

United State's Supreme Court

PROVIDED TO TOMOKA
CORRECTIONAL INSTITUTION
ON 09/23/2024
FOR MAILING BY AT

Robert D. Batsan,
Petitioner,

S.C. Case No: _____

vs.

(To Be Assigned)

App. Case No: 23-13270

Secretary Dept of Corr. and
Attorney General of Florida
Respondent.

Motion For Extension of Time

Come's now the Petitioner, Robert Batsan, in proper person, pro se, and pursuant to Sup. Ct. Rule 30, and respectfully move's this Honorable Court to Grant him an Extension of time to file his writ of certiorari, and in support, petitioner would show:

FACTS

- 1). ON April 9th 2024, Petitioner's Application for Certificate of Appealability was denied by the Eleventh Circuit Court of Appeals.
- 2). ON July 25th 2024, A Timely motion For Reconsideration was Likewise denied.
- 3). The Present Deadline For Filing a writ of certiorari is October 23rd 2024.
- 4). Petitioner is presently preparing a Rule 60(b) motion to be filed with the Eleventh Circuit Court of Appeal challenging the order's rendered for lack of Jurisdiction.

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where the Court reached the merits of the claims raised in the C.O.A., and then denied the C.O.A., based on the merits determination, contrary to the Jurisdictional prerequisites of 28 U.S.C. § 2253 and this Court's holding in Buck v. Davis 137 S. Ct 759 (2017), and Miller-El v. Cockrell 123 S. Ct 1029 (2003),

- 5). In conjunction with the Filing of this motion, Petitioner has also provided this court with a motion to stay the running of the time period to file the writ of Certiorari in, until the Eleventh Circuit Court of Appeal has rendered a ruling on Petitioner's Rule 60(b) motion.

Wherefore, and for the foregoing reasons, Petitioner respectfully moves this Honorable Court to grant an Extension of time to file his writ of Certiorari in the amount of (60) days.

Respectfully submitted

Robert A. Batson
Robert Batson, DC# 792344
Petitioner pro se.

PROOF OF SERVICE

I Hereby Declare Under the Penalty of Perjury,
pursuant to 28 U.S.C. § 1746, and Further Certify that
the instant motion For Extension of time has been
hand delivered to Tamoka C.I. mail room staff for
mailing U.S. mail TO: OFFICE OF ATTORNEY GENERAL,
444 Seabreeze Blvd, Ste 500, Daytona Beach, FL,
32118, on this 20th Day of September 2024,

Respectfully submitted

Robert Bratsen
Robert Bratsen, DC# 792344
Tamoka Correctional Inst
3950 Tiger Bay Rd.
Daytona Beach, FL.
32124,

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

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

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Order of the Court

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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.

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.