

APPENDIX A

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-14034

ISAIAH L. DUNBAR,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:20-cv-00598-KKM-JSS

ORDER:

Isaiah Dunbar is a Florida prisoner serving a 20-year sentence for burglary of a structure with assault. He appeals the denial of a fourth Fed. R. Civ. P. 60(b) motion, following the dismissal of his 28 U.S.C. § 2254 habeas corpus petition as untimely. Dunbar seeks a certificate of appealability (“COA”) and leave to proceed *in forma pauperis* (“IFP”).

A COA is required to appeal from the denial of a Rule 60(b) motion for relief from a judgment in a § 2254 proceeding. *See Gonzalez v. Sec’y for the Dep’t of Corr.*, 366 F.3d 1253, 1263 (11th Cir. 2004) (*en banc*). To obtain a COA, a petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the district court denied a habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the petitioner states a valid claim alleging the denial of a constitutional right, and (2) whether the district court’s procedural ruling was correct. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, reasonable jurists would not debate whether the district court abused its discretion by denying the instant fourth Rule 60(b) motion, as Dunbar did not identify any mistake, newly discovered evidence, fraud, or other valid circumstance that would authorize relief. *See* Fed. R. Civ. P. 60(b). Notably, Dunbar merely reraised the same arguments already presented in his three previous Rule 60(b) motions, which alone justified the denial of the instant motion. *See Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957

23-14034

Order of the Court

3

(11th Cir. 2009). Additionally, his argument that his third Fla. R. Crim. P. 3.850 motion, which the state court deemed untimely, tolled the limitation period was meritless, as an untimely state habeas petition is not “properly filed” within the meaning of 28 U.S.C. § 2244(d)(2) and, thus, does not toll the limitation period. *See Pace v. DiGulielmo*, 544 U.S. 408, 417 (2005). Accordingly, Dunbar’s COA motion is DENIED, and his IFP motion is DENIED AS MOOT.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE

APPENDIX B

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U.S. District Court
Middle District of Florida

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Docket Text:

ENDORSED ORDER denying Dunbar's
[55] motion for relief for the reasons stated in the Court's earlier [38] [46] [49] orders and denying as moot his [55] motion to proceed in forma pauperis. A certificate of appealability and leave to appeal in forma pauperis are **DENIED**. Signed by Judge Kathryn Kimball Mizelle on 11/7/2023. (JT)

8:20-cv-00598-KKM-JSS Notice has been electronically mailed to:
Sonya Roebuck Horbelt sonya.horbelt@myfloridalegal.com,
CrimAppTpa@myfloridalegal.com,
nadia.hernandez@myfloridalegal.com

8:20-cv-00598-KKM-JSS Notice has been delivered by other means to:
Isaiah L. Dunbar
582230
Desoto Correctional Institution
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APPENDIX C

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-14034

ISAIAH L. DUNBAR,

Petitioner-Appellant,

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SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:20-cv-00598-KKM-JSS

Before ROSENBAUM and LUCK, Circuit Judges.

BY THE COURT:

Isaiah Dunbar has moved for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order denying a certificate of appealability on appeal from the denial of his fourth Fed. R. Civ. P. 60(b) motion for relief from judgment, regarding the dismissal of his 28 U.S.C. § 2254 habeas corpus petition as untimely. His motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

APPENDIX D

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