

**IN THE
SUPREME COURT OF THE UNITED STATES**

**RICHARD SUMMERALL,
Petitioner,**

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Dade C.J. R.S

vs.

Case No.: _____

To Be Assigned

11th Cir. No.: 22-13176-A

**RICKY DIXON, Secretary,
Florida Department of Corrections, et al.,
Respondent(s).**

MOTION FOR EXTENSION OF TIME

COMES NOW, the Petitioner, RICHARD SUMMERALL, in his pro se status, with the assistance of another inmate and respectfully motions this Honorable Court to grant a thirty (30) day extension of time to file his Writ of Certiorari. In support of this motion, the Petitioner would state as follows:

01. Petitioner is an inmate currently incarcerated in the State of Florida, specifically at Dade Correctional Institution in Florida City, Florida.

02. Petitioner's appeal to the United States Court of Appeals for the Eleventh Circuit, in the above-cited case number was denied on or about June 6, 2023. (On appeal from the United States District Court for the Middle District of Florida, Docket No.: 3:19-cv-01099-TJC-LLL).

03. By Rule, Petitioner has until September 4, 2023 as a deadline to have his Writ of Certiorari filed in this Court.

04. Petitioner is a layman to the law and has to rely upon the institution's law clerks to assist him in preparing and submitting his Writ of Certiorari.

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SUPREME COURT, U.S.

05. The Florida Department of Correction's rule only allow for the final twenty (20) days to be considered priority access to the law library.

06. Petitioner was just assigned a law clerk to assist him on or about August 28, 2023.

07. On that same day, the institution was placed on State-wide lockdown, due to hurricane preparations and no one had access to the law library until August 31, 2023.

08. The law clerk assigned to assist Petitioner is burdening under a heavy case load and would need the thirty (30) day extension in order to familiarize himself with Petitioner's issues in order to prepare a proper Writ of Certiorari.

09. This is Petitioner's first request for an extension of time and it is being filed in Good Faith and not in spite of the time limits set by this Honorable Court.

WHEREFORE, Petitioner prays this Honorable Court would grant this thirty (30) day extension of time motion as it is being filed in Good Faith.

Respectfully submitted,

Richard Summerall

Richard Summerall, Pro se

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Motion for Extension of Time has been placed into the hand of mailroom personnel here at Dade C.I. for mailing to: Office of the Attorney General; The Capitol PL-01; Tallahassee, Florida 32399 on this 1 day of September 2023.

Legal Mail
Received

SEP 01 2023

Dade C.I. R.S

Richard Summerall

Richard Summerall, DC# 389024

Dade Correctional Institution

19000 S.W. 377th Street

Florida City, Florida 33034

**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

June 06, 2023

Clerk - Middle District of Florida
U.S. District Court
300 N HOGAN ST
JACKSONVILLE, FL 32202

Richard Summerall
Dade CI - Inmate Legal Mail
19000 SW 377TH ST
FLORIDA CITY, FL 33034-6409

Appeal Number: 22-13176-A
Case Style: Richard Summerall v. Secretary, Florida Department of Corrections, et al
District Court Docket No: 3:19-cv-01099-TJC-LLL

The enclosed copy of this Court's order denying the application for a Certificate of Appealability 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
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13176

RICHARD SUMMERALL,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:19-cv-01099-TJC-LLL

ORDER:

Richard Summerall is a Florida prisoner serving a 30-year sentence for burglary with assault and resisting an officer without violence. He seeks a certificate of appealability (“COA”) to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition, in which he asserted that trial counsel was ineffective for failing to (1) adequately move for a judgment of acquittal; (2) argue that the state did not prove that any alleged burglary occurred in a structure or dwelling; (3) argue that the state did not refute Summerall’s hypothesis of innocence; (4) renew his motion for a judgment of acquittal, on the basis that the jury’s verdict was inconsistent; (5) impeach the victim about her prior inconsistent statements; (6) request that Summerall be sentenced for a lesser-included offense; and (7) call a witness to testify that Summerall had never previously violated a trespass warning. Summerall also argued, in Grounds 8, 9, and 10, that appellate counsel was ineffective for failing to argue that (8) the trial court erred by admitting transcripts of jail phone calls without proper authentication; (9) the prosecutor made improper comments during opening statements and closing arguments; and (10) the trial court erred by denying Summerall’s motion to dismiss his trial counsel based on an imputed conflict of interest. In Ground 11, Summerall sought relief based on all these alleged errors under the cumulative-error doctrine.

To obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right” by demonstrating 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.” 28 U.S.C. § 2253(c)(2);

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Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quotation marks omitted). If a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the state-court decision (1) “was contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court,” or (2) “was based on an unreasonable determination of the facts in light of the evidence presented” in state court. 28 U.S.C. § 2254(d)(1), (2). To establish ineffective assistance of counsel, a defendant must show that counsel’s performance was deficient, and that this deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Here, reasonable jurists would not debate the district court’s denial of Ground 1 because Summerall has not shown a reasonable probability that, but for counsel’s alleged errors, the trial court would have granted his motion for a judgment of acquittal, as the state presented sufficient evidence for a rational trier of fact to find each element of the crimes beyond a reasonable doubt. *Bradley v. State*, 787 So. 2d 732, 738 (Fla. 2001); *Slack*, 529 U.S. at 484; *Strickland*, 466 U.S. at 694.

Reasonable jurists would not debate the district court’s denial of Grounds 2, 3, and 4 as procedurally barred because Summerall failed to properly raise these claims in state court. *Bailey v. Nagle*, 172 F.3d 1299, 1302-03 (11th Cir. 1999); *Slack*, 529 U.S. at 484. Because none of these claims raise substantial ineffective-assistance issues, Summerall is not entitled to consideration of his arguments under *Martinez v. Ryan*, 566 U.S. 1, 13-14 (2012) (establishing

circumstances under which federal courts may consider substantial ineffective-assistance claims that have been procedurally defaulted).

Reasonable jurists would not debate the district court's denial of Ground 5 because, contrary to Summerall's assertions, counsel did cross-examine the victim about her inconsistent statements. *Slack*, 529 U.S. at 484. As to Ground 6, the state did not fail to establish a necessary element of burglary with assault and, therefore, there was no basis to sentence Summerall instead for a lesser-included offense. *Id.* As to Grounds 7 and 9, because the state did not reference any prior trespass or trespass warning during closing arguments, trial counsel was not ineffective for failing to call a witness to rebut any such statement or for failing to object to the prosecutor's arguments. *Id.* As to Ground 8, Summerall failed to demonstrate how he was prejudiced by the admission of the transcripts of the jail call recordings. 28 U.S.C. § 2254(e)(1); *Strickland*, 466 U.S. at 694. As to Ground 10, Summerall has not provided evidence to overcome the state court's factual determination that his counsel did not have a conflict of interest preventing him from continuing to represent Summerall. Because Summerall has not shown error in Grounds 1 through 10, he has not shown cumulative error. *United States v. Gamory*, 635 F.3d 480, 497 (11th Cir. 2011).

Accordingly, Summerall's motion for a COA is DENIED and his motions to proceed IFP and for appointment of counsel are DENIED AS MOOT. Summerall's motion to re-file is DENIED AS

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UNNECESSARY, and his request to amend his § 2254 petition is DENIED.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE