

APPENDIX A

Denial of Reconsideration by
United States Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-16845-H

JOHN MICHAEL WOODRUFF,

Petitioner-Appellant,

versus

KAYLA CROCKETT,
COMMISSIONER, GEORGIA DEPARTMENT OF COMMUNITY SUPERVISION,

Respondents-Appellees.

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

Before: WILLIAM PRYOR and MARTIN, Circuit Judges.

BY THE COURT:

John Michael Woodruff filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's September 19, 2017, order denying a certificate of appealability, in order to appeal the denial of his 28 U.S.C. § 2254 petition and motion to proceed *in forma pauperis*. Upon review, Woodruff's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

APPENDIX B

Decision of the United States Court of Appeals

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 16-16845-H

JOHN MICHAEL WOODRUFF,

Petitioner-Appellant,

versus

**KAYLA CROCKETT,
COMMISSIONER, GEORGIA DEPARTMENT OF COMMUNITY
SUPERVISION,**

Respondents-Appellees.

**Appeal from the United States District Court
for the Middle District of Georgia**

ORDER:

John Woodruff moves for a certificate of appealability to appeal the dismissal of his 28 U.S.C. § 2254 petition and for leave to proceed in forma pauperis ("IFP"). Mr. Woodruff is a Georgia prisoner serving a three-year probated sentence for making terroristic threats and a 12-month concurrent probated sentence for disorderly conduct. In April 2006, Mr. Woodruff filed this amended § 2254 petition alleging that:

- (1) he is actually innocent of the crime and possesses an audio recording of the events, which was not presented at trial and that disproves the elements of terroristic threat and disorderly conduct;
- (2) counsel was ineffective for failing to thoroughly cross-examine state witnesses, present evidence, and argue for a directed verdict;
- (3) the state referenced his election not to testify during closing arguments; and
- (4) there were due process violations concerning unspecified "local practices;"

Mr. Woodruff acknowledged that none of his claims had been presented to the state court in direct appeal. He argued that his actual innocence allowed a federal court to hear his petition even though he had not yet presented his claims in state court.

The state filed a limited response to the petition that denied all of Mr. Woodruff's allegations and moved to dismiss the petition for lack of exhaustion, because his conviction was not yet final under state law.¹ Mr. Woodruff replied that the state's response ignored his claim that his demonstration of actual innocence excused the procedural default of his claims.

¹ The state also filed a motion to dismiss Commissioner Michael W. Nail, of the Georgia Department of Community Supervision, as an Improper Party Respondent, which the district court denied as moot when it dismissed Mr. Woodruff's § 2254 petition. The state argued that the rules governing § 2254 cases provide that, when a petitioner is on parole or probation, the named respondent shall be the particular probation officer responsible for supervising the applicant, and the official in charge of the parole or probation agency. Because Mr. Woodruff was on probation, the state argued that his probation officer Kayla Crocket was the proper party respondent. Mr. Woodruff listed this motion in his notice of appeal. Because Mr. Woodruff's motion for a COA is denied, any appeal of the District Court's denial of this motion is moot.

The Magistrate Judge issued a report and recommendation ("R&R") that recommended granting the motion to dismiss because the petition was unexhausted. The Magistrate Judge found that, after his conviction and sentencing, Mr. Woodruff filed a motion for new trial, for which a hearing had not yet been scheduled, and he had not yet filed a direct appeal or any post-conviction pleadings in state court. The Magistrate Judge also determined actual innocence was not an exception to the rules requiring exhaustion; Mr. Woodruff did not contest that he failed to exhaust his claims; and he did not establish that state court remedies were unavailable or ineffective. Mr. Woodruff objected to the R&R. He argued that it failed to resolve his factual claim of actual innocence. Over Mr. Woodruff's objection, the District Court adopted the R&R, granted the motion to dismiss for lack of exhaustion, and denied a COA.

Mr. Woodruff filed a motion for reconsideration claiming the state court recently denied him IFP status for filing a writ of habeas corpus. However, he did not show that he had first filed a direct appeal or that he paid the filing fees and had actually filed his state post-conviction petition. He attached a draft of a state petition for writ of habeas corpus, which contained a virtually blank court-provided form, accompanied by 24 typed pages of memorandum that did not list any individual claims for relief. The draft did not bear a date-stamp to show it had been filed, and it did not have a case number.

Mr. Woodruff also filed a motion requesting a hearing on his motion for reconsideration and a motion for leave to proceed IFP on appeal. The District Court denied his motion for reconsideration and for leave to proceed IFP on appeal. Mr. Woodruff next filed what he titled a “second motion for recusal,” arguing that the court either refused to read his pleadings or suffered from some “cognitive infirmity.”² Mr. Woodruff then moved for a COA in this Court.

DISCUSSION:

In order to obtain a COA, a § 2254 petitioner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The 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, 120 S. Ct. 1595, 1604 (2000). When a District Court denies a § 2254 petition on procedural grounds alone, the COA applicant must show that reasonable jurists would find it debatable (1) whether the District Court was correct in its procedural ruling, and (2) whether the § 2254 petition stated a valid claim of the denial of a constitutional right. Id.

Before bringing a habeas action in federal court, the petitioner must exhaust all state court remedies that are available for challenging his conviction, either on direct appeal or in a state post-conviction motion. 28 U.S.C. § 2254(b),(c). An

² The docket does not show a first motion for recusal.

applicant is not deemed to have exhausted state remedies if he has the right under the law of the state to raise, by any available procedure, the question presented. Id. § 2254(c). The only exception that federal law provides to this requirement involves situations where there is no state corrective process. Id. § 2254(b)(1)(B).

Mr. Woodruff acknowledges that he did not present his claims to the state court. He has not filed a direct appeal or any post-conviction pleadings that would permit the state court to pass upon and correct the alleged violation of his rights, and he has not demonstrated that the state failed to provide corrective process. Indeed, he acknowledged that he could file a writ of habeas corpus in state court but has not done so. He argues that his claim of actual innocence permits this court to hear his petition. A claim of actual innocence excuses procedural default, not failure to exhaust. See Murray v. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 2649 (1986) (holding that, in an extraordinary case, where a constitutional violation likely resulted in the conviction of one who is actually innocent, a federal court may grant the writ, even in the absence of showing cause for procedural default). In addition, a claim of actual innocence must be based upon newly discovered evidence, which could not reasonably have been presented to the state trier of facts. Herrera v. Collins, 506 U.S. 390, 399, 113 S. Ct. 853, 860 (1993). The Supreme Court has not acknowledged this right. Id. Actual innocence does not excuse a failure to exhaust claims; it excuses procedural bars applied against

claims. See McQuiggin 132 S. Ct. at 1931. A claim of actual innocence is also required to contain newly discovered evidence that was not available at the time of trial. Herrera 506 U.S. at 399, 113 S. Ct. at 860. Mr. Woodruff presents no newly-discovered evidence. Reasonable jurists would not therefore debate the District Court's dismissal of his petition for failure to exhaust.

Motions for Reconsideration and Motions for Hearing on the Motion³

Mr. Woodruff argued in a first motion for reconsideration that he had demonstrated an absence of available state corrective process under § 2254(b)(1)(B) because the state denied him IFP standing to file a state post-conviction petition. But the state application for writ of habeas corpus that he filed did not appear to have been filed—it had no date stamp by the clerk of courts and no case number. Beyond that, he did not complete any of the required information on the court-provided form but instead attached a 24-page petition that did not contain individual claims for relief. Because Mr. Woodruff did not allege and presented no evidence demonstrating that he attempted to file the state writ, reasonable jurists would not debate the District Court's denial of this motion.

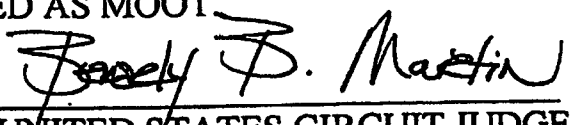
³ None of the motions for reconsideration were construed as brought under Fed. R. Civ. P. 59(e). The District Court did not rule on a COA following its denial of these motions. If this Court construes them as Rule 59(e) motions, it could remand these proceedings to the District Court with instructions to rule on a COA. See Fed. R. App. P. 22(b) (stating that if an appeal is taken by a federal habeas petitioner, the district judge who rendered the judgment must either issue a COA or state why a certificate should not issue). Under the circumstances of the case, such a remand would seem to be a waste of judicial resources, as the District Court made clear its intent to deny a COA with regard to Mr. Woodruff's claims.

In a second motion, he argued that the District Court erred by failing to address the merits of his claims. He then filed a “motion to recuse and second motion for reconsideration of dismissal,” where he raised the exact same argument raised in the prior motion. For reasons set out above, reasonable jurists would not debate the denial of this motion.

Motions for Leave to Proceed IFP

Mr. Woodruff filed a motion for leave to proceed IFP on appeal, which the District Court denied as moot. He filed a motion for reconsideration of this denial, arguing that his motion for leave to proceed IFP was not moot simply because the Court declined to issue a COA. He then filed an amended motion for reconsideration that mirrored the former motion. Mr. Woodruff also filed a renewed motion for leave to appeal IFP, arguing that the issue was not moot because he had applied for a COA from this Court. Reasonable jurists would not debate the District Court’s denial of these motions, because the court had not granted a COA.

Because Mr. Woodruff did not show that reasonable jurists would find debatable the denial of his § 2254 petition, his motion for a COA is DENIED and his motion for leave to proceed IFP is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE

APPENDIX C

Denial of Reconsideration by the USDC

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

JOHN MICHAEL WOODRUFF,

Petitioner,

v.

**KAYLA CROCKETT and MICHAEL W.
NAIL, Commissioner,**

Respondents.

Civil Action No. 7:16-CV-8 (HL)

ORDER

Before the Court is Petitioner's Motion for Reconsideration (Doc. 39) and Motion for Oral Argument (Doc. 40). Plaintiff asks the Court to reconsider its Order (Doc. 26) adopting the Recommendation (Doc. 24) of United States Magistrate Judge Thomas Q. Langstaff, finding Petitioner's federal habeas petition unexhausted and granting Respondent Kayla Crockett's Motion to Dismiss and denying as moot Commissioner Nail's Motion to Dismiss. Upon consideration, the Court denies Petitioner's motions.

Local Rule 7.6 cautions, "Motions for Reconsideration shall not be filed as a matter of routine practice." M.D.Ga. L.R. 7.6. A motion for reconsideration serves a "narrow purpose," primarily to "correct manifest errors of law or fact or to present newly discovered evidence that could not have been discovered at the time of the original motion." Hicks v. Battle, 2007 WL 274660, at *1 (M.D.Ga. Sept. 18, 2007) (internal quotation and citation omitted). "Reconsideration is

appropriate only if the movant demonstrates (1) that there has been an intervening change in the law, (2) that new evidence has been discovered which was not previously available to the parties in the exercise of due diligence, or (3) that the court made a clear error of law.” Bryant v. Citigroup, Inc., 2012 WL 3260443, at *1 (M.D. Ga. Aug. 8, 2012) (quoting Bingham v. Nelson, 2010 WL 339806, at *1 (M.D.Ga. Jan. 21, 2010)).

Petitioner fails to meet the requisite standard for granting a motion for reconsideration. He has shown no intervening change in the law, has presented no new evidence, and has demonstrated no need to a correct clear error of law. Petitioner’s motion is accordingly denied. The Court further denies Petitioner’s request for oral argument.

SO ORDERED this 14th day of November, 2016.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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APPENDIX D

Order of the USDC Adopting Magistrate Judge's
Report & Recommendation

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

JOHN MICHAEL WOODRUFF,

Petitioner,

v.

Civil Action No. 7:16-CV-8 (HL)

**KAYLA CROCKETT, Probation
Officer, and MICHAEL W. NAIL,
Commissioner,**

Respondents.

ORDER

This case is before the Court on the Recommendation (Doc. 24) of United States Magistrate Judge Thomas Q. Langstaff. Finding that Petitioner's federal habeas petition is unexhausted, Judge Langstaff recommends granting Respondent Kayla Crockett's Motion to Dismiss (Doc. 7). It is further recommended that the Motion to Dismiss Commissioner Nail (Doc. 10) as an improper party respondent be denied as moot. Finally, Judge Langstaff recommends denying a certificate of appealability, noting that there has been no substantial showing of the denial of a constitutional right.

Petitioner filed objections to the Recommendation. (Doc. 25). Upon conducting a *de novo* review, the Court concludes that Petitioner's objections lack merit and accordingly overrules those objections. The Court accepts and

adopts the Recommendation in full and grants Respondent Crockett's Motion to Dismiss Petition for Lack of Exhaustion.

The Court further finds no substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Therefore, a Certificate of Appealability is denied.

SO ORDERED, this 17th day of October, 2016.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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APPENDIX E

Report and Recommendation of the
USDC Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

JOHN MICHAEL WOODRUFF,

Petitioner,

VS.

KAYLA CROCKETT, Probation Officer,
and MICHAEL W. NAIL, Commissioner,

Respondents.

7 : 16-CV-08 (HL)

ORDER and RECOMMENDATION

Presently pending in this federal habeas petition are the Respondent's Motion to Dismiss Petition as unexhausted (Doc. 7) and Motion to Dismiss Commissioner Michael W. Nail as an improper party respondent (Doc. 10), as well as several motions filed by Petitioner (Docs. 15, 19, 21). The Petitioner challenges his 2015 Lowndes County convictions for making terroristic threats and disorderly conduct. (Docs. 1, 5). Following a jury trial in which Petitioner was found guilty on both counts, Petitioner was sentenced on September 11, 2015 to probated sentences of three years for making terroristic threats and twelve months concurrent for disorderly conduct. (Doc. 8-1, pp. 3-4).

Prior to his sentencing, Petitioner filed a *pro se* motion for recusal of his trial counsel and a motion for new trial, as amended. *Id.* at pp. 55, 57-59. New counsel represented Petitioner at his sentencing, and was allowed to withdraw thereafter. *Id.* at pp. 98-106. A timely motion for new trial was filed on October 9, 2015, and new appellate counsel entered an appearance on November

9, 2015. *Id.* at pp. 108, 111. As of June 2016, no hearing had yet been scheduled for Petitioner's Motion for New Trial. (Doc. 7-1, p. 2; Doc. 17, pp.1-2). Respondent Crockett seeks to have this petition dismissed for lack of exhaustion, as Petitioner's convictions are not yet final under state law.

The Anti-Terrorism and Effective Death Penalty Act ("AEDPA") provides that a court shall not grant an application for a writ of habeas corpus unless "the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1). "It has been settled since *Ex parte Royall*, 117 U.S. 241 (1886), that a state prisoner must normally exhaust available state judicial remedies before a federal court will entertain his petition for habeas corpus." *Picard v. Connor*, 404 U.S. 270, 275 (1971). The petitioner's claims will be considered exhausted only after "the state courts [have been afforded] a meaningful opportunity to consider allegations of legal error without interference from the federal judiciary." *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986).

"[T]he state prisoner must give the state courts an opportunity to act on his claims before he presents those claims to a federal court in a habeas petition." *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). "[S]tate prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review." *Id.* at 845. "Before a state prisoner may file a federal habeas petition, he must exhaust his state remedies by petitioning the highest court in the state in which he is being held when such review is part of the ordinary appellate review procedure." *Jackson v. Walker*, 206 F. A'ppx 967, 968 (11th Cir. 2006). "In general, a petitioner's federal claim shall not be deemed exhausted where the petitioner 'has the right under the law of the State to raise, by any available procedure, the question

presented.” *Mauk v. Lanier*, 484 F.3d 1352, 1357 (11th Cir. 2007), *quoting* 28 U.S.C. § 2254(c).

The Petitioner bears the burden of proving that he has exhausted available state remedies, and retains the burden to prove all facts relevant to the exhaustion requirement. *Toulson v. Beyer*, 987 F.2d 984, 987 (3rd Cir. 1993); *Lambert v. Blackwell*, 134 F.3d 506, 513 (3rd Cir. 1997); *Mack v. Singletary*, 142 F.Supp.2d 1369, 1375 (S.D.Fla. 2001). “[A] claim can be exhausted [however,] even when there exists a possibility of further state court review, so long as the claim has been ‘fairly presented’ to the state courts.” *Mauk*, 484 F.3d at 1357, *quoting* *Castille v. Peoples*, 489 U.S. 346, 350-51 (1989).

“Just as the State must afford the petitioner a full and fair hearing on his federal claims, so must the petitioner afford the State a full and fair opportunity to address and resolve the claim on the merits.” *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992) *superseded by statute on other grounds as stated in Williams v. Taylor*, 529 U.S. 420 (2000). Petitioner’s current Motion for New Trial has not been resolved, nor has Petitioner pursued a direct appeal of his convictions. Thus, Petitioner has not fairly presented a federal constitutional claim to the Georgia courts and thus has failed to exhaust his state remedies. *Id.*

Petitioner does not appear to contest the exhaustion issue, but maintains he is actually innocent of the crimes for which he stands convicted. (Doc. 14-1). However, actual innocence is not an exception to the rules requiring exhaustion, and Petitioner has failed to establish proper exhaustion of his claims, including his alleged actual innocence, or that the state court remedies are unavailable or ineffective. *See Gore v. Crews*, 720 F.3d 811, 816, 817 (11th Cir. 2013) (while petitioner’s habeas claim was unexhausted, it was not procedurally defaulted, “and, as such, is not subject to any of the exceptions to the procedural default rule”; “we lack the authority to rewrite

the [AEDPA] statute and create an exception that Congress did not enact”); *Bailey v. Patterson*, 2016 WL 3892455 (M.D.Ala. 2016) (finding that petitioner’s claims for habeas relief, including his claim of actual innocence, must be properly exhausted or exhaustion shown to be unavailable). *Cf. Ward v. Hall*, 592 F.3d 1144 (11th Cir. 2010) (actual innocence is an exception to the procedural default doctrine). The Court notes that it is not clear at this time that Petitioner’s claims are or would be procedurally defaulted, as “[a]n unexhausted claim is not procedurally defaulted unless it is evident that any future attempts at exhaustion would be futile due to the existence of a state procedural bar.” *Gore v. Crews*, 720 F.3d 811, 816 (11th Cir. 2013).

The Court notes that this is not a situation in which Petitioner has provided the state courts “one full opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review.” *O’Sullivan*, 526 U.S. at 845. Inasmuch as this federal habeas petition is unexhausted, it is the recommendation of the undersigned that the Respondent Crockett’s Motion to Dismiss be **GRANTED**. It is further recommended that the Motion to Dismiss Commissioner Nail as an improper party respondent be **DENIED** as moot.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The district judge shall make a de novo determination as to those portions of the Recommendation to which objection is made; all other portions of the Recommendation may be reviewed by the district judge for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to

challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

The undersigned finds no substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Therefore, it is recommended that the Court deny a certificate of appealability in its final Order. If the Petitioner files an objection to this Recommendation, he may include therein any arguments he wishes to make regarding a certificate of appealability.

In light of these recommendations, Petitioner's Motion to Seal Document (Doc. 15), Motion to Strike (Doc. 19), and Motion for Protective Order (Doc. 21) are **DENIED** as moot.

SO ORDERED and RECOMMENDED, this 12th day of September, 2016.

s/ **THOMAS Q. LANGSTAFF**
UNITED STATES MAGISTRATE JUDGE