In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-11271

JEFFREY GLENN HUTCHINSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:13-cv-00128-MW

Before JORDAN, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

Jeffrey Glenn Hutchinson moves for a certificate of appealability and for a stay of his execution scheduled for May 1, 2025. After careful review, we deny both motions.

I.

Hutchinson was convicted of first-degree murder, and sentenced to death, for "shotgunning to death" his girlfriend's three young children—Geoffrey, Amanda, and Logan. *Hutchinson v. Florida*, 677 F.3d 1097, 1098 (11th Cir. 2012). (He also shot his girlfriend, but he was not sentenced to death for this fourth murder. *Id.*) After his convictions and sentences were affirmed on direct appeal, *Hutchinson v. State*, 882 So. 2d 943, 948 (Fla. 2004), Hutchinson petitioned the district court for a writ of habeas corpus under 28 U.S.C. section 2254. *Hutchinson*, 677 F.3d at 1098. The district court dismissed the petition because it was untimely, *Hutchinson v. Florida*, No. 5:09-CV-261-RS, 2010 WL 3833921, at *1 (N.D. Fla. Sept. 28, 2010), and Hutchinson had not met his burden to show that the one-year statute of limitations was equitably tolled, *id.* at *1–2.

We affirmed. *Hutchinson*, 677 F.3d at 1103. Hutchinson's habeas petition, we explained, was filed almost four years after the one-year statute of limitations had run. *Id.* at 1098–99. And while he would be entitled to equitable tolling if he showed "(1) that he ha[d] been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way," *id.* at 1100 (quoting *Holland*

v. Florida, 560 U.S. 631, 649 (2010)), Hutchinson "ha[d] not carried his burden of showing that he pursued his rights diligently," *id.* at 1103. "[H]is affidavit and the other materials" showed "that he had in hand a petition that he could have re-labeled and filed *pro se* in federal court within three weeks after the one-year limitations period ran, but he waited" almost four years "before he filed a *pro se* federal habeas petition. That [was] not reasonable diligence." *Id.*

Thirteen years have gone by, and on the eve of his execution, Hutchinson moved under Federal Rule of Civil Procedure 60(b)(6) for relief from the district court's judgment dismissing his federal habeas petition.[1] His motion was based on "new revelations" that he was suffering from mild neurocognitive disorder and Gulf War illness. These new revelations, Hutchinson wrote, were "extraordinary circumstances" that cast doubt on the equitable tolling ruling. The district court denied the motion and denied a certificate of appealability.

II.

Hutchinson appealed the denial of his rule 60(b)(6) motion, and he has now moved for a certificate of appealability (COA) in our court. We "may issue" one "only if" he "ma[kes] a substantial

[1] This is Hutchinson's second rule 60(b)(6) motion. The district court denied the first one, we denied his motion for a certificate of appealability, and the United States Supreme Court denied his petition for writ of certiorari. *Hutchinson v. Dixon*, 142 S. Ct. 787 (2022).

showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

"[T]o grant a COA on a procedural question . . . we must evaluate not only the merit of the procedural arguments, but also the merit of the underlying claims." *Franklin v. Hightower*, 215 F.3d 1196, 1199 (11th Cir. 2000). "If 'jurists of reason' would not find it debatable both whether 'the petition states a valid claim of the denial of a constitutional right' and whether 'the district court was correct in its procedural ruling,' then we may not grant a COA on a procedural issue." *Id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)); *see also Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1267 (11th Cir. 2004) (en banc) (applying the *Slack* framework to cases that "involve[d r]ule 60(b) procedural issues in addition to merits issues"), *aff'd*, 545 U.S. 524 (2005). "Because [r]ule 60 'vests wide discretion in [district] courts,' we ask whether a reasonable jurist could conclude that the district court abused its discretion." *Mills v. Comm'r, Ala. Dep't of Corrs.*, 102 F.4th 1235, 1239 (11th Cir. 2024) (second alteration in original) (quoting *Buck v. Davis*, 580 U.S. 100, 123 (2017)).

For three reasons, reasonable jurists could not conclude that the district court abused its discretion in denying Hutchinson's rule 60(b)(6) motion.

A.

First, "[r]ule 60(b)(6) states that a court may grant relief only 'for . . . any *other* reasons' than those listed in clauses (b)(1) through (b)(5)." *Id.* at 1240 (quoting Fed. R. Civ. P. 60(b)(6)). "Rule 60(b)(6)

provides a catchall for 'any other reason that justifies relief.' This last option is available only when [r]ules 60(b)(1) through (b)(5) are inapplicable." *Kemp v. United States*, 596 U.S. 528, 533 (2022). Rule 60(b)(6) "grants federal courts broad authority to relieve a party from a final judgment . . . provided that the motion . . . is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988).

Hutchinson's rule 60(b)(6) motion was premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)—specifically, clause (b)(2), which allows the district court to relieve a party from a judgment based on "newly discovered evidence." Hutchinson's "motion focuse[d] entirely on 'new evidence,' 'new revelations,' and 'new information,' pertaining to [his] brain damage and Gulf War [i]llness." Because Hutchinson's rule 60(b)(6) motion was premised on the "newly discovered evidence" ground for relief in clause (b)(2), the district court did not have "authority to relieve" him from the judgment dismissing his habeas petition. *See id.*

This is true even though Hutchinson's motion sought relief from a judgment entered not as a result of a trial or penalty phase, but because of "some later post-conviction matter." Although "[s]uch circumstances will rarely occur in the habeas context," "[r]ule 60(b) has an unquestionably valid role to play in habeas cases," and "function[s] as legitimate in habeas cases as in run-of-the-mine civil cases." *Gonzalez*, 545 U.S. at 534–35; *see also James v.*

Sec'y, Dep't of Corr., 130 F.4th 1291, 1295 (11th Cir. 2025) (explaining that rule 60(b)(2) may afford relief when "consideration of the new evidence would probably produce a new result—*i.e.*, would warrant the application of equitable tolling or the actual innocence gateway").

B.

Second, even if the district court had the authority under rule 60(b)(6) to relieve Hutchinson from the judgment dismissing his habeas petition, his motion was untimely because it was not "made within a reasonable time." *See* Fed. R. Civ. P. 60(c)(1). "What constitutes reasonable time necessarily depends on the facts in each individual case." 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2866, at 536 (3d ed. 2012) (footnote omitted).

Here, Hutchinson's motion depended on his mild neurocognitive disorder and Gulf War illness. But, as one of his experts explained, the neurocognitive impacts of exposure to "repetitive low-level blasts" had "broad public awareness . . . within the past five years." Yet, Hutchinson did not see a doctor about these impacts until October 2024. And even then, once he had his expert's November 2024 report, he waited five months—only after his death warrant was signed—to file his rule 60(b)(6) motion.

The delay is even less reasonable for his Gulf War illness. At Hutchinson's sentencing, in 2001, multiple experts testified about the effects of Gulf War illness. *See Hutchinson*, 882 So. 2d at 949 ("The defense presented evidence of mitigation, including but not limited to evidence involving Hutchinson's diagnosis of Gulf War

Syndrome . . . ."). For example, Dr. William Baumzweiger, who saw Hutchinson in 1996, 1998, and 1999, diagnosed him "with Gulf War Disorder with neurological damage." The neurological damage, Dr. Baumzweiger reported, caused: a personality change including obsessions and compulsions; a decline in cognitive skills; concentration problems; and irritability. Hutchinson, in other words, has known about the neurological damage caused by his illness for more than twenty years and, yet, he did not move for relief from the judgment based on it until April 2025.

Even if new science came along giving greater insights into the impacts of Gulf War illness, those insights were known by 2021—at the latest. Still, Hutchinson waited four more years, on the eve of his execution, to make his motion based on these insights. That delay was not reasonable.

C.

Third, even if Hutchinson made his rule 60(b)(6) motion within a reasonable time, he did not "show 'extraordinary circumstances' justifying the reopening of" the judgment dismissing his habeas petition as untimely. *See Gonzalez*, 545 U.S. at 535. He has not shown extraordinary circumstances because the new evidence about his mild neurocognitive disorder and Gulf War illness was not connected to his ability to file a timely petition. *See Lawrence v. Florida*, 421 F.3d 1221, 1226 (11th Cir. 2005), *aff'd*, 549 U.S. 327 (2007) (finding no "extraordinary circumstances present in his case to warrant the application of equitable tolling" partly because

"Lawrence cannot establish a causal connection between his alleged mental incapacity and his ability to file a timely petition").

In 2012, we held that Hutchinson was not entitled to equitable tolling because he did not pursue his rights diligently. *Hutchinson*, 677 F.3d at 1103. We reached that conclusion based on "his affidavit and the other materials." *Id.* Those materials showed that Hutchinson repeatedly expressed concerns to his counsel about missing the one-year limitations period for filing a habeas petition. *Id.* at 1111–12 (attaching his affidavit). As the one-year deadline approached, Hutchinson, "in no uncertain terms," directed his counsel to file his postconviction motion, and that if they didn't, he would file the motion himself. *Id.* at 1112–13. Hutchinson already had a postconviction motion drafted before the one-year deadline had expired. *Id.* at 1113. But instead of filing it, even though he knew the limitations period had lapsed and even though he already had a draft petition "in hand," Hutchinson waited almost four years to file his federal habeas petition. *Id.* at 1103.

Nothing in Hutchinson's rule 60(b)(6) motion impacted these facts, which supported the conclusion that he did not pursue his habeas rights diligently. As the district court found, the expert reports he included with his motion "say nothing about how [his] mental impairments and brain injuries have impacted his ability to communicate with counsel, navigate the legal system, or comply with filing deadlines." According to his experts, Hutchinson had mental impairments as early as the late 1990s. Even so, Hutchinson "was (1) able to communicate with his attorneys, (2) aware that his

federal habeas petition had an imminent statute of limitations deadline, and (3) aware of the significance of that deadline," and "he had prepared his own complete petition setting out all of the claims that he wanted to raise." While we now know more about the diagnosis for his mental health disorder, and we know more about the scope of his illness, this knowledge doesn't change the facts from Hutchinson's affidavit or connect his disorder and illness to his ability to file a timely habeas petition.

Hutchinson responds that his mental condition has worsened over time, "meaning that he would have been more impaired between 2005 and 2009, when [we] said he was not diligent." But his expert explained that his mental condition has not worsened. His post-traumatic stress disorder "symptoms" have "improved" and are "in remission." And because Hutchinson has been in a "highly structured environment," "his cognitive deficits may appear less impactful in his current day-to-day activities than they would be if he were in the civilian world."[2]

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[2] Hutchinson also responds that the district court failed to address two "other factors supporting [his] motion." First, he writes, the district court "did not address [his] assertion that the equities in his case have now shifted." But it did. After reviewing the new evidence, the district court found that "the evidence [] Hutchinson has proffered does not change anything with respect to . . . the equitable tolling issue," and Hutchinson "failed to demonstrate extraordinary circumstances based on new evidence concerning underlying brain injuries and Gulf War [i]llness sustained while serving in the military."

Second, Hutchinson contends that the district court "failed to address the context of what has occurred in state court since [he] attempted to present new information on his war injuries there." But this factor runs into the same

D.

There's one other reason why we must deny Hutchinson's motion for a certificate of appealability. Even if the district court's procedural ruling denying Hutchinson's rule 60(b)(6) motion was debatable, Hutchinson has not shown that his underlying federal habeas petition stated a debatable claim of the denial of a constitutional right. Although vaguely referring to prior COAs, *see Griffin v. Sec'y, Fla. Dep't of Corr.*, 787 F.3d 1086, 1094–96 (11th Cir. 2015), his motions—here and below—do not identify a single debatable claim from his federal habeas petition. The Florida Supreme Court rejected each of his constitutional claims, *Hutchinson*, 882 So. 2d at 950–59; *Hutchinson v. State*, 17 So. 3d 696, 701–02 (Fla. 2009), and we have not seen anything that indicates these determinations resulted in "extreme malfunctions in the state criminal justice systems" that would entitle him to federal habeas relief under the Anti-Terrorism and Effective Death Penalty Act. *See Greene v. Fisher*, 565 U.S. 34, 43 (2011) (quotation omitted).

III.

For these reasons, we deny Hutchinson's motion for a certificate of appealability. Because his COA motion is denied, we

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problem as his new evidence. The state court proceedings in 2025 are not extraordinary circumstances authorizing the district court to revisit the equitable tolling ruling because they are not causally connected to Hutchinson's ability to file a timely petition twenty years earlier. Quite simply, the state court litigation over vacating Hutchinson's conviction and sentence does not bear on whether Hutchinson was diligent in pursuing his federal habeas petition in 2005.

deny as moot his motion to stay his execution. *See Mills*, 102 F.4th at 1237 ("Because no reasonable jurist could conclude that the district court abused its discretion, we deny Mills's application and deny as moot his motion to stay his execution."); *id.* at 1241 ("We DENY Mills's application for a certificate of appealability and DENY AS MOOT his motion to stay his execution.").

MOTION FOR CERTIFICATE OF APPEALABILITY DENIED; MOTION FOR STAY OF EXECUTION DENIED AS MOOT.

JORDAN, Circuit Judge, Concurring:

I concur in Parts I, II.C, and III of the majority's order. I agree that reasonable jurists would not debate Mr. Hutchinson's failure to demonstrate the extraordinary circumstances necessary for Rule 60(b)(6) relief. Understanding that our COA analysis is not a merits determination, *see Buck v. Davis*, 580 U.S. 100, 115 (2017), Mr. Hutchinson has not explained why there is a causal connection between the newly discovered evidence concerning his mental health problems and brain injuries and his failure to timely file a federal habeas corpus petition. As a result, the district court's denial of his Rule 60(b) motion is not debatable. Having resolved this dispositive issue against Mr. Hutchison, I would stop there and go no further.

The majority provides three additional reasons why it believes that a certificate of appealability is not warranted, but I share Judge Newsom's view that, "[a]t least in appellate courts, issuing alternative holdings is often just a bad idea." *United States v. Files*, 63 F.4th 920, 933 (11th Cir. 2023) (Newsom and Tjoflat, J.J., concurring). *See also United States v. Horn*, 129 F.4th 1275, 1306 (11th Cir. 2025) (Jordan, J., concurring in part and concurring in the judgment) (agreeing with Judge Newsom); *Gose v. Native Am. Services Corp.*, 109 F.4th 1297, 1313 n.20 (11th Cir. 2024) (setting out the problems that can result from issuing alternative holdings). The better practice in most cases is to "decide no more than is necessary to resolve" the matter at hand, *Harbourside Place, LLC v. Town of*

Jupiter, 958 F.3d 1308, 1322 (11th Cir. 2020), and I would follow that course of action here.