In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13123

MARIA NAVARRO MARTIN,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cv-00149-RBD-EJK

ORDER:

Maria Martin is a Florida prisoner serving a seven-year sentence for witness tampering. She filed a *pro se* 28 U.S.C. § 2254 petition, arguing, as amended, that Fla. Stat. § 914.22, the statute under which she was convicted, is unconstitutional. The district court denied the petition after finding that the claim was procedurally barred because Martin had failed to raise it in the state courts. Martin now moves this Court for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP").

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement 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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation omitted). Where the district court denied a habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Id.* at 484-85.

Here, reasonable jurists would not debate the district court's denial of Martin's § 2254 petition for failure to exhaust the claim. Although Martin raised the issue in her motion for a judgment of an acquittal, she did not raise the claim on direct appeal, as she voluntarily dismissed that appeal through counsel. Moreover, she did not raise it in her Fla. R. Crim. P. 3.850 motion or on appeal from the denial of that motion. Lastly, even if Martin had raised the

claim in her Fla. R. Crim. P. 3.800 motion, she did not appeal the denial of that motion, and thus failed to properly exhaust it. *See Ward v. Hall*, 592 F.3d 1144, 1156 (11th Cir. 2010). She further did not allege cause and prejudice to excuse the default, nor did she demonstrate the applicability of the actual innocence exception. *See McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir. 2011).

Accordingly, Martin's motion for a COA is DENIED. Her motion for leave to proceed IFP is also DENIED as moot.

/s/ Nancy G. Abudu
UNITED STATES CIRCUIT JUDGE

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13123

MARIA NAVARRO MARTIN,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cv-00149-RBD-EJK

Before BRASHER AND ABUDU, Circuit Judges.

BY THE COURT:

Maria Martin has filed a motion for reconsideration of this Court's May 2, 2024, order denying her motions for a certificate of appealability and leave to proceed *in forma pauperis*. Upon review, Martin's motion for reconsideration is DENIED because she has offered no new evidence or arguments of merit to warrant reconsideration.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARIA NAVARRO MARTIN,

Petitioner,

v. Case No: 6:23-cv-149-RBD-EJK

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

ORDER

This cause is before the Court on the Amended Petition for Writ of Habeas Corpus ("Amended Petition," Doc. 3) filed by Petitioner under 28 U.S.C. § 2254. Respondents filed a Response to Petition ("Response," Doc. 9) in compliance with this Court's instructions and with the *Rules Governing Section 2254 Cases in the United States District Courts*. Petitioner filed Replies (Doc. Nos. 15, 22, 25) to the Response. For the following reasons, the Court concludes that Petitioner is not entitled to relief on her claims.

I. PROCEDURAL BACKGROUND

The State Attorney in and for the Ninth Judicial Circuit charged Petitioner by second amended criminal information in Orange County, Florida with one count of witness tampering (Count One) and one count of conspiracy to commit

witness tampering (Count Two). (Doc. 10-2 at 43-44). A jury trial was held, and the trial court granted Petitioner's motion for a judgment of acquittal as to Count Two and the jury found Petitioner guilty as to Count One. (*Id.* at 45-50.) The trial court adjudicated Petitioner guilty of the offense and sentenced her to imprisonment for a term of seven years. (*Id.* at 47, 76-77) Petitioner filed a direct appeal but subsequently voluntarily dismissed the appeal. (*Id.* at 5).

Petitioner next filed a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850, which she later amended. (*Id.* at 81-116.) The trial court entered an order denying Claims One, Two, Three, Five, Six, Seven, and Eight and granting an evidentiary hearing on Claim Four. (*Id.* at 313-19.) After the evidentiary hearing, the trial court denied relief. (*Id.* at 756-58.) The Fifth DCA affirmed the denial *per curiam*. (*Id.* at 935.)

Petitioner filed a motion to correct illegal sentence under Florida Rule of Criminal Procedure 3.800. (*Id.* at 766-96). It does not appear that the trial court entered an order on the motion. However, a Rule 3.800 motion is "deemed denied, and the trial court's jurisdiction ends, once 60 days elapse without rendition of an order ruling on the motion . . . ." *Sessions v. State*, 907 So. 2d 572, 573 (Fla. 1st DCA 2005).

Petitioner subsequently filed a petition for writ of habeas corpus, which the Fifth DCA dismissed. (*Id.* at 939-57, 964.)

II. LEGAL STANDARD

A petitioner must exhaust all available state court remedies before filing a federal habeas petition. 28 U.S.C. § 2254(b)(1)(A); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). "Exhaustion requires that 'state prisoners . . . give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process.'" *Mason v. Allen*, 605 F.3d 1114, 1119 (11th Cir. 2010) (quoting *O'Sullivan*, 526 U.S. at 845).

A habeas claim not properly exhausted in the state courts is procedurally defaulted if presentation of the claim in state court would be barred by state procedural rules. *Gray v. Netherland*, 518 U.S. 152, 161–62 (1996); *Coleman v. Thompson*, 501 U.S. 722, 735 n.1 (1991). "[I]f the petitioner failed to exhaust state remedies and the court to which the petitioner would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred[,] . . . there is a procedural default for purposes of federal habeas." *Coleman*, 501 U.S. at 735 n.1 (citations omitted). A procedural default can be overcome either through showing cause for the default and resulting prejudice, *Murray v. Carrier*, 477 U.S. 478, 488 (1986), or establishing a "fundamental

miscarriage of justice," which requires a colorable showing of actual innocence. *Schlup v. Delo*, 513 U.S. 298, 324–27 (1995).

III. ANALYSIS

Petitioner argues that § 914.22, Florida Statutes is unconstitutional and that she raised this argument in the motion for a judgment of acquittal and in the Rule 3.850 motion.[1] (Doc. 1 at 6).

Contrary to Petitioner's assertion, it does not appear this claim was raised with the state courts. Petitioner voluntarily dismissed her direct appeal, and, therefore, this claim was not raised on direct appeal. Petitioner argued in her Rule 3.850 motion that "the State did not establish the crime alleged." (*Id.* at 109, 137, 316). However, Petitioner did not raise the issue of whether § 914.22 was constitutional, and, in addition, the trial court found that Petitioner's "challenge to the sufficiency of the evidence was an issue for direct appeal and, therefore, is not cognizable in this Rule 3.850 motion." (Doc. 10-2 at 316). Also, on appeal of the denial of the Rule 3.850 motion, Petitioner did not raise the issue of whether § 914.22 was constitutional.

---

[1] Count One of the second amended information alleged a violation of sections 914.22(1)(a) and 914.22(2)(d). Section 914.22 sets forth the crimes relating to tampering with or harassing a witness, victim, or informant.

This claim is procedurally barred because it was not raised with the state courts.[2] Petitioner has not shown either cause or prejudice that would excuse the default. Likewise, Petitioner has neither alleged nor shown the applicability of the actual innocence exception. A review of the record reveals that Petitioner cannot satisfy either exception to the procedural default bar. Therefore, this claim is procedurally barred and will be denied.[3]

IV. CERTIFICATE OF APPEALABILITY

This Court should grant an application for a certificate of appealability only if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Lamarca v. Sec'y, Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). However, the petitioner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

Petitioner fails to demonstrate that reasonable jurists would find the district

---

[2] To the extent any portion of this claim was raised in the Rule 3.850 motion, the trial court determined that it was procedurally barred. (Doc. 10-2 at 316.)

[3] In addition, aside from vague and conclusory allegations, Petitioner has failed to show that § 914.22 is unconstitutional. Therefore, this claim is without merit.

court's assessment of the constitutional claims debatable or wrong. Moreover, Petitioner cannot show that jurists of reason would find this Court's procedural rulings debatable. Petitioner fails to make a substantial showing of the denial of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

V. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Amended Petition for Writ of Habeas Corpus (Doc. 3) is **DENIED**.

2. This case is **DISMISSED with prejudice**.

3. Petitioner is **DENIED** a certificate of appealability in this case.

4. The Clerk of the Court is directed to enter judgment in favor of Respondents and to close this case.

DONE and **ORDERED** in Orlando, Florida on September 15, 2023.

ROY B. DALTON, JR.
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Party