

APPENDIX

A

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10602

SHANNON LEVON CLARK,

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. 8:17-cv-02556-MSS-CPT

ORDER:

Shannon Clark moves for a certificate of appealability ("COA") in order to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition, reconsideration, and other miscellaneous motions. As an initial matter, Clark's motions for excess pages and to consider his COA as timely filed are GRANTED.

To merit a certificate of appealability, Clark must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Because he has failed to make the requisite showing, the motion for a certificate of appealability is DENIED.

His motion for leave to proceed *in forma pauperis* on appeal is DENIED AS MOOT.

Finally, Clark's motion for clarification as to whether the appeal of the denial of his motion to disqualify the district court judge and the denial of his motion for appointment of counsel on appeal is GRANTED to note that the appeal of the denial of these motions is pending in Case No. 23-11762.

/s/ Elizabeth L. Branch

UNITED STATES CIRCUIT JUDGE

APPENDIX A

- I. District Court Order denying habeas corpus and COA
- II. Eleventh Circuit Order denying COA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SHANNON L. CLARK,

Petitioner,

Case No: 8:17-cv-2556-MSS-CPT

v.

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

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED final judgment is entered in favor of the Respondents. The Petitioner, Shannon L. Clark's second amended petition for the writ of habeas corpus (Doc. 23) is DENIED.

**ELIZABETH M. WARREN,
CLERK**

s/AC, Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SHANNON CLARK

Petitioner,

v.

Case No. 8:17-cv-2556-MSS-CPT

SECRETARY, Department of Corrections,

Respondent.

ORDER

This cause comes before the Court on Clark's "Motion for Additional Time or Motion to Amend Judgment" (Doc. 103), "Motion for Reconsideration for Order for Certificate of Appealability" (Doc. 104), "Motion for Leave to Represent Statement of Affidavit Evidence" (Doc. 105), Memorandum of Law (Doc. 106), "Motion to Withdraw Motion for Extension of Time and Motion to Amend Judgment" (Doc. 107), "Request to Reassign Counsel to Represent Oral Argument" (Doc. 108), and "Request for an Evidentiary Hearing" (Doc. 111). Each motion is addressed in one of the following four sections:

I.

“Motion for Additional Time or Motion to Amend Judgment” (Doc. 103) and
“Motion to Withdraw Motion for Extension of Time and Motion to Amend
Judgment” (Doc. 107)

An earlier order denied Clark's second amended petition under 28 U.S.C. § 2254. (Doc. 99) In his “Motion for Additional Time or Motion to Amend Judgment” (Doc. 103) filed in November 2021, Clark cites Federal Rule of Civil Procedure 59(e) and requests additional time in which to file a motion for reconsideration of the earlier order denying his second amended federal petition. Subsequently recognizing that Federal Rule of Civil Procedure 6(b)(2) prohibits this Court from extending the time to act under Rule 59(e), Clark now moves to withdraw the earlier motion. Upon review, Clark's “Motion to Withdraw Motion for Extension of Time and Motion to Amend Judgment” (Doc. 107) is **GRANTED**. Clark's “Motion for Additional Time or Motion to Amend Judgment” (Doc. 103) is **WITHDRAWN**.

II.

“Motion for Reconsideration for Order For Certificate of Appealability” (Doc. 104) and “Motion for Leave to Represent Statement of Affidavit Evidence (Doc. 105)

In both his “Motion for Reconsideration for Order for Certificate of Appealability” (Doc. 104) and his “Motion for Leave to Represent Statement of Affidavit Evidence” (Doc. 105), Clark cites Federal Rules of Civil Procedure 59(e) and 60(b)(6) as the bases for relief. After reviewing the content of the motions, this Court

construes each as both a motion to alter or amend a judgment under Rule 59(e) and a motion for relief from a judgment or order under Rule 60(b)(6).

Rule 59(e)

Rule 59(e) authorizes a motion to alter or amend a judgment after the judgment's entry. "The only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). The decision to alter or amend a judgment under Rule 59(e) "is committed to the sound discretion of the district judge." *Am. Home Assur. Co. v. Glenn Estess & Assocs.*, 763 F.2d 1237, 1238–39 (11th Cir. 1985). A party seeking reconsideration must "set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Cover v. Wal-Mart Stores, Inc.*, 148 F.R.D. 294, 294 (M.D. Fla. 1993). "A [Rule 59(e)] motion for reconsideration may not be used 'to relitigate old matters or raise arguments or present evidence that could earlier have been raised.'" *Richardson v. Johnson*, 598 F.3d 734, 740 (11th Cir. 2010) (quoting *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005)).

Clark alleges that there are "clearly erroneous factual determinations" in this Court's order denying claim 1 of Ground Five, claim 6 of Ground One, and claim 1 of Ground Seven of his second amended federal petition. (Doc. 104 at 1) In claim 1 of Ground Five Clark alleged that his trial counsel rendered ineffective assistance during closing argument by conceding Clark's guilt to second-degree murder. The claim was denied because Clark failed to provide a record citation to support this allegation and this Court's review of counsel's closing argument shows no such

concession of guilt. In his motion Clark again repeatedly insists that his counsel stated to the jury that “he’s guilty of second degree murder like [co-defendant] Erica Brown.” (Doc. 104 at 8, 14, 17) As in his federal petition, Clark fails to cite any page of the trial transcript showing that counsel made the alleged statement and he has not provided any exhibit or copy of the transcript to support the claim. The Court has again reviewed trial counsel’s closing argument in its entirety and finds no concession of guilt as Clark alleges. (Doc. 46, Ex. 43, trial transcript at 472–501)¹

In claim 6 of Ground One of the second amended petition Clark alleged that his resentencing counsel rendered ineffective assistance by “impair[ing] the Petitioner’s . . . rights to due process upon wrongly waiving the right to have the Petitioner evaluated for recorded brain damage and migraines.” (Doc. 23 at 6–7) This claim was denied as procedurally barred because Clark failed to present the claim to the state court and failed to satisfy either the cause and prejudice exception or the fundamental miscarriage of justice exception to overcome the procedural default.

¹ The only excerpt that Clark could arguably be referring to is the following:

“Mr. Siracusa made it a point to tell you something that nobody ever testified to, and that is that Shannon Clark is responsible, and he is a principal in this particular case, not only because of the testimony of Erica Brown that puts him there, but according to Mr. Siracusa, Shannon Clark brought the guns, masks, and gloves to this party.”

However, counsel was merely recounting what the testimony was. He then proceeds to explain that the testimony was not credible, arguing further:

“The only problem with that is the only person that told you that is Mr. Siracusa. He didn’t take the witness stand. He didn’t swear to tell the truth, the whole truth, and nothing but the truth. And what we are up here doing right now is arguing to you. There is absolutely no evidence of that in any way, shape, or form.”

(Doc. 99 at 23) Clark argues that this Court’s “factual findings were clearly erroneous because the issue of incompetence at the time of sentencing was not addressed on the merits per *Clisby* and this allegation can encompass both substantive and procedural due process violations” (Doc. 104 at 23) Clark asserts entitlement to both an evidentiary hearing and a merits review of this claim.

Clark simply reiterates the argument he made in his second amended federal petition. *Clisby v. Jones*, 960 F.2d 925, 935–36 (11th Cir. 1992), requires a district court to resolve all claims for relief raised in a habeas petition, regardless of whether relief is granted or denied. Contrary to Clark’s argument, *Clisby* does not require a district court to conduct a merits review of a procedurally defaulted claim. This Court addressed and resolved claim 6 of Ground One in accordance with *Clisby*.

In claim 1 of Ground Seven of his second amended petition Clark alleged that the judge who presided over his state post-conviction proceedings was biased against him. This Court denied relief on this claim because the alleged error occurred during a state post-conviction proceeding, not during the criminal trial that resulted in Clark’s convictions. As stated in the earlier order denying the petition, the claim cannot be a basis for federal habeas relief because the claim asserts no constitutional challenge to Clark’s confinement. *See Carroll v. Sec’y, Dep’t of Corr.*, 574 F.3d 1354, 1365 (11th Cir.2009).

In his motions Clark neither presents newly-discovered evidence to support his second amended federal petition nor demonstrates a manifest error of law or fact

resulting from the denial of the petition on a procedural ground. Consequently, Clark shows no entitlement to relief under Rule 59(e).

Rule 60(b)

Clark also seeks relief under Rule 60(b)(6), which provides relief from a judgment for “any other reason justifying relief from the operation of the judgment.” To show entitlement to relief under Rule 60(b), a movant “must demonstrate a justification for relief so compelling that the district court [is] required to grant [his] motion.” *Rice v. Ford Motor Co.*, 88 F.3d 914, 919 (11th Cir. 1996). Rule 60(b)(6) requires a showing of “extraordinary circumstances” before relief is warranted. *Gonzalez v. Crosby*, 545 U.S. 524, 535–36 (2005). The Supreme Court suggests that “such circumstances will rarely occur in the habeas context.” *Gonzalez*, 545 U.S. at 535. Clark establishes no “extraordinary circumstance” justifying relief under Rule 60(b)(6).

Accordingly, Clark’s “Motion for Reconsideration for Order For Certificate of Appealability” (Doc. 104) is **DENIED** and his “Motion for Leave to Represent Statement of Affidavit Evidence” (Doc. 105) is **DENIED**.

III.

“Request to Reassign Counsel to Represent Oral Argument” (Doc. 108)

In the earlier order (Doc. 99) denying Clark’s second amended petition this Court granted his “Notice to Dismissing Counsel and Proceeding Pro Se” (Doc. 98). Clark now proceeds *pro se*. In his present “Request to Reassign Counsel to Represent

Oral Argument" (Doc. 108) Clark moves for the re-appointment of his retained counsel. He alleges that in his "Notice to Dismissing Counsel and Proceeding Pro Se" (Doc. 98) that he "was only informing the honorable Court that he was 'in the process' to dismiss counsel and proceed *pro se* . . . unless that honorable Court held a hearing to determine what is wrong between the Petitioner and his mouthpiece." (Doc. 108 at 2-3) Clark now "requests the honorable Court to rescind from its Order granting 'Notice to Dismissing Counsel and Proceeding Pro Se' [and] then re-appoint counsel back to the record to represent oral arguments for claim 1 [of] Ground 6, claim 6 [of] Ground 1, and claim 1 [of] Ground 7 under *Clisby* and Rule 59(e), F.R.C.P." (Doc. 108 at 4)

Clark retained his former counsel, Rachael Reese, Esquire.² The second amended petition has been resolved and this case is closed. Clark presents no basis for either the appointment of counsel or an evidentiary hearing. Accordingly, Clark's "Request to Reassign Counsel to Represent Oral Argument" (Doc. 108) is **DENIED**.

IV.

"Request for an Evidentiary Hearing" (Doc. 111)

Clark moves for an evidentiary hearing on claim 1 of Ground Five of his second amended petition in which he alleged that his trial counsel rendered ineffective assistance during closing argument by conceding Clark's guilt to second-degree

² The Court notes that as of the date of this Order, former counsel has yet to comply with this Court's earlier order from June 2021 (Doc. 91) directing counsel to advise this Court of the status of the complaint filed against her by Clark with the Florida Bar.

murder. Clark argues that “counsel’s strategy in emphasizing second-degree murder was not sound trial strategy” and that “during an evidentiary [hearing] . . . the Petitioner would produce a record establishing that trial counsel was selling him out by maintaining that this case all comes down to Erica Brown’s second-degree murder deal” (Doc. 111 at 4–5, 7)

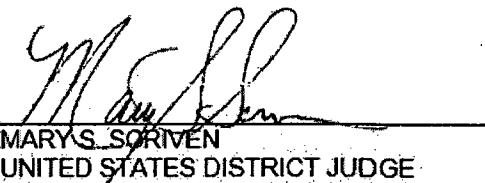
In his motion Clark reiterates the argument he presented to this Court in his second amended petition, which claim was denied in the earlier Order. (Doc. 99) An evidentiary hearing is unnecessary as it “plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief.” *Broadwater v. United States*, 292 F.3d 1302, 1303 (11th Cir. 2002). Accordingly, Clark’s “Request for an Evidentiary Hearing” (Doc. 111) is **DENIED**.

* * * *

The Court previously declined to issue a certificate of appealability. (Doc. 99 at 92–93). Because Clark has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is **DENIED**. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Further, because Clark is not entitled to a certificate of appealability, he is not entitled to appeal *in forma pauperis*.

The **CLERK** is directed to send a copy of this Order to Clark's former counsel at the following address: Rachael Reese, Esquire, c/o O'Brien Hatfield, P.A., 511 W. Bay Street, Tampa, Florida 33606-3533.

DONE AND ORDERED in Tampa, Florida, this 10th day of January, 2022.



MARY S. SORIVEN
UNITED STATES DISTRICT JUDGE

APPENDIX

C

EXHIBIT A (1)

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

March 13, 2024

Clerk - Middle District of Florida
U.S. District Court
801 N FLORIDA AVE
TAMPA, FL 33602-3849

Appeal Number: 23-11762-D
Case Style: Shannon Clark v. Secretary, Department of Corrections, et al
District Court Docket No: 8:17-cv-02556-MSS-CPT

The enclosed copy of the Clerk's Order of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

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-2 Letter and Entry of Dismissal

EXHIBIT A(2)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-11762-D

SHANNON L. CLARK,

Petitioner - Appellant,

versus

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

Respondents - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER: Pursuant to the 11th Cir. R. 42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Shannon Levon Clark has failed to pay the filing and docketing fees to the district court within the time fixed by the rules.

Effective March 13, 2024.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

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

March 19, 2024

Shannon Levon Clark
Walton CI - Inmate Legal Mail
691 INSTITUTION RD
DEFUNIAK SPRINGS, FL 32433

Appeal Number: ~~23-11762-D~~
Case Style: Shannon Clark v. Secretary, Department of Corrections, et al
District Court Docket No: 8:17-cv-02556-MSS-CPT

NO ACTION / DEFICIENCY NOTICE

Notice that no action will be taken on Motion for extension of time to file IFP motion [10161965-2] filed by Appellant Shannon Levon Clark.

Reason(s) no action being taken on filing(s): The filing is deficient for failure to comply with this Court's rules on Certificates of Interested Persons and Corporate Disclosure Statements. See 11th Cir. R. 26.1-1..

No deadlines will be extended as a result of your deficient filing.

- not including a CIP in your filing. See 11th Cir. R. 26.1-1(a)(1).

ACTION REQUIRED

For motions for reconsideration or petitions for rehearing that are not permitted, no action is required or permitted. Your filing will not be considered.

For mistaken filings, to have your document considered, **you must file the document in the correct court.**

For all other deficiencies, to have your document considered, **you must refile the entire document** after all the deficiencies identified above have been corrected and **you must include** any required items identified above **along with** the refiled document. No action will be taken if you only provide the missing items without refiling your entire document.

EXHIBIT B

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11762

SHANNON L. CLARK,

Petitioner-Appellant,

versus

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

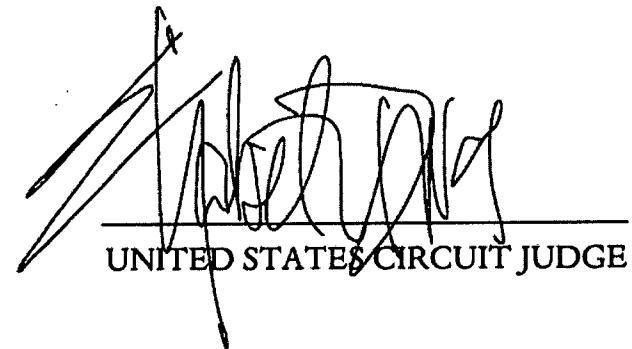
Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:17-cv-02556-MSS-CPT

ORDER:

Shannon Clark moves for a certificate of appealability, as construed from his notice of appeal, leave to proceed *in forma pauperis* ("IFP"), and for clarification on appeal from the denial of a motion to disqualify the district court judge and the denial of a motion for appointment of counsel on appeal following the denial of his 28 U.S.C. § 2254 habeas corpus petition.

As an initial matter, a COA is not necessary in order for Clark to appeal. Accordingly, the Clerk's Office is directed to unconstrue Clark's notice of appeal as a motion for a COA. Clark's motions for IFP and clarification are DENIED.



UNITED STATES CIRCUIT JUDGE

A handwritten signature in black ink, appearing to be a stylized 'J' or 'D', is written above a horizontal line. Below the line, the text "UNITED STATES CIRCUIT JUDGE" is printed in a standard font.

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