

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

**ROBERT D. BATSON
PETITIONER,**

VS.

**DAVID J. SMITH, CLERK OF COURT
JOHN DOE, STAFF ATTORNEY
RESPONDENT(S)**

**APPENDIX
TO
PETITION FOR WRIT OF MANDAMUS**

APPENDIX A. 12/13/24 No Action Order Entered Against Batson.

APPENDIX B. 11/18/24 No Action Order Entered Against Batson.

APPENDIX C. 4/9/24 Order Denying COA.

APPENDIX D. 7/25/24 Order Denying Motion For Reconsideration.

APPENDIX E. 11/1/24 Rule 60(b) Motion Filed By Batson.

APPENDIX F. 11/7/24 & 11/27/24 No Action Order(s) Enter Against George Fields.

APPENDIX G. 11/5/24 & _____ No Action Order(s) Entered Against Patrick Wharen.

Respectfully Submitted

Robert Batson

Robert Batson, DC# 708431
Union Correctional Institution
P.O. Box 1000
Raiford, FL 32083

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

December 13, 2024

Robert Darrel Batson
Tomoka CI - Inmate Legal Mail
3950 TIGER BAY RD
DAYTONA BEACH, FL 32124-1098

Appeal Number: 23-13270-C

Case Style: Robert Batson v. Secretary, Florida Department of Corrections, et al

District Court Docket No: 3:20-cv-00538-TJC-JBT

NO ACTION / DEFICIENCY NOTICE

Notice that no action will be taken on Motion for reconsideration of single judge's order [10358320-2], Motion [10358320-3], Motion to consolidate appeals [10358320-4], Motion to take judicial notice [10358320-5], Motion for appointment of counsel [10358320-6], Motion en banc rehrg [10358320-7] filed by Appellant Robert Darrel Batson.

Reason(s) no action being taken on filing(s): Successive motions for reconsideration are not permitted. See 11th Cir. R. 27-3. Additionally, 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.

Certificate of Interested Persons and Corporate Disclosure Statement ("CIP")

You failed to comply with the CIP rules by:

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

Successive Motions for Reconsideration Not Permitted

A party may file only one motion for reconsideration with respect to the same order. Likewise, a party may not request reconsideration of an order disposing of a motion for reconsideration previously filed by that party. See 11th Cir. R. 27-3.

ACTION REQUIRED

Exh. 27(A)

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

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November 18, 2024

Robert Darrel Batson
Tomoka CI - Inmate Trust Fund
3950 TIGER BAY RD
DAYTONA BEACH, FL 32124-1098

Appeal Number: 23-13270-C

Case Style: Robert Batson v. Secretary, Florida Department of Corrections, et al

District Court Docket No: 3:20-cv-00538-TJC-JBT

NO ACTION / DEFICIENCY NOTICE

Notice that no action will be taken on Motion for reconsideration of single judge's order [10339784-2] filed by Appellant Robert Darrel Batson.

Reason(s) no action being taken on filing(s): Successive motions for reconsideration are not permitted. See 11th Cir. R. 27-3.

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

Successive Motions for Reconsideration Not Permitted

A party may file only one motion for reconsideration with respect to the same order. Likewise, a party may not request reconsideration of an order disposing of a motion for reconsideration previously filed by that party. See 11th Cir. R. 27-3.

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**

Exhibit (B)

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.

Please note that any filing submitted out of time must be accompanied by an appropriate motion, *i.e.*, a motion to file out of time, a motion to reinstate if the case has been dismissed, and/or a motion to recall the mandate if the mandate has issued.

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

Notice No Action Taken

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13270

ROBERT DARREL BATSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00538-TJC-JBT

Exhibit (C)

ORDER:

Robert Batson is a Florida prisoner serving a 40-year sentence for possession of a gun by a convicted felon. He filed a *pro se* 28 U.S.C. § 2254 habeas corpus petition, alleging that:

- (1) appellate counsel failed to challenge the trial court's pretrial order excluding evidence that would have supported a necessity defense;
- (2) appellate counsel failed to challenge trial counsel's failure to file a motion to suppress; and
- (3) the trial court violated his due process rights by not giving him a full and fair opportunity to litigate his Fourth Amendment claim.

The district court denied the petition, and Batson appealed. Batson now moves for a certificate of appealability ("COA"), for leave to file excess pages for his motion for COA, and for leave to proceed *in forma pauperis* ("IFP"). As an initial matter, Batson's motion for leave to file excess pages for his COA motion is GRANTED.

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). If a state court has adjudicated a claim on the merits, a

23-13270

Order of the Court

3

federal court may grant habeas relief only if the state court decision (1) "was contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." 28 U.S.C. § 2254(d)(1), (2).

Here, reasonable jurists would not debate the denial of Grounds 1 and 2. The Florida Fifth District Court of Appeal ("Fifth DCA") reasonably rejected these claims, as Batson had the opportunity to raise any claim he wished once the Fifth DCA allowed him to proceed *pro se* on direct appeal and file a replacement initial brief. *See Faretta v. California*, 422 U.S. 806, 834 n.46 (1975). In fact, he himself argued that the trial court should not have granted the state's motions *in limine*, one of the claims that he asserted that appellate counsel should have raised. Further, he could not blame appellate counsel for his own decision to not challenge trial counsel's failure to file a motion to suppress. Accordingly, appellate counsel was not ineffective.

Additionally, reasonable jurists would not debate the denial of Ground 3, as the Fifth DCA reasonably rejected this claim. To the extent that Batson was raising a Fourth Amendment claim, the district court correctly found that this claim was barred because he was given a full and fair opportunity to litigate his claim in state court. *See Stone v. Powell*, 428 U.S. 465, 494 (1976). Batson filed a motion to suppress that was denied after an evidentiary hearing, where he cross-examined the state's sole witness at length and

presented oral argument. Further, the trial court provided a brief explanation for its decision to deny the motion, and the Fifth DCA rejected this claim when it was raised on direct appeal. Thus, the record reflects that Batson's Fourth Amendment claim was fully litigated in state court, and as a result, the claim is barred from federal habeas review. *See Tukes v. Dugger*, 911 F.2d 508, 513-14 (11th Cir. 1990).

To the extent that Batson was, instead, arguing that *Stone* itself required certain due process protections in the litigation of a Fourth Amendment claim, this understanding of *Stone* was misguided. Rather, *Stone* simply bars federal habeas review of Fourth Amendment claims that state courts have fully and fairly considered and does not implicate the Fourteenth Amendment's Due Process Clause. *See Stone*, 428 U.S. at 494. Batson did not otherwise identify any clearly established federal law requiring certain due process protections in the litigation of a Fourth Amendment claim. *See* 28 U.S.C. § 2254(d)(1). Accordingly, Batson's COA motion is DENIED, and his motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13270

ROBERT DARREL BATSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00538-TJC-JBT

Before ROSENBAUM and LUCK, Circuit Judges.

Exhibit (D).

BY THE COURT:

Robert Batson has moved for panel or *en banc* rehearing of this Court's order denying a certificate of appealability on appeal from the denial of his 28 U.S.C. § 2254 habeas corpus petition. This motion is construed as a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2. He also seeks leave to file this motion for reconsideration out-of-time and leave to file excess pages in support of this motion.

Batson's motions for leave to file an out-of-time motion for reconsideration and for leave to file excess pages are GRANTED. However, his motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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