No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY MICHAEL NIERENBERG,
Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

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

APPENDIX TO APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

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In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11057

GREGORY MICHAEL NIERENBERG,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:22-cv-00176-WWB-SJH

ORDER:

Gregory Nierenberg, a Florida prisoner, appeals the denial of his 28 U.S.C. § 2254 petition, and moves this Court for a

certificate of appealability ("COA").[1] In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Reasonable jurists would not debate the denial of any of Nierenberg's claims. With respect to Claim 1, the state post-conviction court reasonably determined that trial counsel advised Nierenberg that he had grounds to withdraw his guilty plea and investigated the drug use and inconsistent statements of the state's witnesses, and its conclusion that counsel was not ineffective was not an unreasonable application of federal law. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Turning to Claim 2, the state post-conviction court reasonably determined that counsel did not perform deficiently in advising Nierenberg that he did not have a valid self-defense to second-degree murder, given his statements that he was the aggressor. *See Strickland*, 466 U.S. at 687; *Harrington*, 562 U.S. at 105.

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[1] Nierenberg seeks COA on only four of the claims that he raised in his petition. Accordingly, this Court "will not entertain the possibility of granting a certificate of appealability" on the additional claim that he raised below. *See Jones v. Sec'y, Dep't of Corr.*, 607 F.3d 1346, 1353-54 (11th Cir. 2010).

With respect to Claim 3, the state court did not unreasonably find that counsel had no reason to believe that Nierenberg suffered from PTSD, anxiety, and depression, meaning that its conclusion that counsel did not render deficient performance by not presenting evidence of these conditions was not an unreasonable application of *Strickland*. *See Strickland*, 466 U.S. at 687; *Harrington*, 562 U.S. at 105. As such, Nierenberg also was not entitled to an evidentiary hearing on this claim in the district court. *See Landers v. Warden, Att'y Gen. of Ala.*, 776 F.3d 1288, 1295 (11th Cir. 2015).

As to Claim 4, the state court's determination that counsel did not render ineffective assistance by failing to move to withdraw Nierenberg's guilty plea, in light of Ashley Pace's testimony, was not an unreasonable application of *Strickland*, as it reasonably concluded that Pace's testimony was not inconsistent on the question of whether she saw Nierenberg shoot at Carl Harp. Finally, to the extent that Nierenberg sought to assert a claim of actual innocence, such a claim is not cognizable in a non-capital habeas proceeding. *See Jordan v. Sec'y, Dep't of Corr.*, 485 F.3d 1351, 1356 (11th Cir. 2007).

Accordingly, Nierenberg's motion for a COA is DENIED.

/s/ Kevin C. Newsom

UNITED STATES CIRCUIT JUDGE