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No. _____

TERM 2018

IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN ROLAND — PETITIONER

VS.

JULIE L. JONES, SECRETARY FLORIDA
DEPARTMENT OF CORRECTIONS, ET AL., — RESPONDENT

APPENDIX

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Kevin Roland, DC # L74380
Southbay Correctional Facility
Post Office Box 7171
Southbay, Florida 33493
(Petitioner pro se)

INDEX OF APPENDICES

APPENDIX A

The decision of the United States Court of Appeals for the Eleventh Circuit denying petitioner a Certificate of Appealability (COA), and Leave to Proceed In Forma Pauperis was rendered on October 24, 2017. Reconsideration denied, December 18, 2017.

APPENDIX B

The decision of the Florida's United States Southern District Court rendered a final judgment and order denying Petitioner's petition under Title 28 U.S.C. § 2254, for Writ of Habeas Corpus, Certificate of Appealability (COA), and Leave to Proceed In Forma Pauperis, May 03, 2017.

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APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12471-D

KEVIN ROLAND,

Petitioner-Appellant,

versus

DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

ORDER:

Kevin Roland's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

/s/ Gerald Bard Tjoflat
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12471-D

KEVIN ROLAND,

Petitioner-Appellant,

versus

DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

Before: TJOFLAT and HULL, Circuit Judges.

BY THE COURT:

Kevin Roland, a Florida prisoner, has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's October 24, 2017, order denying him a certificate of appealability to appeal the denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition. Upon review, Roland's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

APPENDIX "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

KEVIN ROLAND,

CASE NO. 17-60718-CIV-DIMITROULEAS

Plaintiff,

vs.

JULIE JONES,

Respondent.

**FINAL JUDGMENT AND ORDER ADOPTING, IN PART, REPORT OF MAGISTRATE JUDGE
DENYING HABEAS PETITION; DENYING CERTIFICATE OF APPEALABILITY**

THIS CAUSE is before the Court on Petitioner Roland's April 6, 2017 Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 [DE-1], and Magistrate Judge White's April 14, 2017 Report and Recommendation [DE-4]. The Court notes that no objections¹ to the Report have been filed, and the time for filing such objections has passed. As no timely objections were filed, the Magistrate Judge's factual findings in the Report are hereby adopted and deemed incorporated into this opinion. *LoConte v. Dugger*, 847 F. 2d 745, 749-50 (11th Cir. 1988), *cert. denied*, 488 U.S. 958 (1988); *RTC V. Hallmark Builders Inc.*, 996 f. 2D 1144, 1149 (11th Cir. 1993).

Although no timely objections were filed, the Court has conducted a de novo review of the Report and record and is otherwise fully advised in the premises. The Court agrees, in part, with the Magistrate's conclusion that the petition for writ of habeas corpus should not be granted and that no certificate of appealability should issue. The Court finds as follows:

1. On October 27, 2011, Roland and Tyjuan Williams were charged by Information with Robbery, occurring on October 6, 2011. [DE-5-1. p. 2].

¹ Roland filed a Notice of Appeal [DE-6] on April 25, 2017 which the Clerk erroneously construed as an Objection to the Report and Recommendation. This Court construes it as a pre-mature Notice of Appeal from a non-appealable non-final order.

2. On November 1, 2011, the State filed a Designation to Career Criminal Court. [DE-5-1, p. 11]. On November 7, 2011, Notices to Declare Habitual Offender and Prison Releasee Reoffender were filed. [DE-5-1, p. 11].

3. On September 20, 2012, a Confidential Expert, Dr. Trudy Block-Garfield, was appointed to evaluate Roland. [DE-5-1, p. 8]. He was evaluated for competency on September 17 and 20, 2012. [DE-5-1, p. 7]. A hearing was held on October 10, 2012.

4. On November 29, 2017, Roland was found guilty as charged. [DE-5-1, p. 7].

5. A Motion for New Trial was filed on December 6, 2012. [DE-5-1, p. 7]. It was denied on January 7, 2013. [DE-5-1, p. 6].

6. On January 7, 2013, Roland was sentenced to twenty (20) years in prison as an Habitual Offender with a fifteen (15) year mandatory minimum as a Prison Releasee Reoffender. [DE-5-1, pp. 3, 6].

7. On September 11, 2014, the Fourth District Court of Appeal affirmed. [DE-5-1, p. 5] [DE-5-2, p. 1]. *Roland v. State*, 149 So. 3d 27 (Fla. 4th DCA 2014). Mandate issued on October 10, 2014. [DE-5-1, p. 5]. [DE-5-2, p. 3]. Roland's conviction became final on September 11, 2014 when he did not later file a writ of certiorari in the United States Supreme Court. *Gonzalez v. Thaler*, 132 S. Ct. 641, 646 (2012), *but see, Bond v. Moore*, 309 F. 3d 770, 774 (11th Cir. 2002). Fifty-six (56) days of non-tolled time elapsed until Roland mail-box filed his Motion to Mitigate on November 6, 2014.

8. On January 23, 2015, Roland filed a Notice of Inquiry, [DE-5-1, p. 5], inquiring about the status of his mitigation motion. [DE-7, p. 3].

9. On February 23, 2015, the Clerk received both a letter detailing mitigation and Roland's Motion to Mitigate [DE-5-1, p. 5]. However, it appears that the mitigation motion had been mail-box filed on November 6, 2014. [DE-5-1]. Mitigation was denied on February 19, 2015. [DE-5-1, p. 5]. On March 5, 2015, Roland filed a Notice of Appeal from the denial of the Motion to Mitigate. [DE-5-1, p. 5];

[DE-5-7, p. 3]. However, there is no right to file an appeal from such an order in Florida². The Fourth District Court of Appeal dismissed the appeal on July 23, 2015. [DE-5-1, p. 4]; [DE-5-3].

10. On September 10, 2015, Roland filed³ a habeas petition in the Fourth District Court of Appeal. [DE-5-1, p. 4]; [DE-5-4]. It was denied on October 28, 2015. [DE-5-4].

11. On October 27, 2015, Roland filed a Motion for Post Conviction Relief. [DE-5-1, p. 4]. It was denied on March 17, 2016. [DE-5-1, p. 4]. Rehearing was denied on March 30, 2016. [DE-5-1, p. 4]. The Fourth District Court of Appeal affirmed on June 6, 2016 [DE-5-1, p. 4]; [DE-5-5]. *Roland v. State*, 212 So. 3d 373 (Fla. 4th DCA 2016). Rehearing was denied on August 2, 2016. [DE-5-5]. Mandate issued on August 19, 2016. [DE-5-5].

12. In this timely habeas petition, Roland complains about: a limitation on the cross-examination of witness Tyjuan Williams, a double jeopardy violation in being sentenced both as an Habitual Offender and as a Prison Releasee Reoffender; ineffective assistance of counsel in only requesting the appointment of one mental health expert; and that habitual offender was not proven through fingerprint evidence.

13. Prior to *Rogers v. Sec'y, D.O.C.*, 2017 WL 1573823 (11th Cir. 2017), this Court would have agreed with Judge White that Roland's petition is time-barred. Roland's conviction became final on September 11, 2014 when the Fourth District Court of Appeals affirmed and he later failed to seek certiorari in the United States Supreme Court. Fifty-six days of non-tolled time elapsed until Roland filed his mail-box Motion to Mitigate. Roland's Motion to Mitigate tolled the statute of limitations until July 23, 2015. *Rogers v. Sec'y, D.O.C.*, 2017 WL 1573823 (11th Cir. 2017). Forty-Nine (49) days of non-tolled time elapsed until he filed his habeas petition on September 10, 2015.⁴ The clock began to run again on

² It might be argued that the time from the denial of the motion to mitigate on February 19, 2015 until the Fourth District Court of Appeal dismissed the appeal on July 23, 2015 is not tolled. Without that tolling, this habeas petition would be untimely.

³ Received by the Fourth District, it is unclear if it was earlier filed under the mail-box rule.

⁴ Under the mailbox rule perhaps fewer days may have elapsed.

August 2, 2016, when the Fourth District Court of Appeal denied rehearing. Another Two Hundred Thirty-Seven (237) days elapsed until Roland filed this federal petition. His motion to mitigate did toll the AEDPA, one year statute of limitations. *Rogers*, but see, *Baker v. McNeil*, 439 Fed. Appx. 786 (11th Cir. 2011). Roland's motion sought relief based on mercy. *Rogers*, but see, *Alexander v. Sec'y, D.O.C.*, 523 F. 3d 1291, 1297 (11th Cir. 2008). Judge White did not have the benefit of *Rogers*. Three hundred forty-two (342)⁵ days of non-tolled time elapsed prior to Roland filing this habeas petition. It now appears to be timely filed.

14. However, on the merits, Roland does not merit any relief. First, Roland has a complaint about a cross-examination of former Co-defendant Tyjuan Williams. Roland concedes that Williams admitted on cross-examination that he faced years and years in prison, that he had lied to the police when arrested, that he used drugs either the night before or the day of the incident and that he was on probation and control release at that time.⁶ No error has been shown. See *U.S. v. Fields*, 763 F. 3d 443, 464 (6th Cir.) *cert. denied*, 135 S. Ct. 392 (2014). Here, the jury was provided with sufficient information to make a discriminating appraisal of Williams' motives and bias. *U.S. v. Landron-Class*, 696 F. 3d 62, 71 (1st Cir. 2012), *cert. denied*, 133 S. Ct. 1621 (2013). Under *Davis v. Alaska*, 415 U.S. 308 (1974), this court would have allowed defense counsel to elicit from Williams that he was facing a maximum of fifteen (15) years in prison. Nevertheless, it not up to this federal court to substitute its judgement for that of the state court trial judge. No constitutional error has been shown. Here, a reasonable jury would not have received significantly different impression of Williams' credibility. *U.S. v. Taylor*, 17 F. 3d 333, 340 (11th Cir. 1994).

⁵ This court has given Roland the benefit of the mail-box rule which granted Roland an extra one hundred-nine (109) days for his motion to mitigate to be delivered by the post office, mainly because of his January 23, 2015 Notice of Inquiry. [DE-7, p. 3].

⁶ Appellant's brief recounts the same damaging evidence. Indeed, the trial court allowed Williams to be impeached by his facing a "significant amount of time". [DE-7, p. 10]. Here, the jury had sufficient detail about Tyjuan Williams to assess his motives and biases. *U.S. v. Linzy*, 604 F. 3d 319, 323 (7th Cir.) *cert. denied*, 562 U.S. 919 (2010).

15. Second, there is no double jeopardy violation where the habitual offender sentence exceeded the Prison Releasee Reoffender sentence. *Grant v. State*, 770 So. 2d 655 (Fla. 2000); *Simeton v. State*, 117 So. 3d 881 (Fla. 4th DCA 2013); *Robinson v. Tucker*, 2011 WL 4952997 *22 (N.D. FL. 2011)..

16. Third, Roland's conclusory allegations regarding incompetency are insufficient upon which to base any relief. Roland was evaluated by an expert and found to be competent.⁷ There is no requirement in Florida that a second expert be appointed. *Tita v. State*, 42 So. 3d 838, 839-41 (Fla. 4th DCA 2010); *Drope v. Missouri*, 420 U.S. 162, 173 (1975). Roland was represented by experienced trial counsel⁸ and has not shown that a failure to secure a second opinion was warranted in this case. Indeed, none was requested, and none would have been required. *U.S. v. Thornberg*, 676 F. 3d 703, 707 (8th Cir. 2012), *cert. denied*, 133 S. Ct. 1654 (2013).

17. Fourth, for the purpose of habitualization, a fingerprint match is not essential to qualify a predicate offense. Identity can be proven by photographic evidence or matching names and social security members. *Sustakoski v. State*, 992 So. 2d 306, 308 (Fla. 4th DCA 2008); *Smith v. State*, 990 So. 2d 1162 (Fla. 3d DCA 2008). Here, the complained about predicate conviction, 10-971-CF10A, was alternatively matched to State Exhibit #4. [DE-7, pp. 12-13].

Wherefore, Roland's habeas petition [DE-1] is Denied on the merits.

The Report [DE-4] is Adopted and Approved, in part.

The Clerk shall close this case and deny any pending motions as Moot.

It is ORDERED AND ADJUDGED as follows:

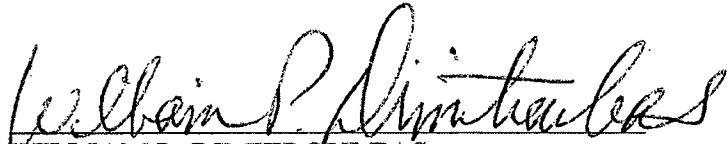
1. Judgment is entered on behalf of Respondent, against the Petitioner, Kevin Roland.
2. On consideration of a Certificate of Appealability, the Court will deny such a Certificate

⁷ Indeed, Dr. Block-Garfield found that Roland had attempted to present himself as more impaired than likely the case; he was less than forthright. [DE-7, pp. 4-7]

⁸ This court is familiar with Michael Weinstein's being an experienced trial attorney from when this Court served as a state court judge in the 1990's; as such, his decisions are entitled to more deference. The presumption is even greater that his conduct was reasonable. *Chandler v. U.S.*, 218 F. 3d 1305, 1316 (11th Cir. 2000); *Callahan v. Campbell*, 427 F. 3d 897, 933 (11th Cir. 2005); *Michael v. Crosby*, 430 F. 3d 1310, 1320 (11th Cir. 2005).

As this Court determines that Petitioner has not shown a violation of a substantial Constitutional right. The Court notes that pursuant to Rule 22(b)(1), Federal Rules Appellate Procedure, Petitioner may now seek a certificate of appealability from the Eleventh Circuit Court of Appeals.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 3rd day of May, 2017.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Honorable Patrick A. White, US Magistrate Judge

Kevin Roland, #L74380
c/o South Bay Corr. Facility
PO Box 7171
South Bay, Florida, 33493-7171

Richard Valuntas, AAG

CERTIFICATE OF SERVICE

I Hereby Certify that a true and correct copy of the foregoing Appendix in Support of Petition for Certiorari has been hand-delivered to prison officials at South Bay Correctional Facility to be mailed to: Acting Solicitor General of the United States of the United States, Ian Heath Gershengorn, Department of Justice, 950 Pennsylvania Ave, N. W., Room 5614 Washington, DC 20530-0001; Pam Bondi, Attorney General of Florida, The Capitol, PL-01 Tallahassee, Florida 32399-1050, on this 1 day of March 2018.



Kevin Roland, DC # L74380
(Petitioner pro se)