Appendix A

– Decision of the United States Court of Appeals, Eleventh Circuit, Judgment Done and Ordered by the U.S. District Judge Robin S. Rosenbaum on 08/07/2024, USAP 11 No. 24-10843.

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10843

MARIO A. MANBORDE,

Petitioner-Appellant,

versus

ATTORNEY GENERAL, STATE OF FLORIDA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-23838-DPG

ORDER:

Mario Manborde is a Florida prisoner serving a ten-year sentence after pleading guilty to lewd and lascivious conduct on a child, and sexual activity with a child by a person in familial or custodial authority. On November 19, 2019, Manborde was sentenced to ten years' imprisonment and did not directly appeal his convictions or sentence. On February 25, 2021, he filed a Fla. R. Crim. P. 3.850 motion, which the state trial court denied on September 21, 2021, and the Third District Court of Appeal ("Third DCA") affirmed *per curiam*.

On November 18, 2022, Manborde filed his initial 28 U.S.C. § 2254 petition. After finding that he failed to satisfy pleading requirements, the district court ordered him to file an amended petition, which also did not comply with pleading requirements. The court thus afforded him one final opportunity to file a compliant petition.

Manborde then filed the instant petition. The state responded that the petition was untimely and that, regardless, his claims failed on the merits. Manborde replied that he was entitled to equitable tolling because (1) the sentencing court did not advise him of his right to appeal, (2) counsel did not file a direct appeal, and (3) he filed his Rule 3.850 motion after the federal limitations period had run due to his *pro se* status and ignorance of the law.

The district court dismissed Manborde's petition after concluding that it was untimely. It found that, because he did not file a direct appeal, his judgment became final on December 19, 2019, 30 days after his sentencing. It noted that his federal limitations

period thus expired on December 20, 2019, absent statutory or equitable tolling. It found that his Rule 3.850 motion did not toll the federal limitations period, as it was filed after the period expired.

It also found that his assertions as to equitable tolling were unavailing, because (1) he failed to explain why he was unable to timely file a federal habeas petition, (2) his ignorance of the law did not excuse the untimely filing, and (3) he had not presented any evidence establishing his innocence. The court thus dismissed the petition and declined to issue a certificate of appealability ("COA"). Manborde appealed, and the court denied his subsequent motion for leave to appeal *in forma pauperis* ("IFP"). He now moves this Court for a COA and IFP status.

Here, reasonable jurists would not debate the dismissal of Manborde's § 2254 petition as untimely. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). After he was sentenced on November 19, 2019, he had 30 days in which he could directly appeal his convictions and sentence, and, because he failed to do so, his judgment became final when the period in which he could have appealed expired, on December 20, 2019. *See Mederos v. United States*, 218 F.3d 1252, 1253 (11th Cir. 2000); *see also* Fla. R. App. P. 9140(b)(3). Manborde thus had until December 21, 2020, to file his petition.[1] *See* 28 U.S.C. § 2244(d)(1)(A).

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[1] Because December 20, 2020, was a Sunday, Manborde had until the following day to file his § 2254 petition. *See* Fed. R. Civ. P. 6(a)(1).

Further, his Rule 3.850 motion did not statutorily toll the limitations period, as it was not filed until February 25, 2021, two months after the statute of limitations had expired. *See Sibley v. Culliver*, 377 F.3d 1196, 1204 (11th Cir. 2004) (explaining that, "once a deadline has expired, there is nothing left to toll"). Manborde's § 2254 petition was thus untimely, as he did not file it until November 2022, nearly two years after the limitations period had expired.

Moreover, Manborde did not establish his entitlement to equitable tolling, as he did not show that he had been pursuing his rights diligently and that some extraordinary circumstance stood in his way of a timely filing. *See Holland v. Florida*, 560 U.S. 631, 649 (2010). His assertions as to counsel, and the trial court's failures, do not explain why he was unable to timely file his § 2254 petition. Lastly, his *pro se* status does not excuse the untimely filing. *See Outler v. United States*, 485 F.3d 1273, 1282 n.4 (11th Cir. 2007).

Accordingly, Manborde's motion for a COA is DENIED, and his motion for IFP status is also DENIED as moot.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE

Appendix B

Decision of the United States District Court, Southern District of Florida, Done and Ordered by U.S. District judge Darren P. Gayles on February 9, 2024. U.S. Dist Ct. No. 1:22-cv-23838-GAYLES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:22-cv-23838-GAYLES

MARIO A. MANBORDE,

Petitioner,

v.

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

ORDER DISMISSING 28 U.S.C. § 2254 PETITION AS TIME BARRED

THIS CAUSE comes before the Court on *pro se* Petitioner Mario A. Manborde's Second Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 ("the Petition"), [ECF Nos. 15, 16]. Petitioner, a state prisoner, challenges his convictions and sentences in Case No. F17-15733 in the Eleventh Judicial Circuit in and for Miami-Dade County. The Court has reviewed the Petition, the State's Response to the Court's Order to Show Cause, [ECF No. 28], the pertinent state court record and transcripts, [ECF Nos. 29, 30], Petitioner's Reply [ECF No. 31], and the record in this case. For the following reasons, the Petition is **DISMISSED** as time barred.[1]

I. PROCEDURAL HISTORY

A. State Proceedings

On November 7, 2019, the State charged Petitioner by amended information with lewd and lascivious molestation on a child less than twelve (Count 1) and sexual activity with a child by a

[1] The dismissal of a federal habeas petition as time bared is with prejudice and constitutes a merits adjudication for second-or-successive purposes. *See Jordan v. Sec'y, Dep't of Corr.*, 485 F.3d 1351, 1353 (11th Cir. 2007).

person in familial or custodial authority (Count 2). Resp't Ex. 5 [ECF No. 29-1 at 33–36]. The same day, Petitioner pled guilty to both counts as part of a negotiated plea agreement. Resp't Ex. 6, *id.* at 38–42. On November 19, 2019, Petitioner was sentenced to 10 years in state prison followed by 10 years of reporting probation. Resp't Ex. 8, *id.* at 49–51. Petitioner did not appeal.

On February 25, 2021,[2] Petitioner filed a motion for post-conviction relief pursuant to Fla. R. Crim. P. 3.850. Resp't Ex. 9, *id.* at 53–128. On September 21, 2021, the state trial court denied the motion. Resp't Ex. 12, *id.* at 141–42. Petitioner appealed, and the Third District Court of Appeal affirmed, *per curiam*, issuing its mandate on March 22, 2022. Resp't Ex. 13, *id.* at 144; *see also Manborde v. State*, 333 So. 3d 1157 (Fla. 3d DCA 2022).

On May 26, 2022, Petitioner filed a "Petition for Writ of Habeas Corpus to Correct Manifest Injustice." Resp't Ex. 16 [ECF No. 29-1 at 240–74]. On July 14, 2022, the state court denied the petition as a successive and untimely post-conviction motion. Resp't Ex. 18, *id.* at 280–81. Petitioner appealed, and the Third District affirmed, *per curiam*, issuing its mandate on November 10, 2022. *State v. Manborde*, No. F17-15733, Docket No. 302, (Fla. 11th Cir. Ct. Nov. 10, 2022). Petitioner then sought to invoke the discretionary jurisdiction of the Florida Supreme Court, which dismissed the case on November 23, 2022. Resp't Ex. 19 [ECF No. 29-1 at 283–84].

B. Federal Habeas Proceeding

On November 18, 2022, Petitioner filed his initial Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. [ECF No. 1]. The Court found that Petitioner's grounds were "vague and

[2] "Under the prison mailbox rule, a *pro se* prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." *Jeffries v. United States*, 748 F.3d 1310, 1314 (11th Cir. 2014) (quotation omitted). Although the State avers that this motion was filed on February 21, 2021—the date Petitioner signed it—the stamp on the first page of the motion reveals that it was received by prison authorities for mailing on February 25, 2021. [ECF No. 29-1 at 53]. In any event, whether the motion was filed on February 21, 2021 or February 25, 2021 is irrelevant for timeliness purposes.

conclusory" and ordered him to file an amended petition on the proper form. [ECF No. 3 at 2–3]. The Court also observed that Petitioner appeared to be seeking equitable tolling of the statute of limitations under § 2244(d) and instructed him that he "must present his equitable tolling argument in the petition itself under the 'timeliness' section of the attached form." *Id.* at 3. The Clerk of Court mailed the form for § 2254 petitions to Petitioner. [ECF No. 4].

On December 29, 2022, Petitioner filed an Amended Petition and incorporated memorandum of law that, combined, totaled 82 pages, and raised 33 grounds for relief. [ECF No. 8, 9]. The Court found that the Amended Petition did not comport with Federal Rule of Civil Procedure 8(a)(2)'s requirement that a pleader state his claims in a "short and plain" fashion, and it noted that a number of Petitioner's claims were "frivolous or redundant." [ECF No. 11 at 1–2]. The Court therefore dismissed the Amended Petition without prejudice and afforded Petitioner one final opportunity to file a second amended petition that complied with the Court's instructions. *Id.* at 3. The Court reminded Petitioner that the Second Amended Petition would be the "sole, operative pleading," and that the Court would consider only claims raised in the Second Amended Petition. *Id.* The Court again mailed Petitioner the form for § 2254 petitions. [ECF No. 11-1].

On January 11, 2023, Petitioner filed a handwritten, two-page pleading titled "Amended Petition pursuant to 28 U.S.C. § 2254," [ECF No. 15], and a 49-page pleading titled "Memorandum of Law Accompanying Amended Petition for Relief," [ECF No. 16]. Neither pleading was on the form for § 2254 petitions, and the accompanying "Memorandum of Law" again raised 33 grounds for relief. Nonetheless, the Court ruled that these filings would constitute the operative "Second Amended Petition," and it ordered the State to respond after striking 10 of Petitioner's grounds. [ECF Nos. 18, 19].

On February 6, 2023, this Court received three more pleadings from Petitioner: (1) the completed § 2254 form, signed on January 26, 2023 [ECF No. 21], (2) an undated, 31-page handwritten pleading titled "Second Amended Petition under 28 U.S.C. § 2254" [ECF No. 22], and (3) another undated, 13-page handwritten pleading titled "Incorporated Memorandum of Law pursuant to 28 U.S.C. § 2254" [ECF No. 23]. The Court struck these pleadings, explaining that it had already granted Petitioner two opportunities to amend his habeas petition and had not granted him leave to file a Third Amended Petition. [ECF No. 24]. The Court reiterated that the Second Amended Petition [ECF Nos. 15, 16], would be the operative pleading. *Id.*

On March 29, 2023, the State filed a Response, arguing that the Second Amended Petition (hereinafter referred to only as "the Petition") is untimely and that Petitioner's claims are both procedurally barred and without merit. [ECF No. 28]. On April 18, 2023, Petitioner filed a Reply. [ECF No. 31]. In addition, Petitioner has filed a "Motion to Grant Evidentiary Hearing" [ECF No. 32], and excerpts of deposition transcripts from his state criminal case [ECF No. 33]. Because the Court concludes that the Petition is untimely, it need not address the State's remaining arguments.

II. DISCUSSION – TIMELINESS

The Antiterrorism and Effective Death Penalty Act ("AEDPA") establishes a one-year statute of limitations for habeas petitions filed by state prisoners under § 2254. *See* 28 U.S.C. § 2244(d)(1). Under AEDPA, the limitations period shall run from the latest of—

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such action;
>
> (C) the date on which the constitutional right asserted was

initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

§ 2244(d)(1)(A)–(D).

Here, the relevant provision above is sub-section (A). Petitioner does not assert that the State created an unconstitutional impediment to his filing the Petition, and none of his 23 claims rely on either a newly recognized right by the Supreme Court or evidence that could not have been discovered with due diligence prior to Petitioner's plea and sentence.[3] Therefore, Petitioner had one year from "the date on which [his] judgment became final by the conclusion of direct review" to file the instant Petition. § 2244(d)(1)(A).

The date on which a judgment becomes final is the day that (1) direct review concludes or (2) the time for seeking such review expires. *See Gonzalez v. Thaler*, 565 U.S. 134, 149–50 (2012) (citing § 2244(d)(1)(A)). Here, Petitioner did not file a direct appeal, so his judgment became final on **December 19, 2019**, 30 days after he was sentenced, when the time period for filing an appeal expired. *See* Fla. R. App. P. 9.140(b)(1)(A), (b)(3) (a criminal defendant has thirty days following rendition of written sentence to appeal conviction); *Booth v. State*, 14 So. 3d 291, 292 (Fla. 1st DCA 2009) ("Appellant did not appeal his judgment and sentence. Thus, his judgment and sentence became final 30 days later when the time for filing an appeal passed"). As mentioned,

[3] As explained in the Court's discussion of "Actual Innocence," *infra*, Petitioner raises several vague and conclusory allegations concerning evidence he claims shows his innocence, but this evidence is not newly discovered, nor does it demonstrate his innocence.

Petitioner did not file his initial Petition in this case until November 18, 2022.[4] Therefore, the Petition is untimely unless Petitioner is entitled to statutory or equitable tolling.

A. Statutory Tolling

AEDPA's limitation period is tolled for "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2). In other words, the one-year clock continues to tick during any gaps in the post-conviction review process. *See San Martin v. McNeil*, 633 F.3d 1257, 1266 (11th Cir. 2011). An application is "properly filed" when it is filed in accordance with state laws and rules governing such filings. *Artuz v. Bennett*, 531 U.S. 4, 8 (2000).

Here, Petitioner filed his first state post-conviction application—his Rule 3.850 motion—on February 25, 2021. Resp't Ex. 9 [ECF No. 29-1 at 53–128]. Because Petitioner's judgment became final on December 19, 2019, however, the AEDPA limitations period expired on **December 20, 2020**. *Downs v. McNeil*, 520 F.3d 1311, 1318 (11th Cir. 2008) ("the limitations period should be calculated according to the 'anniversary method,' under which the limitations period expires on the anniversary of the date it began to run."). From that point forward, none of Petitioner's filings could toll the statute of limitations. *See Tinker v. Moore*, 255 F.3d 1331, 1333 (11th Cir. 2001) (a post-conviction motion cannot toll the AEDPA's limitations period after it has expired). Therefore, Petitioner is not entitled to statutory tolling.

B. Equitable Tolling

AEDPA's one-year limitation period "is subject to equitable tolling in appropriate cases." *Holland v. Florida*, 560 U.S. 631, 645 (2010). The Supreme Court has established a two-part test

[4] The Second Amended Petition relates back to the initial Petition for timeliness purposes. *See Mayle v. Felix*, 545 U.S. 644, 664 (2005)).

for equitable tolling: the petitioner "must show '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Lawrence v. Florida*, 549 U.S. 327, 336 (2007) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)); *see also Brown v. Barrow*, 512 F.3d 1304, 1307 (11th Cir. 2008) (noting that the Eleventh Circuit "has held that an inmate bears a strong burden to show specific facts to support his claim of extraordinary circumstances that are both beyond his control and unavoidable even with diligence."). Equitable tolling is, therefore, "an extraordinary remedy limited to rare and exceptional circumstances and typically applied sparingly." *Cadet v. Fla. Dep't of Corr.*, 742 F.3d 473, 477 (11th Cir. 2014) (quotation and citation omitted).

Petitioner makes no arguments for equitable tolling in his Petition, despite the Court's instructions that he do so. *See* [ECF Nos. 3 at 3]; [ECF Nos. 15, 16]. Although he presents arguments for equitable tolling in his Reply, "arguments raised for the first time in a reply brief are not properly before a reviewing court." *Herring v. Sec'y, Dep't of Corr.*, 397 F.3d 1338, 1342 (11th Cir. 2005) (quotation and alteration omitted).

Nonetheless, even considering the arguments in Petitioner's Reply, he is still not entitled to equitable tolling. Petitioner appears to claim that the state trial court's failure to advise him of his right to appeal entitles him to equitable tolling. [ECF No. 31 at 3]. It is unclear how the trial court's failure to advise Petitioner of his right to *appeal* prevented him from timely filing a *habeas petition*, and Petitioner does not elaborate. Rather, this argument appears directed towards Respondent's claim that some of Petitioner's grounds are procedurally defaulted for failure to raise them on appeal. In any event, Petitioner's contention is refuted by the record, as the trial court advised Petitioner that he was waiving his right to appeal by pleading guilty. *See* Tr. Plea Hr'g [ECF No. 30-1 at 67:24–68:7].

Petitioner also seems to argue that his counsel's failure to file a direct appeal entitles him to equitable tolling. He states, "counsel . . . was both ineffective and prejudicial towards the petitioner by not filing a direct appeal within the first year. Therefore, the petitioner has satisfied the requirements of equitable tolling." [ECF No. 31 at 4]. But again, Petitioner fails to explain how counsel's failure to file a direct appeal has any bearing on whether he was prevented from timely filing a § 2254 petition. It appears that Petitioner again conflates the direct appeal process with the post-conviction collateral review process.

Lastly, Petitioner appears to contend that his *pro se* status and ignorance of the law should justify equitable tolling. [ECF No. 31 at 3]. But the Eleventh Circuit has consistently held that *pro se* status or ignorance of the law are not "extraordinary circumstances" that justify equitable tolling. *See Perez v. Florida*, 519 F. App'x 995, 997 (11th Cir. 2013) ("we have not accepted a lack of a legal education and related confusion or ignorance about the law as excuses for a failure to file in a timely fashion"); *Outler v. United States*, 485 F.3d 1273, 1282 n.4 (11th Cir. 2007) ("*[P]ro se* litigants, like all others, are deemed to know of the one-year statute of limitations."). In sum, Petitioner is not entitled to equitable tolling of the AEDPA's limitations period.

C. Actual Innocence

Lastly, a petitioner may overcome the statute of limitations by showing that he is actually innocent. *See McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013) ("a credible showing of actual innocence may allow a prisoner to pursue his constitutional claims . . . on the merits notwithstanding the existence of a procedural bar to relief."). This exception, however, "applies to a severely confined category: cases in which new evidence shows 'it is more likely than not that no reasonable juror would have convicted the petitioner.'" *Id.* at 395 (quoting *Schlup v. Delo*, 513 U.S. 298, 329 (1995)). "'[A]ctual innocence' means factual innocence, not mere legal

insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998). For a claim of actual innocence to be credible, a petitioner must "support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Schlup*, 513 U.S. at 324. Such evidence is "unavailable in the vast majority of cases, [and] claims of actual innocence are rarely successful." *Id.*

Petitioner has not presented any new reliable evidence of his actual innocence. Petitioner scatters throughout the Petition various conclusory allegations of innocence, but he provides no evidence to support these claims. *See Fast v. Sec'y, Dep't of Corr.*, 826 F. App'x 764, 766 (11th Cir. 2020) ("unsupported, conclusory statements" cannot demonstrate actual innocence). For instance, Petitioner alleges that his counsel was ineffective for "not presenting evidence to exonerate the petitioner," and he claims that "allegations were fabricated to damage Petitioner's character." [ECF No. 16 at 31, 40]. But Petitioner provides no evidence to support these claims, nor does he even specify what evidence would have exonerated him or what allegations were fabricated. He further alleges in conclusory fashion that "exculpatory evidence" was suppressed in violation of *Brady*[5] when the State altered a recording of a controlled call between the victim and Petitioner. *Id.* at 27. But again, Petitioner does not specify what exculpatory evidence was contained on the controlled call, nor does he provide any of this purportedly exculpatory evidence.

Petitioner also claims that certain deposition transcripts demonstrate his factual innocence. First, he claims that the victim "recanted" her accusations in her deposition. Specifically, he alleges that the victim "recanted statements regarding the use of no condoms and the date(s) and time of the allegations could not be confirmed." *Id.* at 21. But these vague assertions, absent further context

[5] *Brady v. Maryland*, 373 U.S. 83 (1963).

or explanation, certainly do not show that the victim recanted her accusations of molestation and sexual activity. Second, Petitioner references a part of the victim's mother's deposition in which she testified that she asked her daughter whether anyone had touched her inappropriately, and her daughter answered "no." *Id.* at 22. Again, this one statement, divorced from context, does not demonstrate that "it is more likely than not that no reasonable juror would have convicted the petitioner" had the case gone to trial. *Schlup*, 513 U.S. at 329; *see also McQuiggin*, 569 U.S. at 401 ("We stress once again that the *Schlup* standard is demanding. The gateway should open only when a petition presents 'evidence of innocence so strong that a court cannot have confidence in the outcome of the trial'" (quoting *Schlup*, 513 U.S. at 316)). The Court notes that Petitioner has filed brief excerpts of these deposition transcripts, which confirm that the statements he references are taken out of context and do not support a claim of actual innocence.[6] *See* [ECF No. 33].

In any event, these depositions are not "new evidence." As the state court docket shows, they were taken during the pretrial discovery phase and were thus available to Petitioner prior to his guilty plea. *Manborde*, No. F17-15733, Docket Nos. 62, 173; *see Schlup*, 513 U.S. at 328–29 (an "actual innocence" claim requires the petitioner to present "relevant evidence that was either *excluded or unavailable at trial*" (emphasis added)); *McQuiggin*, 569 U.S. at 399 ("[u]nexplained delay in presenting new evidence bears on the determination whether the petitioner has made the requisite showing"); *Holt v. Toney*, No. 17-CV-1338-RDP-GMB, 2020 WL 3949071, at *3 (N.D. Ala. May 15, 2020) (holding that the petitioner had "not come forward with any 'new evidence' that was previously unavailable to him" prior to his guilty plea "to support a claim of actual

[6] For instance, the surrounding portions of the victim's mother's deposition testimony reveal that she asked her daughter whether anyone had touched her inappropriately because she suspected Petitioner was molesting her daughter. *See* [ECF No. 33 at 6:12–8:25].

innocence."). Accordingly, Petitioner has not met the "actual innocence" exception to the statute of limitations.

III. EVIDENTIARY HEARING

Petitioner is not entitled to an evidentiary hearing because he has not alleged specific facts that, if true, would entitle him to habeas relief. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief"); *Allen v. Sec'y, Fla. Dep't of Corr.*, 611 F.3d 740, 763 (11th Cir. 2010) ("Having alleged no specific facts that, if true, would entitle him to federal habeas relief, [the petitioner] is not entitled to an evidentiary hearing."). Therefore, Petitioner's "Motion to Grant Evidentiary Hearing" [ECF No. 32] shall be denied.

IV. CERTIFICATE OF APPEALABILITY

A prisoner seeking to appeal a district court's final order denying his habeas petition has no absolute right to appeal but must obtain a certificate of appealability ("COA") to do so. 28 U.S.C. § 2253(c)(1); *Harbison v. Bell*, 556 U.S. 180 (2009). This Court should issue a COA only if Petitioner makes "a substantial showing of the denial of a constitutional right." § 2253(c)(2). Where the court has rejected a claim on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Because reasonable jurists would not debate whether the Petition is timely, Petitioner is not entitled to a COA.

V. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Petitioner's Second Amended Petition for Writ of Habeas Corpus [ECF Nos. 15, 16] is **DISMISSED WITH PREJUDICE** as time barred under 28 U.S.C. § 2244(d).

2. No certificate of appealability shall issue.

3. Petitioner's Motion to Grant Evidentiary Hearing [ECF No. 32] is **DENIED**.

4. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of February, 2024.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record; and
Mario A. Manborde, *pro se*
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Additional material from this filing is available in the Clerk's Office.