

APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12776

Non-Argument Calendar

RAYMOND J. RAMIREZ,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:23-cv-61353-DMM

Before JILL PRYOR, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

Raymond J. Ramirez, proceeding *pro se*, appeals the district court's order granting voluntary dismissal of his 28 U.S.C. § 2254 petition. He argues that the district court abused its discretion by recharacterizing his "Notice of Venue Transfer/Motion to Not Enter Ruling," as a Fed. R. Civ. P. 41(a)(2) motion without providing him notice of its intention to do so. He argues that, had the court provided notice, he would have moved to withdraw the "recharacterized motion" and, instead, moved forward with his habeas corpus proceeding.

"We review *de novo* a district court's decision to dismiss a § 2254 petition . . . [b]ut we review the district court's determination of the relevant facts, such as the petitioner's diligence, only for clear error." *Lugo v. Sec'y, Florida Dept. of Corr.*, 750 F.3d 1198, 1206 (11th Cir. 2014).

In *Diaz v. Sec'y for Dep't of Corr.*, we held that a petitioner was not entitled to equitable tolling of the limitations period for filing a federal habeas petition under the facts in that case. 362 F.3d 698, 702 (11th Cir. 2004). In so doing, we explained that the district court did not err in granting petitioner's motion for voluntary dismissal of his § 2254 petition without advising him of potential statute-of-limitations consequences because "the district court . . . merely granted the precise action requested by Diaz." *Id.* at 701. We noted that the petitioner's case did not involve a

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Opinion of the Court

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recharacterization of his pleadings. *Id.* Nor did it entail “any action taken by the district court, either *sua sponte* or at the sole request of Diaz’s opposing party, that prevented Diaz or hindered him from pursuing his pending claims within the period of the statute of limitations” *Id.*

Here, the district court did not err in dismissing Ramirez’s 28 U.S.C. § 2254 petition without prejudice because it properly construed his transfer motion as requesting a voluntary dismissal. Ramirez’s “Notice of Venue Transfer/Motion to Not Enter Ruling” explicitly asked that the district court not rule on his petition, as he was pursuing other challenges to his conviction and sentence, specifically in the Supreme Court and the Broward County Circuit Court. The district court did not act *sua sponte* or at the sole request of the state, and it did not rule in a manner that prevented Ramirez from pursuing his habeas claims within the statute of limitations period. *Id.* Rather, the district court acknowledged that the transfer motion essentially constituted a voluntary dismissal of the case and did as Ramirez asked, as well as cautioning him that the dismissal would not toll the federal limitations period. *Id.* Thus, the district court properly dismissed the § 2254 petition because it merely granted the request that Ramirez made in his “Notice of Venue Transfer/Motion to Not Enter Ruling.” *Id.*

Accordingly, the decision of the district court is

AFFIRMED.

APPENDIX B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-61353-CV-MIDDLEBROOKS

RAYMOND J. RAMIREZ,

Petitioner,

vs.

RICKY D. DIXON, Secretary,
Florida Department of Corrections,

Respondent.

ORDER OF DISMISSAL

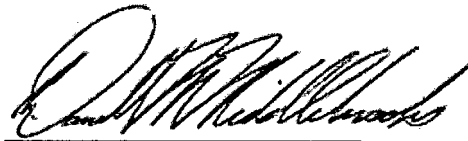
THIS CAUSE is before the Court on the Petitioner Raymond J. Ramirez's ("Petitioner") "Notice of Venue Transfer/Motion to Not Enter Ruling," in legal effect a "Notice of Voluntary Dismissal" ("Notice") docketed by the Clerk on July 24, 2023. (DE 6). Petitioner claims he has filed a petition with the United States Supreme Court and "does not want this Court to enter a ruling on his 2254 habeas corpus. . . ." (*Id.* at 1). In this federal petition for writ of habeas corpus ("Petition") pursuant to 28 U.S.C. § 2254, Petitioner challenges his state court conviction for burglary of a structure with an assault entered following a 2014 violation of probation proceeding in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Case No. 04-06065-CF10A. (DE 1 at 1). Following initial screening, on July 20, 2023, I ordered Petitioner to file an application to proceed *in forma pauperis* or pay the Clerk's \$5.00 filing fee. (DE 5). On that same date, I entered a separate Order directing the Respondent to show cause why the Petition should not be granted. (DE 3).

Petitioner's Notice in legal effect seeks dismissal of this action because he is pursuing declaratory relief before the United States Supreme Court. (*Id.* at 1). Petitioner is cautioned, however, that dismissal of this action will not toll the federal limitations period should he wish to

refile a subsequent federal habeas corpus petition at a later date. *See Duncan v. Walker*, 533 U.S. 167, 181-82 (2001) (holding that a federal habeas corpus petition is not an "application for State post-conviction or other collateral review" within the meaning §2244(d)(2)); *see also Nyland v. Moore*, 216 F.3d 1264, 1267 (11th Cir. 2000) (per curiam) (holding that the filing date of a second §2254 application does not relate back to the filing of an earlier, timely petition which is dismissed prior to resolution on the merits). Accordingly, upon review of the Petitioner's Motion and the record, it is **ORDERED AND ADJUDGED** as follows:

1. Petitioner's Notice of Venue Transfer/Motion to Not Enter Ruling (DE 6), in legal effect a notice of voluntary dismissal is **APPROVED**, and this proceeding is **DISMISSED** without prejudice, except as to the application of the federal statute of limitations or any other procedural defenses which may apply;
2. All pending motions, not otherwise ruled upon are **DENIED as moot**; and,
3. The Clerk of Court shall **CLOSE THIS CASE**.

SIGNED in Chambers at West Palm Beach, Florida on this 24th day of July, 2024.



Donald M. Middlebrooks
United States District Judge

Copies furnished to:

Raymond J. Ramirez, Pro Se

DC#L55488

Desoto Correction Institution-Desoto Annex

Inmate Mail/Parcels

13617 SE Highway 70

Arcadia, FL 34266

Florida Attorney General

Noticing 2254 SAG Broward and North

Email: CrimAppWPB@MyFloridaLegal.com

APPENDIX C

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12776

RAYMOND J. RAMIREZ,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:23-cv-61353-DMM

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR
REHEARING EN BANC

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Order of the Court

23-12776

Before JILL PRYOR, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

APPENDIX D

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12776

RAYMOND J. RAMIREZ,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:23-cv-61353-DMM

JUDGMENT

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23-12776

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: April 21, 2025

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: September 19, 2025

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RAYMOND J. RAMIREZ,
Petitioner,

Case No.: 23-CV-61353
Broward No.: 04-6065CF 10A

v.
RICKY DIXON, Secretary
Florida Department of Corr.
Respondent.

FILED BY <u>MC</u>	D.C.
AUG 08 2023	
ANGELA E. NOBLE CLERK U.S. DIST. CT. S. D. OF FLA. - MIAMI	

AMENDED MOTION FOR RELIEF
FROM ORDER

COMES NOW, Raymond J. Ramirez, Pro se, Pursuant to Rule 60, Fed. R. Civ. P., and hereby submits this Amended Motion For Relief From Order:

1. The Petitioner was not seeking a voluntary dismissal.
2. The Petitioner's "Notice of Venue Transfer / Motion To Not Enter Ruling" was to be construed as requesting a stay of the proceedings in this Court and /or hold the proceeding in abeyance until the U.S. Supreme Court either decided to entertain the habeas Corpus or declined to entertain the habeas Corpus and transfer it back to this Court Pursuant to Title 28 U.S.C.S. 2241 (b).
3. The Petitioner request's that this Court reinstate the Proceeding in this Court and /or vacate its 7/24/23 order because the Petitioner was not seeking voluntary dismissal of his Title 28 U.S.C.S. 2254 habeas Corpus.
4. The U.S. Supreme Court Clerk of Court returned Petitioner's habeas Corpus on 8/1/23.

DE-15

**Amended Motion for
Relief from Order**

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SUPREME COURT, U.S.**

WHEREFORE, the Petitioner respectfully requests that this Court vacate its 7/24/23 order of voluntary dismissal and reinstate and/or reopen the habeas Corpus Proceeding in Case no.: 23-CV-61353.

Sincerely,

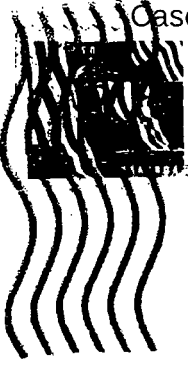
RR
Raymond J. Ramirez
D.C. # L55488

Certificate of Service

I hereby Certify that a true and correct hand written copy of the foregoing Amended Motion For Relief From Order was placed in the hands of Desoto C.I. Annex Personnel for mailing to Paul Patti III, 1515 N. Flagler Dr. Suite 900 West Palm Beach, FL 33401 on this 3rd day of August 2023.

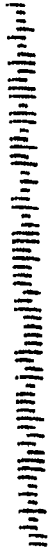
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ON 8/3/23 FOR MAILING
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OFFICER INITIALS AP

RR
Raymond J. Ramirez
D.C. # L55488
Desoto C.I. Annex
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Arcadia, FL 34266



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
OFFICE OF THE CLERK
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MIAMI, FL 33128



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CORRECTIONAL INSTITUTION

Reymond J. Ramirez
D.C. # L55488
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Arcadia, FL 34266

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