Petitioner's claim of actual innocence is unavailing as the evidence at

trial was sufficient to support his conviction and he has presented no new evidence to overcome the conviction.

III. Standard of Review

A prisoner in state custody may not be granted a writ of habeas corpus for any claim that was adjudicated on the merits in state court unless the state court's decision was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "based on an unreasonable determination of the facts in light of the evidence presented" to the state court. 28 U.S.C. § 2254(d)(1), (2); *see Williams v. Taylor*, 529 U.S. 362, 405-06 (2000); *Fugate v. Head*, 261 F.3d 1206, 1215-16 (11th Cir. 2001). A state court decision is "contrary to" or an "unreasonable application of" the Supreme Court's clearly established precedent within the meaning of § 2254(d)(1) only if the state court applies a rule that contradicts the governing law as set forth in Supreme Court case law, or if the state court confronts a set of facts that are materially indistinguishable from those in a decision of the Supreme Court and nevertheless arrives at a result different from Supreme Court precedent. *Brown v. Payton*, 544 U.S. 133, 141 (2005); *Williams*, 529 U.S. at 405-06. In the habeas context, clearly established federal law refers to Supreme Court decisions as of the time of the relevant state-court decision. *Hall v. Head*, 310 F.3d 683, 690 (11th Cir. 2002) (citing *Williams*, 529 U.S. at 412).

In adjudicating a petitioner's claim, the state court does not need to cite Supreme Court decisions and the state court need not even be aware of the Supreme Court cases. *See Early v. Packer*, 537 U.S. 3, 8 (2002); *Parker v. Sec'y, Dep't of Corr.*, 331 F.3d 764, 775-76 (11th Cir. 2003). So long as neither the reasoning nor the result of the state court decision contradicts Supreme Court decisions, the state court's decision will not be disturbed. *Early*, 537 U.S. at 8. Further, a federal court must presume the correctness of the state court's factual findings unless

the petitioner overcomes them by clear and convincing evidence. *See* 28 U.S.C. § 2254(e)(1); *Putman v. Head*, 268 F.3d 1223, 1241 (11th Cir. 2001).

In claims one and three, Petitioner raises claims of ineffective assistance of counsel. The U.S. Supreme Court clearly established the law governing claims of ineffective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668 (1984). *Strickland* requires a criminal defendant to show that: (1) his counsel's performance was deficient and (2) that deficiency prejudiced him. *Id.* at 690. For the first prong, deficient performance means performance outside the wide range of professionally competent assistance. *Id.* The judiciary's scrutiny of counsel's performance is highly deferential. *Id.* at 689. For the second prong, a defendant establishes prejudice by showing that, but for counsel's deficient performance, there is a reasonable probability the outcome of the proceedings would have been different. *Id.* at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceedings. *Id.*

Petitioner must satisfy both the deficiency and prejudice prongs set forth in *Strickland* to obtain relief on his ineffective assistance of counsel claims. *See Strickland*, 466 U.S. at 690. Failure to establish either prong is fatal, making it unnecessary to consider the other. *See id.* at 697. Combining AEDPA's habeas standard and *Strickland*'s two-pronged test provides the relevant inquiry in this case. To obtain habeas relief, Petitioner must show the state court "applied *Strickland* to the facts of his case in an objectively unreasonable manner" when it rejected his claims of ineffective assistance of counsel. *Bell v. Cone*, 535 U.S. 685, 699 (2002).

IV. Discussion

A. Counsel's Failure to Call Emmanuel Miller

In his first claim, Petitioner contends that his trial counsel was ineffective for failing to present Emmanuel Miller as a witness at trial. He argues that Miller would have testified that he

was armed with a .22 caliber handgun and shot the decedent during the robbery. This claim was presented in Petitioner's prior federal habeas petition. The court denied the claim, finding that Miller was also robbed at gunpoint by Petitioner and his codefendants. [ECF No. 18-1 at 188]. The court found that there was no reason to expect that Miller would have either confessed to shooting the decedent or otherwise offered helpful testimony to Petitioner. *Id.* Finding that counsel's performance was not deficient, the court denied this claim.

The State argues that this claim should be denied here under the "law of the case" doctrine. [ECF No. 17 at 45]. Petitioner recognizes the doctrine but argues it is not applicable here because its application would result in a manifest injustice. [ECF No. 14 at 5-6]. Petitioner has not presented any new evidence or law that would render the court's prior denial of this claim incorrect. Since this claim has previously been considered and denied, it does not merit habeas relief. Even so, this Court agrees with the prior court that the performance of Petitioner's trial counsel was not deficient for failing to call Emmanuel Miller as a witness.

B. Actual Innocence Claim

In his second claim, Petitioner argues that he is actually innocent of first-degree felony murder. [ECF No. 14 at 8-9]. This claim is based on Petitioner's unproven allegations of the events surrounding the robbery and shooting. Petitioner speculates that one of the victims, Emanuel Miller, was the person who actually shot and killed the deceased victim. Petitioner bases this claim on statements provided by Miller, along with Miller's deposition testimony, that he had a .22 caliber handgun in his possession at the time he and the decedent were attacked by Petitioner. Petitioner also mischaracterizes the evidence presented at trial by alleging that the firearm examiner testified that the spent .22 projectile did not match a projectile test fired from Petitioner's .22 caliber rifle. The firearm examiner did not so testify.

The examiner identified the spent projectile as a ".22 caliber **long rifle** projectile." [ECF No. 19.1 at 398] (emphasis added). He testified that the projectile could have been fired from Petitioner's gun but could not say so conclusively. The examiner testified that "the number of lands and grooves, the width of these and the direction of the twists are exactly the same, but because of the damage to the surface of this projectile, there's not a sufficient quantity in my opinion of these small, microscopic marks for me to reach a conclusion beyond a reasonable scientific certainty that this projectile was fired through this barrel to exclusion of all others." *Id.* at 401. The examiner also testified that the shell casings found at the scene were ejected from Petitioner's gun to the exclusion of any other. *Id.* at 395-397.

Although Petitioner claims he is actually innocent, he has not presented any new reliable evidence to support this claim. The evidence Petitioner relies on, Miller's deposition and police statements, were available at trial. His allegation that the projectile that struck the decedent did not match the rifle he used is contradicted by the expert testimony. In the absence of any new reliable evidence, Petitioner's claim of actual innocence is denied. Because this claim is without merit, it cannot excuse the lack of exhaustion.

C. Counsel's Failure to Object to Felony Murder Jury Instruction

In his third claim, Petitioner contends that his trial counsel was ineffective for failing to object to the jury instruction on first-degree felony murder. Petitioner argues that the jury instruction was erroneous and that he was prejudiced by the misleading instruction. In particular, Petitioner argues that Section (3)(b) of the felony murder instruction –which permits a finding that someone other than Petitioner and his co-defendants killed the victim– was improper because Emmanuel Miller was not an accomplice to their robbery. Petitioner has cited no law in support of this claim. This claim was previously presented in Petitioner's motion for post-conviction relief in

state court. The state court denied the claim, finding as a matter of law that the jury instruction was proper.

As with his first and second claims, Petitioner again argues that Miller was the actual shooter. [ECF No. 14 at 12]. Petitioner seems to argue that an element of felony murder could not be satisfied if Miller fired the fatal shot but was not also involved in the robbery. *Id.* As the state court found, Petitioner is confusing the law of felony murder and the law of principals. Petitioner was properly convicted of felony murder based on his participation in a robbery that led to another person's death; it doesn't matter whether Miller participated in the robbery or whether Miller was the fatal shooter. Because the state court found the jury instruction was proper under Florida law, counsel cannot be ineffective for failing to pursue such a non-meritorious claim. *See Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001); *United States v. Sanders*, 165 F.3d 248, 253 (3rd Cir. 1999). This claim is without merit and is denied.

V. Certificate of Appealability

Rule 11(a) of the Rules Governing § 2254 Proceedings provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant;" and if a certificate is issued, "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." Rules Governing § 2254 Proceedings, Rule 11, 28 U.S.C. foll. § 2254. A timely notice of appeal must still be filed even if the court issues a certificate of appealability. *See id.*

Based on this record, Petitioner is not entitled to a certificate of appealability. "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To merit a certificate of appealability, Petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claims

and (2) the procedural issues he seeks to raise. *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *see also Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). For the reasons stated above, the Court finds that Petitioner's claims are without merit and he cannot satisfy the *Slack* test.

Having considered the petition, the record, and being fully advised, it is hereby

ORDERED AND ADJUDGED that:

1. This Petition [ECF No. 1] is **DENIED**.
2. No certificate of appealability shall issue.
3. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Miami, Florida, this 8th day of November 2021.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

cc: Arnold Ancrum
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C

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-14312

ARNOLD ANCRUM,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-21363-DPG

ORDER:

Arnold Ancrum appeals the denial of his 28 U.S.C. § 2254 habeas petition. He seeks reinstatement of his appeal and a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP"). Upon reconsideration of the Clerk's entry of dismissal on March 2, 2022, for want of prosecution pursuant to 11th Cir. R. 42-1(b), Ancrum's motion to reinstate the appeal is GRANTED. His motion for a COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right *See* 28 U.S.C. § 2253(c)(2). His motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Andrew L. Brasher

UNITED STATES CIRCUIT JUDGE

D

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-14312

ARNOLD ANCRUM,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-21363-DPG

Before ROSENBAUM and BRASHER, Circuit Judges.

BY THE COURT:

Arnold Ancrum has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order reinstating his appeal, denying a certificate of appealability, and denying leave to proceed *in forma pauperis* as moot in his underlying habeas petition, 28 U.S.C. § 2254. Upon review, Ancrum's motion for reconsideration is DENIED because he has offered no new evidence or meritorious arguments as to why this Court should reconsider its previous order.