In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13319

RUFUS YOUNG,

Petitioner-Appellant,

versus

STATE OF FLORIDA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:20-cv-61074-RAR

Before BRASHER and ABUDU, Circuit Judges.

BY THE COURT:

Rufus Young has filed a motion for leave to file an out-of-time motion for reconsideration, in which he states that he failed to timely seek reconsideration due to an "honest mistake." He attaches his motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's August 31, 2023, order denying him a certificate of appealability, in part, following the district court's denials of his 28 U.S.C. § 2254 petition and motion to alter the judgment.

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

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ORDER:

Rufus Young is a Florida prisoner serving life imprisonment for felony murder and four counts of attempted armed robbery. He moves for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP"), following the district court's denials of his 28 U.S.C. § 2254 petition and Fed. R. Civ. P. 59(e) motion.[1] To obtain a COA, Young must show 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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

Here, reasonable jurists would debate whether the district court erred in denying Ground One of Young's § 2254 petition, which challenged counsel's performance related to a motion to suppress Young's incriminating statements. The district court denied Ground One based on its *de novo* determination that police possessed probable cause to arrest Young and, thus, the outcome of the suppression motion would not have been different regardless of counsel's alleged deficiencies. Because reasonable jurists would debate whether the district court erred in determining that police had probable cause to arrest Young, his motion for a COA is GRANTED IN PART, only on the following issue:

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[1] Although Young raised three grounds in his § 2254 petition, in his current motion for a COA, he expressly limits his request for a COA to the two grounds addressed in this order. *See Jones v. Sec'y, Dep't of Corr.*, 607 F.3d 1346, 1353-54 (11th Cir. 2010).

> Whether the district court erred in denying Ground One of Young's § 2254 petition, without holding an evidentiary hearing, based on the *de novo* determination that police possessed probable cause to arrest Young and, thus, that he could not establish ineffective assistance as to any of counsel's alleged deficiencies related to a motion to suppress his incriminating statements?

Because the appeal would not be frivolous, and because Young's financial affidavit reflects that he is indigent, his motion for IFP status is GRANTED. *See* 28 U.S.C. § 1915.

With respect to Ground Two of Young's § 2254 petition, reasonable jurists would not debate the district court's determination that he could not establish an entitlement to relief based on counsel's alleged failure to advise him about the applicability of the "independent act doctrine"[2] as a defense in his case. A defense based on the independent act doctrine would have been inconsistent with Young's trial testimony and alibi defense, and Florida law precludes ineffective assistance claims "for failing to pursue a . . . defense [that] would have been inconsistent with [Young's] theory[.]" *See Dufour v. State*, 905 So. 2d 42, 52-53 (Fla. 2005).

As to Young's Rule 59(e) motion, although he alerted the district court to a potential error in the decision denying his

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[2] The independent act doctrine provides that, when a defendant and codefendant have a common plan to commit a crime, but the codefendant commits a criminal act outside of the common plan, the defendant is not responsible for the independent act of the codefendant. *See Ray v. State*, 755 So. 2d 604, 609 (Fla. 2000).

§ 2254 petition, a COA for the Rule 59(e) motion would be redundant of the COA that he already has been granted. Accordingly, his motion for a COA is DENIED IN PART, as to all other issues.

In light of Young's *pro se* status and the potential complexity of his appeal, the interests of justice and judicial economy dictate that he receive appointed counsel. *See Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993); *See* 28 U.S.C. § 1915(e)(1). Accordingly, counsel will be *sua sponte* appointed, by separate order, to represent Young on appeal.

/s/ Nancy G. Abudu
UNITED STATES CIRCUIT JUDGE