APPENDIX A

ORDERS FROM U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ORDER DENYING CERTIFICATE OF APPEALABILITY

ORDER DENYING MOTION FOR RECONSIDERATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-13897

JERRY LESTER WILLIS,

Petitioner-Appellant,

versus

WARDEN VALDOSTA STATE PRISON,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:95-cv-00359-JPB

ORDER:

Jerry Willis, a Georgia prisoner serving a life sentence for malice murder and possession of a firearm by a convicted felon, filed a *pro se* 28 U.S.C. § 2254 petition, asserting that: (1) trial counsel failed to object properly to the testimony of a state witness; (2) appellate counsel failed to challenge the trial court's alleged "sequential" jury instruction; (3) the trial court erred by referring to the appellate process when the court was recharging the jury; and (4) appellate counsel failed to challenge the trial court's reference to the appellate process.

A magistrate judge recommended denying his § 2254 petition, reasoning that none of the four asserted grounds merited relief. In September 1996, the district court adopted the magistrate judge's recommendation and denied Willis's § 2254 petition, after briefly reviewing each claim and finding that none had merit.

Five years later, in September 2001, Willis filed a motion to "reopen the case," seemingly asserting that that the district court never ruled on Ground 3 of his petition. In November 2001, the district court denied the motion to reopen, reasoning that the court had addressed and ruled on Ground 3.

Nearly 22 years later, in August 2023, Willis filed the instant Fed. R. Civ. P. 60(b) motion, reasserting Grounds 3 and 4. The district court denied the motion, reasoning that Willis's "remarkable delay" of almost 27 years since the denial of his § 2254 petition was "undeniably unreasonable," regardless of his purported diligence. The court added that it already had determined that he was

not entitled to relief on Ground 3, and Willis had not shown that the issue should be considered for a third time. The district court denied a certificate of appealability ("COA"), and he now seeks a COA, as construed from his notice of appeal, from this Court.

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). The petitioner 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).

Here, reasonable jurists would not debate whether the district court abused its discretion by denying the instant motion. As the district court noted, Willis waited more than two decades to reassert claims that he had previously raised and did not provide any reason for this delay. *See BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 (11th Cir. 2008). Further, in the instant motion, he did not identify any mistake, newly discovered evidence, fraud, or other valid circumstance that would authorize relief. *See* Fed. R. Civ. P. 60(b). Instead, Willis merely reraised claims that the district court had already denied on the merits. Accordingly, Willis's COA motion is DENIED.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-13897

JERRY LESTER WILLIS,

Petitioner-Appellant,

versus

WARDEN VALDOSTA STATE PRISON,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:95-cv-00359-JPB

Before ROSENBAUM and LUCK, Circuit Judges.

BY THE COURT:

Jerry Willis 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 Fed. R. Civ. P. 60(b) motion, regarding the denial of a 28 U.S.C. § 2254 petition. His motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

23-13897

Jerry Lester Willis
#373983
Telfair SP - Inmate Legal Mail
H-3
PO BOX 549
HELENA, GA 31037

APPENDIX B

ORDERS FROM THE U.S. DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ORDER DENYING MOTION FOR A
CERTIFICATE OF APPEALABILITY

ORDER DENYING MOTION FOR
RECONSIDERATION

ORDER DENYING PETITIONER'S
FED. R. CIV. P. 60(b) MOTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JERRY LESTER WILLIS,

Petitioner,

v.

LELAND LINAHAN,

Respondent.

CIVIL ACTION NO.
1:95-CV-0359-JPB

ORDER

This matter is before the Court on Petitioner Jerry Lester Willis' Motion for a Certificate of Appealability ("COA") [Doc. 33]. This Court finds as follows:

BACKGROUND

Petitioner initially filed his 28 U.S.C. § 2254 petition for a writ of habeas corpus on February 14, 1995, challenging his April 14, 1992, convictions in DeKalb County Superior Court. [Doc. 1]. On September 25, 1996, District Judge J. Owen Forrester denied the petition and dismissed this action. [Doc. 18]. Petitioner sought to appeal, [Doc. 20], and the Eleventh Circuit denied Petitioner's motion for a COA on October 6, 2001, and dismissed his appeal, [Doc. 23]. On September 18, 2001, Petitioner filed a motion seeking to reopen this matter, which

Judge Forrester denied on November 28, 2001. [Doc. 25]. Almost twenty-two years later, Petitioner filed a Fed. R. Civ. P. 60(b) motion to reconsider, arguing for a second time that this Court failed to address his claim that the criminal trial court erred in telling the jury that he would likely appeal his convictions. [Doc. 26]. This Court denied that motion on October 27, 2023, after finding that the Court had already addressed his jury instruction claim at least twice and that Petitioner's motion was not timely filed. [Doc. 28]; see also Fed. R. Civ. P. 60(c)(1) (requiring that Rule 60(b) motions "be made within a reasonable time"). In the instant Motion, Petitioner now seeks to appeal the Court's October 27, 2023 order.

ANALYSIS

Pursuant to 28 U.S.C. § 2253(c), an appeal may not be taken from the denial of a habeas corpus petition when the detention complained of arises out of process issued by a state court unless the petitioner obtains a COA. The Court will issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, the applicant "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Melton v. Sec'y, Fla. Dep't of Corr., 778 F.3d 1234, 1236 (11th Cir. 2015) (quotation and citation omitted).

The Eleventh Circuit Court of appeals has explained that

> [w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, the prisoner in order to obtain a COA, still must show both (1) "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" and (2) "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

Lambrix v. Sec'y, Fla. Dep't of Corr., 872 F.3d 1170, 1179 (11th Cir. 2017) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

This Court has reviewed the record in this matter and concludes that jurists of reason would not debate the denial of Petitioner's Rule 60(b) motion, and the instant Motion [Doc. 33] is therefore **DENIED** pursuant to 28 U.S.C. § 2253(c)(2). Petitioner is advised that he "may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." See Rule 11(a), Rules Governing § 2254 Cases in the United States District Courts.

SO ORDERED this 12th day of January, 2024.

J. P. BOULEE
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JERRY LESTER WILLIS,

Petitioner,

v.

LELAND LINAHAN,

Respondent.

CIVIL ACTION NO.
1:95-CV-0359-JPB

ORDER

This matter is before the Court on Petitioner Jerry Lester Willis' Motion to Amend his Fed. R. Civ. P. 60(b) Motion for Reconsideration [Doc. 34]. This Court finds as follows:

This Court's previous Order denying Petitioner's Rule 60(b) Motion sets forth the background and procedural history of this case. See [Doc. 28]. The Court incorporates those facts by reference here. In short, Petitioner filed a 28 U.S.C. § 2254 petition for a writ of habeas corpus on February 14, 1995, challenging his April 14, 1992 convictions. [Doc. 1]. On September 25, 1996, this Court denied the petition and dismissed this action. [Doc. 18]. Thereafter, the

Eleventh Circuit denied Petitioner's motion for a certificate of appealability and dismissed his appeal on October 3, 1997. [Doc. 23].

Almost twenty-seven years after this matter was dismissed, on August 11, 2023, Petitioner filed his Rule 60(b) motion. [Doc. 26]. In his Rule 60(b) motion, Petitioner argued for the second time that this Court failed to address his claim that the criminal trial court erred in telling the jury that he would likely appeal his convictions. See id. This Court denied that motion after finding that the twenty-seven-year delay was unreasonable under Rule 60(c)(1), and, in any event, this Court has already determined and redetermined that Petitioner is not entitled to relief with respect to his claim that the trial court committed reversible error in instructing the jury. [Doc. 28].

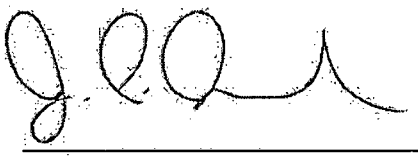
In the instant Motion to Amend, Petitioner raises another claim that this Court has already addressed: that one of the witnesses who testified against him, Kathleen Simon, changed her story and could not have witnessed what she testified to. [Doc. 34]. Upon review of the record, this Court finds that it previously denied Petitioner relief based on Simon's testimony. See [Doc. 18, pp. 2–3].[1] Because

---

[1] To the extent that Petitioner contends that he raises a claim that differs from that raised in his original petition, this Court lacks jurisdiction to consider it. A Rule 60(b) motion raising novel claims is deemed successive under 28 U.S.C. § 2244(b), Gonzalez v. Crosby, 545 U.S. 524, 531 (2005), and this Court may not review the claim until

this Court is aware of no facts that warrant deviation from its original finding, this Court again concludes that Petitioner has not shown that he filed his Rule 60(b) motion within a reasonable time under Rule 60(c)(1), and that Petitioner has not shown that this Court erred in determining that his claim is unavailing. As a result, Petitioner's proposed amendment would be futile, and his Motion to Amend [Doc. 34] is **DENIED**.

SO ORDERED this 5th day of April, 2024.



J. P. BOULEE
United States District Judge

Petitioner has obtained authorization from the Eleventh Circuit to pursue relief on a successive claim.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JERRY LESTER WILLIS,

Petitioner,

v.

LELAND LINAHAN,

Respondent.

CIVIL ACTION NO.
1:95-CV-0359-JPB

ORDER

This matter is before the Court on Petitioner Jerry Lester Willis' Fed. R. Civ. P. 60(b) Motion for Reconsideration [Doc. 26]. This Court finds as follows:

BACKGROUND

Petitioner initially filed a 28 U.S.C. § 2254 petition for a writ of habeas corpus on February 14, 1995, challenging his April 14, 1992 convictions in DeKalb County Superior Court. [Doc. 1]. In a Report and Recommendation ("R. & R.") entered on September 18, 1995, Magistrate Judge Gerrilyn G. Brill recommended that the petition be denied. [Doc. 9]. After Petitioner filed objections, [Doc. 10], District Judge J. Owen Forrester adopted the R. & R., denied the petition and dismissed this action on September 23, 1996. [Doc. 18]. Thereafter, Petitioner sought to appeal, and the Eleventh Circuit Court of Appeals denied Petitioner's motion for a certificate of appealability on October

6, 1997. [Doc. 20]; [Doc. 23]. On September 18, 2001, Petitioner filed a motion seeking to reopen this matter. [Doc. 24]. In that motion, Petitioner argued that this Court failed to consider his claim that the trial court committed reversible error in telling the jury that the case would be appealed. Id. On November 30, 2001, Judge Forrester denied the motion, specifically finding that Judge Brill, in her R. & R., had, in fact, "addressed Petitioner's contention that the trial court erred when recharging the jury by referring to the appellate process" and had concluded that the claim was unavailing. [Doc. 25, p. 1].

In the instant Rule 60(b) motion, Petitioner again argues that this Court failed to address his claim that the criminal trial court erred in telling the jury that he would likely appeal his convictions. Petitioner further admits that this matter is "clearly stale," but asserts that he has been diligent in pursuing his rights. [Doc. 26, p. 7].

ANALYSIS

Local Rule 7.2 provides that motions for reconsideration are not to be filed "as a matter of routine practice," but only when "absolutely necessary." Reconsideration is limited to the following situations: (1) "an intervening change in controlling law;" (2) "the availability of new evidence;" or (3) "the need to correct clear error or prevent manifest injustice." Pepper v. Covington Specialty Ins. Co., No. 1:16-CV-693, 2017 WL 3499871, at *1 (N.D. Ga. Aug. 3, 2017). A party "'may not employ a motion for reconsideration as a vehicle to present new arguments or evidence that should have been raised earlier, introduce novel legal theories, or repackage familiar arguments to test

whether the Court will change its mind.'" Id. (quoting Brogdon v. Nat'l Healthcare Corp., 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000)). Importantly, a "motion under Rule 60(b) must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1).

At the outset, the Court notes that this matter was dismissed almost twenty-seven years ago, and regardless of Petitioner's purported diligence, such a remarkable delay is undeniably unreasonable. Moreover, this Court has already determined and redetermined that Petitioner is not entitled to relief with respect to his claim that the trial court committed reversible error in instructing the jury. Upon review of Petitioner's motion, this Court does not find that Petitioner has sufficiently shown the issue should be considered for a third time.

For the reasons discussed, Petitioner's Motion for Reconsideration [Doc. 26] is **DENIED**.

SO ORDERED this 27th day of October, 2023.

J. P. BOULEE
United States District Judge

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

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Jerry Wills
JERRY WILLIS

Date: 25 JULY, 2024