APPENDIX

APPENDIX A

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-13760

DONALD EDWARD SMITH,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent- Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:22-cv-00214-RBD-PRL

Before BRANCH and LUCK, Circuit Judges.

BY THE COURT:

The motion for leave to file an out-of-time motion for reconsideration is DENIED.

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

July 22, 2026

Donald Edward Smith
506 CLEAR RD
OCALA, FL 34472

Appeal Number: 23-13760-G
Case Style: Donald Smith v. USA
District Court Docket No: 5:22-cv-00214-RBD-PRL
Secondary Case Number: 5:17-cr-00030-RBD-PRL-1

The enclosed order has been ENTERED.

Electronic Filing
All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

MOT-2 Notice of Court Action

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

May 07, 2024

Donald Edward Smith
13365 SW 3RD CT
OCALA, FL 34473

Appeal Number: 23-13760-G
Case Style: Donald Smith v. USA
District Court Docket No: 5:22-cv-00214-RBD-PRL
Secondary Case Number: 5:17-cr-00030-RBD-PRL-1

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-13760

DONALD EDWARD SMITH,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent- Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:22-cv-00214-RBD-PRL

ORDER:

Donald Smith moves for a certificate of appealability ("COA"), in order to appeal the denial of his *pro se* 28 U.S.C. § 2255 motion to vacate. To merit a COA, a movant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 529 U.S. 473, 484-85 (2000). Because Smith has failed to make the requisite showing, his motion for a COA is DENIED.

/s/ Robert J. Luck
UNITED STATES CIRCUIT JUDGE

APPENDIX C

U.S. COURT OF APPEALS RECEIVED CLERK JUN 25 2026 ATLANTA, GA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DONALD EDWARD SMITH,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Case No.: 23-13760-G
District Court Case No.: 5:22-cv-00214-RBD-PRL
Criminal Case No.: 5:17-cr-00030-RBD-PRL-1

DONALD EDWARD SMITH'S MOTION TO RECALL MANDATE AND FOR LEAVE TO FILE OUT-OF-TIME MOTION FOR RECONSIDERATION OF THE MAY 7, 2024 ORDER DENYING CERTIFICATE OF APPEALABILITY

Petitioner-Appellant Donald Edward Smith ("Appellant") respectfully moves this Court to recall the mandate issued with the Court's May 7, 2024 order denying a certificate of appealability and to grant leave to file an out-of-time motion for reconsideration of that order. The May 7, 2024 notice expressly stated that the order denying the Certificate of Appealability ("COA") was issued as the mandate of this Court under Eleventh Circuit Rule 41-4 and further advised that any motion to reconsider, vacate, or modify the order was due within twenty-one days, with no additional time allowed for mailing. App. Dkt. Entry 35; Exhibit 1.

This motion is not a petition for panel rehearing or rehearing en banc. Eleventh Circuit Rule 22-1(c) provides that the denial of a certificate of appealability, whether by a single circuit judge or by a panel, "may be the subject.

of a motion for reconsideration but may not be the subject of a petition for panel rehearing or a petition for rehearing en banc." 11th Cir. R. 22-1(c). Accordingly, Appellant seeks only the relief expressly permitted by Rule 22-1(c): reconsideration of the COA denial.

Because the May 7, 2024 COA denial was issued as the mandate, Appellant also seeks a limited recall of mandate under Federal Rule of Appellate Procedure 41 and Eleventh Circuit Rule 41-1. The Supreme Court has recognized that courts of appeals possess inherent authority to recall their mandates, subject to abuse-of-discretion review, but that the power is reserved for extraordinary circumstances and is to be used sparingly. *Calderon v. Thompson*, 523 U.S. 538, 549–50 (1998). In Calderon, the Court described recall of mandate as a power of last resort, reserved for grave and unforeseen circumstances, because of the strong finality interests attached to appellate mandates.

Appellant does not ask this Court to use recall as a substitute appeal, rehearing petition, or second/successive collateral attack. Rather, Appellant seeks a narrow procedural recall for the limited purpose of restoring the Rule 22-1(c) reconsideration opportunity that was lost when the May 7, 2024 order was mailed to an address Appellant had attempted to update before the order issued, the address-change notice was not docketed until after the COA denial and mandate, and Appellant did not timely receive the order in time to seek reconsideration.

This is the type of limited, equitable relief necessary to prevent injustice. Without recall, Appellant is permanently barred from filing the only reconsideration motion authorized by Rule 22-1(c), not because he knowingly slept on his rights, but because the order triggering the twenty-one-day deadline was not timely received.

I. Relief Requested

Appellant respectfully requests that this Court enter an order granting the following limited relief:

1. Recall the mandate issued with the Court's May 7, 2024 order denying Appellant's application for a certificate of appealability;

2. Grant leave to file an out-of-time motion for reconsideration of the May 7, 2024 order denying a certificate of appealability;

3. Deem the attached proposed Motion for Reconsideration timely filed as of the filing date of this motion, or, in the alternative, allow Appellant twenty-one days from the date of any order granting this motion to file his Motion for Reconsideration;

4. Permit reconsideration of the COA denial on the merits under Eleventh Circuit Rule 22-1(c), without treating this motion as a petition for panel rehearing, rehearing en banc, a successive § 2255 motion, or a new collateral attack; and

5. Grant such other and further relief as this Court deems just and proper.

II. Basis for the Motion

This motion arises from a notice failure that deprived Mr. Smith of a meaningful opportunity to seek reconsideration within the twenty-one-day period stated in this Court's May 7, 2024 notice.

On May 7, 2024, this Court denied Mr. Smith's application for a certificate of appealability. The Clerk's May 7, 2024 notice expressly stated that the order denying the COA was issued as the mandate of the Court pursuant to Eleventh Circuit Rule 41-4. The notice further advised that, under Eleventh Circuit Rule 27-2, any motion to reconsider, vacate, or modify the order had to be filed within twenty-one days of entry, with no additional time allowed for mailing. *See* App. Dkt. Entry 35; Exhibit 1.

The May 7, 2024 notice was mailed to Mr. Smith at 13365 SW 3rd Court, Ocala, Florida 34473. However, before that order issued, Mr. Smith had prepared a change-of-address notice dated April 23, 2024, identifying his address as 62 Almond Road, Ocala, Florida 34472. *See* App. Dkt. Entry 36; Exhibit 2.

The appellate record reflects that Appellant's April 23, 2024 notice of change of address was received and filed by this Court on May 2, 2024, before the May 7, 2024 order denying the COA and issuing as the mandate. The notice

identified Appellant's mailing address as 62 Almond Road, Ocala, Florida 34472. App. Dkt. Entry 36; Exhibit 2. Nevertheless, the May 7, 2024 notice denying the COA and issuing as the mandate was mailed to Appellant's prior address, 13365 SW 3rd Court, Ocala, Florida 34473. *See* App. Dkt. Entry 35; Exhibit 1.

Thus, the order that triggered the twenty-one-day reconsideration deadline was mailed to the prior address even though Mr. Smith had already attempted to update his mailing address before the order issued. Although the address-change notice was received and filed before the COA denial and mandate issued, the May 7, 2024 order was nevertheless mailed to Appellant's prior address. As a result, Mr. Smith did not receive timely notice of the May 7, 2024 order and was deprived of the meaningful opportunity to file the reconsideration motion expressly permitted by Eleventh Circuit Rule 22-1(c).

This is not an attempt to relitigate the appeal through an improper rehearing petition. Rather, Mr. Smith seeks limited procedural relief: recall of the mandate and leave to file an out-of-time motion for reconsideration so that the authorized Rule 22-1(c) remedy is not forfeited because of a notice failure outside his meaningful control.

III. Specific Explanation for Delay Under Eleventh Circuit Rule 41-1(c)

Because this motion is being filed more than one year after the May 7, 2024 mandate, Appellant provides this specific explanation for why the motion was not filed sooner and why good cause exists for the delay.

First, Appellant did not timely receive the May 7, 2024 order denying the certificate of appealability. The order was mailed to Appellant's prior address, 13365 SW 3rd Court, Ocala, Florida 34473, even though Appellant had prepared and attempted to update his address to 62 Almond Road, Ocala, Florida 34472 before the order issued. The May 7, 2024 notice was not merely informational; it triggered the twenty-one-day period to seek reconsideration and expressly stated that no additional time would be allowed for mailing.

Second, the appellate record reflects that Appellant's April 23, 2024, notice of change of address was received and filed on May 2, 2024, before the May 7, 2024 COA denial and mandate issued. *See* App. Dkt. Entry 36; Exhibit 2. This created a practical notice failure: despite the change-of-address notice being received and filed before the COA denial, the order starting the twenty-one-day reconsideration period was mailed to Appellant's prior address.

Third, Appellant's ability to personally monitor mail, docket activity, deadlines, and legal filings was severely impaired by documented medical conditions. Appellant's Federal Bureau of Prisons medical record reflects that he had been diagnosed with a terminal medical condition with a life expectancy of

less than twenty-four months. *See* Exhibit 3. His medical-history summary further reflects multiple cancers, heart disease, diabetes, kidney disease, neuropathy, glaucoma/retinopathy issues, extensive surgeries, rehabilitation periods, and continuing medical treatment. *See* Exhibit 4. These conditions were not ordinary inconvenience; they directly affected Appellant's ability to personally monitor the docket, receive and process legal mail, and respond to strict appellate deadlines.

Fourth, because of his medical condition and diminished functional capacity, Appellant has relied on assistance to manage his affairs, including mail, records, and legal-related paperwork. A Durable Power of Attorney was executed in 2018. *See* Exhibit 5. Appellant does not rely on the Power of Attorney to suggest that any non-attorney representative was acting as legal counsel. Rather, it is offered to show Appellant's documented reliance on assistance because of serious medical and functional limitations that affected his ability to timely discover, understand, and respond to the May 7, 2024 order.

Fifth, Appellant first learned on May 11, 2026, at approximately 10:45 a.m., that the Eleventh Circuit had denied his certificate of appealability on May 7, 2024, that the denial had issued as the mandate, and that the twenty-one-day period to seek reconsideration had expired. Appellant learned this information when he went to the Clerk's Office to ask about the status of his case because he had not received any update. Clerk's Office staff informed him of the status of the appeal, including

that the certificate of appealability had been denied and that the reconsideration deadline had already expired. Upon learning of the order and the mailing/address issue, Appellant began gathering the relevant records, including the May 7, 2024 notice, the April 23, 2024 change-of-address notice, docket materials, mailing documents, medical records, and supporting exhibits. Appellant acted in good faith and as promptly as his medical condition, functional limitations, and reliance on assistance reasonably allowed. See Smith Declaration ¶¶ 36–46.

Sixth, the delay was not strategic, dilatory, or for purposes of harassment. Appellant did not intentionally ignore the May 7, 2024 order, did not knowingly waive the Rule 22-1(c) reconsideration remedy, and did not make a tactical decision to allow the reconsideration period to expire. The delay resulted from the combined effect of non-receipt, mailing to the prior address, delayed docketing or processing of the address-change issue, severe medical impairment, reliance on assistance, and the immediate issuance of the COA denial as the mandate.

For these reasons, Appellant respectfully submits that he has provided the specific explanation required by Eleventh Circuit Rule 41-1(c), and that good cause exists for the delay in seeking limited recall of the mandate for the sole purpose of allowing the Rule 22-1(c) motion for reconsideration that Appellant was unable to timely file.

IV. Legal Standard

A. Recall is necessary to prevent injustice because Mr. Smith was deprived of a meaningful opportunity to seek reconsideration

Eleventh Circuit Rule 22-1(c) expressly authorizes reconsideration of an order denying a certificate of appealability. The Rule provides that an application for a certificate of appealability may be considered by a single circuit judge, and that denial of a certificate of appealability, whether by a single judge or by a panel, may be challenged by motion for reconsideration, but not by petition for panel rehearing or rehearing en banc. 11th Cir. R. 22-1(c). Accordingly, Appellant seeks the procedural relief allowed by Rule 22-1(c): leave to file a motion for reconsideration of the COA denial.

Eleventh Circuit Rule 27-2 provides that a motion to reconsider, vacate, or modify an order must be filed within twenty-one days of entry, and that no additional time is allowed for mailing. 11th Cir. R. 27-2. The Clerk's May 7, 2024 notice advised Appellant of that same twenty-one-day deadline and stated that the order denying a COA was issued as the mandate. *See* App. Dkt. Entry 35; Exhibit 1.

Federal Rule of Appellate Procedure 41 governs the appellate mandate. Under Rule 41(c), the mandate is effective when issued. Fed. R. App. P. 41(c). Eleventh Circuit Rule 41-1(b) further provides that a mandate once issued shall not be recalled except to prevent injustice. Where a motion to recall mandate is tendered more than one year after issuance, Rule 41-1(c) requires the motion to

state specifically why it was not filed sooner, and the Court will not grant the motion unless the movant establishes good cause for the delay.

The Supreme Court has recognized that courts of appeals possess inherent authority to recall their mandates, subject to abuse-of-discretion review. *Calderon v. Thompson*, 523 U.S. 538, 549 (1998). That authority is extraordinary and reserved for limited circumstances because of the finality interests attached to appellate mandates. Id. at 549–50. In *Calderon*, the Court described recall of mandate as a power of last resort, to be used sparingly and only where grave or unforeseen circumstances justify intervention.

Appellant recognizes the high standard imposed by Calderon and Eleventh Circuit Rule 41-1. He does not ask this Court to recall the mandate as a substitute appeal, as a petition for rehearing, or as a second or successive collateral attack. Rather, Appellant seeks a limited procedural recall for one purpose only: to restore the Rule 22-1(c) reconsideration opportunity that was lost when the May 7, 2024 COA denial was mailed to a prior address, after Appellant had attempted to update his address, even though Appellant's address-change notice had been received and filed before the COA denial and mandate issued.

Equitable principles further support limited relief where extraordinary circumstances prevent a litigant from timely asserting a right despite reasonable diligence. In *Holland v. Florida*, 560 U.S. 631, 649 (2010), the Supreme Court held

that equitable tolling is available in appropriate habeas cases where a litigant shows that he pursued his rights diligently and that an extraordinary circumstance prevented timely filing. The Court also emphasized that equitable analysis should not be controlled by rigid or mechanical rules where strict application of a deadline would create a particular injustice. Id. at 649–50.

Holland is also important because it makes clear that diligence means reasonable diligence, not maximum feasible diligence. Id. at 653. That principle applies here by analogy. Appellant's delay did not result from strategy, indifference, or intentional failure to act. It resulted from non-receipt of the May 7, 2024 order, address-change and docketing confusion, severe medical limitations, reliance on assistance, and the immediate issuance of the COA denial as the mandate.

The Supreme Court's decision in *Maples v. Thomas,* 565 U.S. 266 (2012), further supports the principle that a missed postconviction deadline may be excused where the default resulted from circumstances external to the litigant and cannot fairly be attributed to him. In Maples, the Court held that cause existed where the petitioner was left without meaningful notice and no reason to know he needed to protect himself before the deadline expired. The Court emphasized that principles of agency law and fundamental fairness prevent a court from charging a litigant with a default caused by circumstances beyond his control. Id. at 280–83.

Although this case does not present the same attorney-abandonment facts as Maples, the same fairness principle applies. Appellant should not lose the only reconsideration remedy authorized by Rule 22-1(c) because the order triggering the twenty-one-day deadline was not timely received, was mailed to a prior address, and the address-change notice was not docketed until after the COA denial and mandate issued. Under these circumstances, limited recall of the mandate is necessary to prevent injustice and to allow Appellant to file the reconsideration motion he was unable to timely file.

B. Appellant has shown good cause for filing more than one year after the mandate

Eleventh Circuit Rule 41-1(c) requires a motion to recall mandate filed more than one year after issuance to specifically explain why it was not filed sooner and to establish good cause for the delay. Appellant has satisfied that requirement.

As set forth above, the delay was not caused by strategy, neglect, or intentional failure to act. It resulted from a combination of documented non-receipt, address-change confusion, delayed docketing of the address-change notice, severe medical impairment, reliance on assistance, and the fact that the May 7, 2024 COA denial issued immediately as the mandate.

The record reflects that the May 7, 2024 order was mailed to Appellant's prior address. *See* App. Dkt. Entry 35; Exhibit 1. Appellant had already prepared a change-of-address notice identifying a different mailing address. *See* App. Dkt.

Entry 36; Exhibit 2. The appellate record reflects that Appellant's April 23, 2024 notice of change of address was received and filed on May 2, 2024, before the May 7, 2024 COA denial and mandate issued. See App. Dkt. Entry 36; Exhibit 2. Nevertheless, the May 7, 2024 order was mailed to Appellant's prior address. See App. Dkt. Entry 35; Exhibit 1.

Appellant's documented medical condition further explains why he was not able to simply monitor the docket, discover the order immediately, or correct the problem within the twenty-one-day reconsideration period. His BOP medical records reflect a terminal prognosis, and his medical-history summary documents extensive ongoing serious medical conditions, surgeries, and rehabilitation. *See* Exhibits 3 & 4.

Appellant's diligence is further shown by the fact that, after receiving no update, he went to the Clerk's Office on or about May 8, 2026 to inquire about the status of his case, learned for the first time that the May 7, 2024 COA denial had issued as the mandate and that the reconsideration deadline had expired, and then began gathering the records necessary to seek relief. See Smith Declaration ¶¶ 36–46.

These circumstances establish good cause for the delay and justify a limited recall of the mandate for the sole purpose of allowing Appellant to file the reconsideration motion authorized by Eleventh Circuit Rule 22-1(c).

C. The requested relief is narrow and does not prejudice the United States.

Mr. Smith is not asking the Court to grant a certificate of appealability through this motion. Nor is he asking the Court to treat this motion as a petition for rehearing, a new appeal, or a second or successive collateral attack.

He asks only for the opportunity to file the motion for reconsideration that Eleventh Circuit Rule 22-1(c) expressly permits, but which he was unable to timely file because he did not receive the May 7, 2024 order in time to act.

The United States will suffer no unfair prejudice from responding to a motion for reconsideration. By contrast, denying relief would permanently deprive Mr. Smith of the only reconsideration mechanism available from the COA denial, despite the record showing a notice issue connected to the mailing address and docketing of the address change.

Because the requested relief is limited, procedural, and directed only to restoring the lost reconsideration opportunity, the balance of equities favors granting leave to file the out-of-time motion for reconsideration.

D. Reconsideration is not futile because reasonable jurists could debate the constitutional issues under Slack

Although this motion seeks procedural relief, Appellant respectfully submits that reconsideration would not be futile. The proposed Motion for Reconsideration presents substantial constitutional questions concerning ineffective assistance of

counsel, actual conflict of interest, denial of conflict-free counsel at a critical stage, the knowing and voluntary nature of the guilty plea, medical/medication issues affecting Appellant's ability to knowingly and intelligently enter a plea, and newly submitted evidence concerning Appellant's whistleblower/TCR activity and alleged pre-sentencing proffer.

A certificate of appealability does not require Appellant to prove at this stage that he will ultimately prevail. Under *Slack v. McDaniel,* 529 U.S. 473, 484 (2000), a COA should issue where reasonable jurists could debate whether the petition states a valid claim of the denial of a constitutional right and, where applicable, whether the district court's procedural ruling was correct.

The Supreme Court reinforced that standard in *Miller-El v. Cockrell,* 537 U.S. 322 (2003), explaining that the COA inquiry is a threshold inquiry and does not require full consideration of the factual or legal bases supporting the claims. The question is the debatability of the underlying constitutional claim, not the final resolution of that debate. A petitioner need not convince the Court that he will prevail; he must show that reasonable jurists could debate the district court's resolution or that the issues deserve encouragement to proceed further.

The Supreme Court again emphasized this principle in *Buck v. Davis*, 580 U.S. 100, 115–17 (2017), explaining that the COA inquiry is not coextensive with a merits analysis. At the COA stage, the question is only whether jurists of reason

could disagree with the district court's resolution or conclude that the issues deserve encouragement to proceed further. The Court cautioned that when a court first decides the merits and then denies a COA based on that merits ruling, it places too heavy a burden on the applicant at the COA stage.

Here, the proposed Motion for Reconsideration identifies issues that are at least debatable among reasonable jurists. The evidence includes a limited-purpose representation arrangement, third-party payment/funding concerns, counsel's connection to settlement or plea negotiations rather than trial representation, and a compressed March 23, 2018 proceeding during which withdrawal of counsel, arraignment on superseding information, and change of plea were addressed in close sequence.

Schaffnit's December 29, 2020 letter states that the fee agreement was between his office and Mr. Lope, not Appellant, and that Appellant signed only an Authority to Represent after Schaffnit was retained. See Exhibit 6. The March 23, 2018 transcript further reflects that Schaffnit described his role as contingent on resolution of the matter through a plea or settlement. Schaffnit stated that, if the plea agreement went through, he would continue to represent Appellant and file a limited notice of appearance for purposes of plea and sentencing, but that if negotiations failed and the case proceeded to trial, he did not anticipate filing a notice of appearance for trial. See Exhibit 8.

Wilson's Second Motion to Withdraw was filed on March 22, 2018, the day before the March 23, 2018, plea hearing, and was based on conflict concerns. *See* Exhibit 7. The March 23, 2018 transcript reflects that the proceeding involved Wilson's motion to withdraw, Schaffnit's status, arraignment on the superseding information, and the change-of-plea process. *See* Exhibit 8.

The proposed Motion for Reconsideration, attached as Attachment A, also identifies newly submitted evidence concerning Appellant's whistleblower/TCR activity involving Perfect Seven and the alleged pre-sentencing proffer conference. Appellant contends that, before sentencing, the Government and counsel were aware that he had acted as a whistleblower or cooperating source concerning the Perfect Seven matter. Appellant further contends that this information was not meaningfully presented to the sentencing court, despite its relevance to counsel conflict, mitigation, credibility, and punishment. *See* Smith Declaration ¶¶ 64–87; Exhibits 9.

Appellant does not ask the Court to adjudicate the full Brady/Giglio or newly discovered evidence issue in this recall-mandate motion. Rather, Appellant raises this evidence to show that the proposed Rule 22-1(c) reconsideration motion is not futile and presents debatable constitutional issues deserving of further review. The existence of evidence concerning whistleblower activity, third-party-funded counsel, alleged counsel conflict, and a pre-sentencing proffer supports

Appellant's position that reasonable jurists could debate whether his constitutional claims warranted a COA.

These issues are not merely procedural disagreements. They go directly to whether Appellant had conflict-free counsel at a critical stage, whether the plea was knowing and voluntary, whether material information bearing on sentencing and mitigation was omitted from the sentencing record, and whether reasonable jurists could debate the denial of relief under 28 U.S.C. § 2253(c).

Because the proposed Motion for Reconsideration presents debatable constitutional questions, limited recall of the mandate would not be an empty exercise. It would allow the Court to consider the Rule 22-1(c) reconsideration motion that Appellant was unable to timely file due to the notice failure described above.

V. Conclusion

For the foregoing reasons, Appellant respectfully requests that this Court recall the mandate issued with the May 7, 2024 order denying a certificate of appealability; grant leave to file an out-of-time motion for reconsideration of the May 7, 2024 COA denial; deem Appellant's proposed Motion for Reconsideration, attached hereto as Attachment A, timely filed as of the filing date of this motion, or alternatively allow Appellant twenty-one days from the date of any order granting

this motion to file the motion for reconsideration; and grant any further relief this Court deems just and proper.

Date: June 22 2026

Respectfully submitted,

Donald Edward Smith
Pro Se Petitioner-Appellant
506 Clear Road
Ocala, Florida 34472
Email: smithdon741@gmail.com
Phone: 352-659-1719

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2026, I served a true and correct copy of the foregoing motion by United States Mail, postage prepaid, upon:

Holly Lynn Gershow
Assistant United States Attorney
United States Attorney's Office
Middle District of Florida
Appellate Division
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602

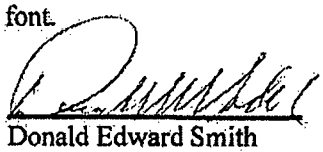
Roberta J. Bodner
Assistant United States Attorney
35 S.E. 1st Avenue, Suite 300
Ocala, Florida 34471

Donald Edward Smith

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with Federal Rule of Appellate Procedure 27(d) because it contains fewer than 5,200 words, excluding the parts exempted by the rule.

I further certify that this motion was prepared in a proportionally spaced typeface using Times New Roman, 14-point font.



Donald Edward Smith

ATTACHMENT A

DONALD EDWARD SMITH'S MOTION FOR RECONSIDERATION OF THE MAY 7, 2024 ORDER DENYING CERTIFICATE OF APPEALABILITY

U.S. COURT OF APPEALS RECEIVED CLERK JUN 25 2026 ATLANTA, GA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DONALD EDWARD SMITH,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Case No.: 23-13760-G
District Court Case No.: 5:22-cv-00214-RBD-PRL
Criminal Case No.: 5:17-cr-00030-RBD-PRL-1

/

DONALD EDWARD SMITH'S MOTION FOR RECONSIDERATION OF THE MAY 7, 2024 ORDER DENYING CERTIFICATE OF APPEALABILITY

Petitioner-Appellant Donald Edward Smith ("Appellant"), proceeding pro se, respectfully submits this proposed Motion for Reconsideration of this Court's May 7, 2024 order denying his application for a certificate of appealability ("COA").

This motion is submitted as Attachment A to Appellant's Motion to Recall Mandate and for Leave to File Out-of-Time Motion for Reconsideration. If the Court grants recall of mandate and leave to file this motion out of time, Appellant respectfully requests that the Court deem this Motion for Reconsideration timely filed and reconsider the May 7, 2024 COA denial under Eleventh Circuit Rule 22-1(c).

This motion is not a petition for panel rehearing or rehearing en banc. Eleventh Circuit Rule 22-1(c) expressly provides that a denial of a certificate of

appealability "may be the subject of a motion for reconsideration but may not be the subject of a petition for panel rehearing or a petition for rehearing en banc." Appellant therefore seeks only reconsideration of the COA denial.

I. INTRODUCTION

The May 7, 2024 order denied Appellant's application for a certificate of appealability. Respectfully, reconsideration is warranted because Appellant's application presents issues that are at least debatable among reasonable jurists and deserve encouragement to proceed further.

The issues presented are not ordinary disagreements with the district court's ruling. They concern whether Appellant was denied conflict-free counsel at a critical stage, whether counsel's limited and third-party-funded representation created an actual conflict or ineffective assistance, whether the guilty plea was knowing and voluntary, whether Appellant's serious medical and medication-related conditions affected his capacity to enter a knowing and intelligent plea, and whether material information concerning Appellant's whistleblower/TCR activity and pre-sentencing proffer was omitted from the sentencing record despite its relevance to conflict, mitigation, credibility, and punishment.

At the COA stage, Appellant is not required to prove that he will ultimately prevail. The question is whether reasonable jurists could debate the district court's resolution of his constitutional claims or conclude that the issues deserve

encouragement to proceed further. *Slack v. McDaniel,* 529 U.S. 473, 484 (2000); *Miller-El v. Cockrell,* 537 U.S. 322, 336–38, 342 (2003).

Because Appellant's claims satisfy that threshold standard, the Court should reconsider the May 7, 2024, COA denial and grant a certificate of appealability on the issues set forth below.

II. LEGAL STANDARD

Under 28 U.S.C. § 2253(c), a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. The certificate must also indicate the specific issue or issues that satisfy that showing. 28 U.S.C. § 2253(c)(2)-(3).

The COA standard is intentionally limited. At this stage, Appellant is not required to prove that he will ultimately prevail on the merits. Rather, he must show that the constitutional issues are debatable among reasonable jurists, that another court could resolve the issues differently, or that the issues are adequate to deserve encouragement to proceed further.

In *Slack v. McDaniel,* the Supreme Court held that a COA should issue when reasonable jurists could debate whether the petition states a valid claim of the denial of a constitutional right and, where applicable, whether the district court's procedural ruling was correct. 529 U.S. 473, 484 (2000).

In *Miller-El v. Cockrell,* the Supreme Court explained that the COA inquiry is a threshold inquiry and does not require full consideration of the factual or legal bases supporting the claims. The question is not whether the petitioner will ultimately prevail, but whether the underlying constitutional claim is debatable among reasonable jurists. 537 U.S. 322, 336–38, 342 (2003).

This distinction matters here because Appellant does not ask the Court, at the COA stage, to finally decide his ineffective-assistance, conflict-of-counsel, plea-validity, medical-capacity, whistleblower/proffer, or evidentiary-hearing claims. He asks only that the Court recognize that those issues are at least debatable among reasonable jurists and deserve further review.

Under these standards, Appellant respectfully submits that reasonable jurists could debate the denial of relief and that a COA should issue.

III. ARGUMENT

A. Reasonable jurists could debate whether Appellant was denied conflict-free counsel at a critical stage.

The Sixth Amendment guarantees the right to effective assistance of counsel, including the right to representation free from an actual conflict of interest. This right is especially important during plea negotiations, arraignment, change of plea, and sentencing, all of which are critical stages of a criminal prosecution.

Appellant's case presents substantial conflict issues that reasonable jurists could debate. The record includes evidence that attorney Gilbert Schaffnit's

representation was limited in scope and connected to settlement or plea negotiations rather than full trial representation. Schaffnit's December 29, 2020, letter states that the fee agreement in Appellant's case was between Schaffnit's office and Mr. Lope, not Appellant, and that Appellant signed only an Authority to Represent after Schaffnit had already been retained. The letter also states that Schaffnit was not at liberty to provide Appellant with a copy of the fee agreement without a release from Mr. Lope and his attorney. *See* Exhibit 6.

The March 23, 2018, transcript further reflects that Schaffnit described his role as contingent on the resolution of the matter through a plea or settlement. Schaffnit stated that, if the plea agreement went through, he would continue to represent Appellant and file a limited notice of appearance for purposes of plea and sentencing, but that if negotiations failed and the case proceeded to trial, he did not anticipate filing a notice of appearance for trial. *See* Exhibit 8.

The Authority to Represent further reflects that Schaffnit's role would conclude if no agreement was reached by the final pretrial agreement date, and that Appellant would then proceed to trial with court-appointed counsel. *See* Exhibit 6.

This evidence supports a debatable question whether Appellant's counsel was operating under divided loyalties, limited obligations, third-party funding pressures, or representation constraints that adversely affected Appellant's ability to receive conflict-free legal advice at the most important stages of the case.

The conflict issue is further supported by the timing of attorney David Wilson's Second Motion to Withdraw. Wilson was Appellant's court-appointed/CJA counsel before attorney Gilbert Schaffnit appeared for the limited plea-negotiation purpose described above. Wilson filed his Second Motion to Withdraw on March 22, 2018, one day before the March 23, 2018 proceeding. *See* Exhibit 7. The March 23, 2018 transcript reflects that the proceeding involved Wilson's motion to withdraw, Schaffnit's limited/contingent status, arraignment on the superseding information, and the change-of-plea process in close sequence. *See* Exhibit 8.

Reasonable jurists could debate whether Appellant had constitutionally adequate, conflict-free counsel when these events occurred. The record raises substantial questions regarding who was actually advising Appellant, the scope of that representation, whether counsel was prepared and free of conflicting obligations, and whether Appellant's plea decision was affected by counsel conflict or ineffective assistance.

This issue alone warrants a COA.

B. Reasonable jurists could debate whether Appellant's guilty plea was knowing, voluntary, and intelligent.

A guilty plea must be knowing, voluntary, and intelligent. A plea entered without effective assistance of counsel, without conflict-free advice, or without the

defendant's meaningful ability to understand the proceedings cannot satisfy constitutional standards.

Appellant's plea occurred against a highly unusual procedural background. On March 23, 2018, the Court addressed counsel-related issues, withdrawal of counsel, Schaffnit's status, arraignment on the superseding information, and the change-of-plea process in the same compressed proceeding. *See* Exhibit 8.

The timing and sequence of these events create a debatable constitutional issue. Reasonable jurists could conclude that Appellant did not have a meaningful opportunity to receive independent, conflict-free advice before entering his plea. Reasonable jurists could also debate whether the district court sufficiently addressed counsel conflict, representation status, and the effect of counsel's limited role before accepting the plea.

Appellant's serious medical condition further supports the need for a COA. Appellant's medical records reflect significant and ongoing medical issues, including terminal medical prognosis, multiple serious medical conditions, treatment history, surgeries, rehabilitation, and medication-related concerns. *See* Exhibits 3 and 4.

These facts are relevant to whether Appellant was able to knowingly and intelligently enter a plea. At minimum, reasonable jurists could debate whether the district court and the § 2255 court adequately considered the combined effect of

counsel conflict, limited representation, medical condition, and medication-related issues on Appellant's capacity to enter a valid plea.

Because Appellant's plea-validity claim is debatable among reasonable jurists, a COA should issue.

C. Reasonable jurists could debate whether counsel's performance was constitutionally ineffective.

Appellant also presents debatable ineffective-assistance issues. Under *Strickland v. Washington*, ineffective assistance requires a showing that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. 466 U.S. 668, 687–88, 694 (1984). *Hill v. Lockhart* applies Strickland to guilty-plea challenges and provides that, in the plea context, prejudice generally requires showing a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. 474 U.S. 52, 56–60 (1985).

Here, Appellant contends that counsel failed to provide constitutionally adequate advice in connection with the plea, failed to protect Appellant from counsel conflict, failed to adequately address Appellant's medical and medication-related conditions, and failed to meaningfully present material information bearing on mitigation and punishment.

The limited-purpose and third-party-funded representation evidence makes the ineffective-assistance issue debatable. If counsel's role was limited to

settlement or plea negotiations and would end if no agreement was reached, reasonable jurists could debate whether Appellant received adequate advice regarding trial rights, plea consequences, sentencing exposure, conflict issues, and available mitigation.

Reasonable jurists could also debate whether counsel should have requested further inquiry, additional time, medical evaluation, conflict review, or other safeguards before Appellant entered the plea.

This is not a request for this Court to decide the ultimate merits at the COA stage. It is a request for recognition that reasonable jurists could debate whether Appellant stated a valid claim of ineffective assistance of counsel. Under Slack, Miller-El, that is enough for a COA.

D. Reasonable jurists could debate whether whistleblower/TCR and proffer evidence supported Appellant's constitutional claims.

Appellant also submits that reconsideration is warranted because the record and newly submitted materials raise debatable constitutional issues concerning Appellant's whistleblower/TCR activity involving Perfect Seven and the alleged pre-sentencing proffer conference.

Before sentencing, and before the indictment in the criminal case, Appellant had been involved in gathering and disclosing information concerning what he believed to be a Ponzi/offering-fraud scheme involving Perfect Seven. Smith Declaration ¶¶ 64–72; Exhibit 9.

Appellant states that, on or about October 9, 2018, approximately three weeks before sentencing, he participated in a proffer conference attended by AUSA Bonnie Glober, FBI and/or IRS agents, Gilbert Schaffnit, and Appellant. Smith Declaration ¶¶ 73–77. Appellant further states that, at or around that proffer, he disclosed his whistleblower activity and hand-delivered a large envelope of materials concerning his Perfect Seven whistleblower file to AUSA Glober. Smith Declaration ¶¶ 75–77.

Appellant also states that he had disclosed his whistleblower/TCR activity to Schaffnit when representation paperwork was signed on or about March 6, 2018, and that he believes Schaffnit had contractual duties and/or legal obligations connected to Robert Lope and Diane Sanders, persons connected to the issues Appellant was disclosing concerning Perfect Seven. Smith Declaration ¶¶ 78–81.

These facts are relevant to the COA inquiry for at least three reasons.

First, they support the conflict-of-counsel issue. If counsel had obligations, relationships, or divided loyalties connected to persons involved in the subject matter Appellant was disclosing as a whistleblower, reasonable jurists could debate whether counsel had an actual conflict or whether further conflict inquiry was constitutionally required.

Second, they support the ineffective-assistance issue. Reasonable jurists could debate whether counsel should have meaningfully investigated, preserved,

and presented the whistleblower/proffer evidence as mitigation or as part of sentencing advocacy.

Third, they support a due-process and sentencing-materiality issue. Appellant contends that the Government and counsel were aware before sentencing that he had acted as a whistleblower or cooperating source concerning the Perfect Seven matter, but that this information was not meaningfully presented to the sentencing court despite its relevance to mitigation, credibility, punishment, and the Government's sentencing position.

Appellant does not ask the Court at the COA stage to finally decide a Brady/Giglio or newly discovered evidence claim. Rather, Appellant submits that the whistleblower/TCR and proffer evidence strengthen the showing that his constitutional claims are debatable among reasonable jurists and deserve further review.

At minimum, reasonable jurists could debate whether the district court should have allowed fuller review or an evidentiary hearing regarding the conflict, mitigation, sentencing, and due-process implications of this evidence.

E. Reasonable jurists could debate whether an evidentiary hearing was required.

Appellant further submits that reasonable jurists could debate whether the district court erred by denying relief without an evidentiary hearing on the conflict, plea validity, medical capacity, and whistleblower/proffer issues.

The record contains factual disputes and factual matters outside the ordinary plea colloquy, including the scope of Schaffnit's representation, third-party payment and obligations, Wilson's withdrawal and conflict concerns, the timing and sequence of the March 23, 2018 proceeding, Appellant's medical and medication-related condition, and the alleged October 9, 2018 proffer.

These issues are fact-intensive. They are not resolved merely by reciting that a plea colloquy occurred. Reasonable jurists could debate whether Appellant was entitled to further factual development before denial of § 2255 relief.

Because reasonable jurists could debate whether the district court should have conducted an evidentiary hearing, a COA should issue on that question as well.

IV. REQUESTED COA ISSUES

Appellant respectfully requests that the Court grant a certificate of appealability on the following issues:

1. Whether reasonable jurists could debate whether Appellant was denied his Sixth Amendment right to conflict-free counsel at a critical stage of the criminal proceedings;

2. Whether reasonable jurists could debate whether counsel rendered ineffective assistance in connection with Appellant's plea, sentencing, counsel-conflict issues, medical/medication issues, and mitigation evidence;

3. Whether reasonable jurists could debate whether Appellant's guilty plea was knowing, voluntary, and intelligent in light of the counsel-conflict issues, limited-scope representation, compressed plea proceeding, and Appellant's medical/medication condition;

4. Whether reasonable jurists could debate whether the district court erred in denying § 2255 relief without an evidentiary hearing on Appellant's counsel-conflict, ineffective-assistance, plea-validity, medical-capacity, and whistleblower/proffer issues; and

5. Whether reasonable jurists could debate whether Appellant's whistleblower/TCR and pre-sentencing proffer evidence concerning Perfect Seven raised constitutional issues relating to counsel conflict, mitigation, sentencing due process, Brady/Giglio principles, and ineffective assistance of counsel.

V. CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reconsider its May 7, 2024 order denying a certificate of appealability; grant a certificate of appealability on the issues identified above; and grant such other and further relief as this Court deems just and proper.

Date: June 22nd 2026

Respectfully submitted,

Donald Edward Smith
Pro Se Petitioner-Appellant
506 Clear Road
Ocala, Florida 34472
Email: smithdon741@gmail.com
Phone: 352-659-1719

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2026, I served a true and correct copy of the foregoing proposed Motion for Reconsideration by United States Mail, postage prepaid, upon:

Holly Lynn Gershow
Assistant United States Attorney
United States Attorney's Office
Middle District of Florida
Appellate Division
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602

Roberta J. Bodner
Assistant United States Attorney
35 S.E. 1st Avenue, Suite 300
Ocala, Florida 34471

Donald Edward Smith

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with Federal Rule of Appellate Procedure 27(d) because it contains fewer than 5,200 words, excluding the parts exempted by the rule.

I further certify that this motion was prepared in a proportionally spaced typeface using Times New Roman, 14-point font.

Donald Edward Smith

U.S. COURT OF APPEALS
RECEIVED
CLERK
JUN 25 2026
ATLANTA, GA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DONALD EDWARD SMITH,

Petitioner-Appellant,

v.

Case No.: 23-13760-G
District Court Case No.: 5:22-cv-00214-RBD-PRL
Criminal Case No.: 5:17-cr-00030-RBD-PRL-1

UNITED STATES OF AMERICA,

Respondent-Appellee.

_____/

DECLARATION OF DONALD EDWARD SMITH IN SUPPORT OF MOTION TO RECALL MANDATE AND FOR LEAVE TO FILE OUT-OF-TIME MOTION FOR RECONSIDERATION OF THE MAY 7, 2024 ORDER DENYING CERTIFICATE OF APPEALABILITY

I, Donald Edward Smith, declare as follows:

1. My name is Donald Edward Smith. I am the Petitioner-Appellant in this matter.

2. I submit this Declaration in support of my Motion to Recall Mandate and for Leave to File Out-of-Time Motion for Reconsideration of the May 7, 2024 Order Denying Certificate of Appealability.

3. I have personal knowledge of the facts stated in this Declaration, unless otherwise stated. If called as a witness, I could and would testify truthfully to these facts.

4. For ease of reference, citations to exhibits in this Declaration refer to the exhibits attached to Appellant's Motion to Recall Mandate and for Leave to File Out-of-Time Motion for Reconsideration of the May 7, 2024 Order Denying Certificate of Appealability, referred to herein as the "Motion."

5. The purpose of this Declaration is to explain the facts supporting my request for limited procedural relief, including my address-change efforts, lack of timely receipt of the May 7, 2024 order, medical limitations, reliance on assistance, when I learned of the May 7, 2024 order, and why the present motion was not filed sooner.

6. I am not submitting this Declaration to ask the Court to grant habeas relief through the recall-mandate motion.

7. I am not asking the Court to treat my motion as a petition for panel rehearing, rehearing en banc, a new appeal, or a second or successive § 2255 motion.

8. I seek only limited procedural relief: recall of the mandate and leave to file an out-of-time motion for reconsideration of the May 7, 2024 order denying a certificate of appealability.

9. I have suffered from serious and ongoing medical conditions for several years, including multiple cancers, heart disease, diabetes, kidney-related

issues, neuropathy, vision-related conditions, surgeries, rehabilitation, and continuing medical treatment.

10. While in federal custody, I was housed for an extended period at a federal medical facility and received substantial medical treatment.

11. My Federal Bureau of Prisons medical records reflect that I was diagnosed with a terminal medical condition with a life expectancy of less than twenty-four months. *See* Motion Exhibit 3.

12. Since my release, I have continued to experience serious medical complications, ongoing treatment, surgeries, rehabilitation, and physical, cognitive, and functional limitations. *See* Motion Exhibit 4.

13. These medical conditions affected my ability to personally monitor mail, track court deadlines, review docket activity, prepare legal filings, and respond quickly to court notices.

14. Because of my medical condition and functional limitations, I have relied on assistance from others to manage certain affairs, including mail, documents, records, and legal-related paperwork.

15. On or about July 19, 2018, I executed a Durable Power of Attorney. *See* Motion Exhibit 5.

16. I do not offer the Durable Power of Attorney to suggest that any non-attorney representative was acting as legal counsel for me.

17. I offer the Durable Power of Attorney only to show my documented reliance on assistance because of serious medical and functional limitations that affected my ability to manage mail, documents, court notices, and legal-related deadlines.

18. On or about February 14, 2023, I submitted a change-of-address notice to the United States District Court for the Middle District of Florida, Ocala Division.

19. That February 14, 2023 notice changed my address from 7548 SW 2nd Street, Ocala, Florida 34474 to 13365 SW 3rd Court, Ocala, Florida 34473.

20. At a later point, I needed to update my address again.

21. Before the Eleventh Circuit issued its May 7, 2024 order denying my certificate of appealability, I prepared a change-of-address notice dated April 23, 2024.

22. The April 23, 2024 change-of-address notice identified my mailing address as: Donald Edward Smith, 62 Almond Road, Ocala, Florida 34472. *See* Motion Exhibit 2.

23. My intent in preparing and attempting to submit the April 23, 2024 change-of-address notice was to make sure the Court had my correct mailing address before any further order issued.

24. I understand that the appellate docket reflects a notice of receipt/address-change issue associated with the case before or around the time of the COA ruling, but that it was not entered until after the May 7, 2024 COA denial had already issued.

25. Specifically, the May 2, 2024 notice of receipt or notice of address change, which was not entered until May 13, 2024. *See* Motion Exhibit 2.

26. Because the address-change issue was not docketed until after the May 7, 2024 order had already issued, the order denying my certificate of appealability was mailed to my prior address.

27. On May 7, 2024, the Eleventh Circuit denied my application for a certificate of appealability. The May 7, 2024 notice stated that the order denying the certificate of appealability was issued as the mandate of the Court.

28. The May 7, 2024 notice also stated that any motion to reconsider, vacate, or modify the order had to be filed within twenty-one days of entry. The notice further stated that no additional time would be allowed for mailing.

29. The May 7, 2024 notice was mailed to me at my prior address: 13365 SW 3rd Court, Ocala, Florida 34473. *See* Motion Exhibit 1.

30. Because the May 7, 2024 notice was mailed to my prior address, I did not receive it in time to prepare and file a motion for reconsideration within the twenty-one-day period stated in the notice.

31. I did not intentionally ignore the May 7, 2024 order.

32. I did not knowingly waive my right to seek reconsideration.

33. I did not make a strategic decision not to file a motion for reconsideration.

34. I was unable to file a timely motion for reconsideration because I did not timely receive the order that triggered the twenty-one-day deadline.

35. The notice issue was made worse by my medical condition, functional limitations, reliance on assistance, and difficulty personally monitoring court mail and docket activity.

36. I first learned that the Eleventh Circuit had denied my certificate of appealability on May 11, 2026, at approximately 10:45 a.m.

37. Before May 11, 2026, I did not understand that the May 7, 2024 order had already issued as the mandate of the Court.

38. Before May 11, 2026, I did not understand that the twenty-one-day period to seek reconsideration of the May 7, 2024 COA denial had already expired.

39. I learned of the May 7, 2024 order when I went to the Clerk's Office on May 11, 2026, at approximately 10:45 a.m., to ask about the status of my case because I had not received any update. At that time, Clerk's Office staff informed me that the Eleventh Circuit had denied my certificate of appealability on May 7,

2024, that the denial had issued as the mandate, and that the time to seek reconsideration had already expired.

40. Upon learning of the May 7, 2024 order, I also learned that the order had been mailed to my prior address, 13365 SW 3rd Court, Ocala, Florida 34473, even though I had prepared and attempted to submit a change-of-address notice dated April 23, 2024, identifying my address as 62 Almond Road, Ocala, Florida 34472.

41. After learning of the May 7, 2024 order and the mailing/address issue, I began gathering records to determine what had happened.

42. Those records included the May 7, 2024 notice and order, the April 23, 2024 change-of-address notice, mailing documents, appellate docket materials, medical records, and other supporting exhibits.

43. Because of my serious medical condition, cognitive and functional limitations, and reliance on assistance, I could not immediately prepare and file the present motion without first locating and organizing the relevant documents and understanding the procedural posture.

44. Once I discovered and understood that the May 7, 2024 COA denial had issued without my timely receipt, I acted in good faith to seek relief as promptly as I reasonably could under the circumstances.

45. The delay in filing this motion was not caused by bad faith, intentional delay, strategy, or an attempt to harass the Government.

46. The delay resulted from the combined effect of non-receipt of the May 7, 2024 order, mailing to the prior address, address-change confusion, delayed docketing or processing of the address-change issue, my serious medical condition, and my reliance on assistance to manage mail, records, and legal-related paperwork.

47. I understand that the May 7, 2024 COA denial was issued as the mandate.

48. I also understand that Eleventh Circuit Rule 22-1(c) permits a motion for reconsideration of the denial of a certificate of appealability.

49. Because I did not timely receive the May 7, 2024 order, I was deprived of the meaningful opportunity to file a motion for reconsideration within the twenty-one-day period stated in the notice.

50. I respectfully ask the Court to recall the mandate for the limited purpose of allowing me to file an out-of-time motion for reconsideration of the May 7, 2024 order denying a certificate of appealability.

51. I do not seek recall of the mandate as a substitute appeal.

52. I do not seek recall of the mandate as a petition for panel rehearing or rehearing en banc.

53. I do not seek recall of the mandate as a second or successive § 2255 motion.

54. I seek only the opportunity to file the motion for reconsideration that I was unable to timely file because I did not timely receive the May 7, 2024 order.

55. My motion for reconsideration raises constitutional issues that I believe reasonable jurists could debate.

56. Those issues include ineffective assistance of counsel, actual conflict of interest, denial of conflict-free counsel at a critical stage, the knowing and voluntary nature of my guilty plea, and medical/medication issues affecting my ability to knowingly and intelligently enter a plea.

57. The issues also include the limited and third-party-funded nature of attorney Gilbert Schaffnit's representation.

58. My understanding is that Mr. Schaffnit's representation was connected to settlement or plea negotiations rather than full trial representation.

59. Mr. Schaffnit's December 29, 2020 letter states that the fee agreement in my case was between his office and Mr. Lope, not me, and that I signed an Authority to Represent only after Mr. Schaffnit had already been retained. The letter also states that Mr. Schaffnit was not at liberty to provide me with a copy of the fee agreement without a release from Mr. Lope and his attorney. See Motion Ex. 6.

60. The March 23, 2018 transcript reflects that Mr. Schaffnit stated his appearance was contingent on the resolution of the matter through a plea or settlement. Mr. Schaffnit stated that if the plea agreement went through, he would continue to represent me and file a limited notice of appearance for purposes of plea and sentencing. He further stated that if negotiations failed and the case proceeded to trial, he did not anticipate filing a notice of appearance for trial. See Motion Ex. 8.

61. On March 22, 2018, attorney Wilson filed a Second Motion to Withdraw, one day before the March 23, 2018 plea hearing. The motion was based on conflict concerns, including my Florida Bar complaint against him. *See* Motion Exhibit 7.

62. On March 23, 2018, the Court addressed multiple critical matters in close sequence, including counsel issues, arraignment on the superseding information, and the change-of-plea proceeding. *See* Motion Exhibit 8.

63. I believe these facts support my position that reasonable jurists could debate whether I had conflict-free counsel at a critical stage and whether my plea was knowing, voluntary, and intelligent.

64. I also seek to include newly submitted evidence concerning my whistleblower/TCR activity involving Perfect Seven and related individuals.

65. Before sentencing, and before the indictment in my criminal case, I had been involved in gathering and disclosing information concerning what I believed to be a Ponzi/offering-fraud scheme involving Perfect Seven.

66. I began gathering information concerning Perfect Seven and related individuals in or about October 2013.

67. I had also communicated with state and federal authorities concerning securities-related matters, including communications involving the Securities and Exchange Commission and SEC personnel, including Terra Bunnell.

68. In or about March 2016, I was referred to attorney R. Scott Oswald and The Employment Law Group in Washington, D.C., in connection with whistleblower-related claims. My understanding is that the referral was made because the Perfect Seven matter involved complex, multi-state and federal issues.

69. In 2017, I engaged The Employment Law Group regarding whistleblower claims. The Employment Law Group initially addressed an IRS whistleblower claim and later issued an advisory opinion concerning a viable SEC/Dodd-Frank whistleblower claim involving Perfect Seven. True and correct copies of relevant Employment Law Group materials and TCR-related documents are attached as *See* Motion Exhibit 9.

70. The TCR materials identified Perfect Seven, LLC, and related individuals, including John "Jack" Rickett, James Allen "Jack" Schoenthaler, Mickey Hayes, and Joseph Douglas Sanders.

71. The TCR materials alleged a Ponzi/offering-fraud scheme and identified supporting documentation, including bank records, investor-related records, litigation records, deposition materials, and other documents.

72. I was also communicating with or providing records to state authorities concerning Perfect Seven and related persons, including an Indiana state prosecutor concerning records involving James Allen Schoenthaler and Diane Sanders-Hayes.

73. On or about October 9, 2018, approximately three weeks before sentencing, I participated in a proffer conference.

74. To the best of my recollection, the persons present at the proffer conference included AUSA Bonnie Glober, FBI and/or IRS agents, Gilbert Schaffnit, and me.

75. At that proffer conference, I disclosed that I had acted as a whistleblower and had been gathering and providing information concerning Perfect Seven and related individuals.

76. I also hand-delivered a large envelope of materials concerning my whistleblower file on Perfect Seven to AUSA Bonnie Glober at or around the time of that proffer.

77. The proffer conference lasted approximately two hours, and I provided information concerning Perfect Seven, my whistleblower activity, and the records I had gathered.

78. I had also disclosed my whistleblower/TCR activity to Gilbert Schaffnit when we signed representation paperwork on or about March 6, 2018.

79. Based on documents and communications in my possession, I believe Gilbert Schaffnit had contractual duties and/or legal obligations connected to Robert Lope and Diane Sanders, who were persons connected to the issues I was disclosing concerning Perfect Seven.

80. At the same time, I was disclosing specific and extensive information concerning Perfect Seven to state and federal authorities and to Mr. Schaffnit.

81. I believe those overlapping relationships and obligations were relevant to my conflict-of-counsel and ineffective-assistance claims.

82. I understand that IRS Agent Castiglia contacted The Employment Law Group in Washington, D.C., to verify information concerning my whistleblower activity.

83. My understanding regarding Agent Castiglia's contact with The Employment Law Group is based on information that Agent Castiglia spoke with attorney Janel Quinn, who confirmed that I was a client, declined to disclose privileged information, and referred him to publicly available SEC information.

84. To the best of my knowledge, my whistleblower/TCR activity, the substance of the October 9, 2018 proffer, and the Perfect Seven information were not meaningfully presented to the sentencing court before sentence was imposed.

85. I believe this evidence was relevant to counsel conflict, mitigation, credibility, and punishment.

86. I do not ask the Court to decide the full Brady/Giglio or newly discovered evidence issue based only on this Declaration.

87. I include these facts to explain why my proposed motion for reconsideration is not futile and why reasonable jurists could debate whether my constitutional claims deserved further review.

Executed on this 22 day of June, 2026.

Respectfully submitted,

Donald Edward Smith
Pro Se Petitioner-Appellant
506 Clear Road
Ocala, Florida 34472
Email: smithdon741@gmail.com
Phone: 352-659-1719

EXHIBIT 1

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.call.uscourts.gov

May 07, 2024

Donald Edward Smith
13365 SW 3RD CT
OCALA, FL 34473

Appeal Number: 23-13760-G
Case Style: Donald Smith v. USA
District Court Docket No: 5:22-cv-00214-RBD-PRL
Secondary Case Number: 5:17-cr-00030-RBD-PRL-1

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

EXHIBIT 2

U.S. COURT OF APPEALS
Received in Clerk's Office
MAY 02 2024
ATLANTA, GA

Docket No. 23-13760-B

In the United States Court of Appeals
For the Eleventh Circuit

Clerk of Court
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

RE: Change of Address
Case No: 23-13760-B
Donald Smith v. USA

April 23, 2024

Dear Clerk;

Please note my change of address from:

To:

Donald Edward Smith
62 Almond Road
Ocala, Florida 34472

Thank you in advance for your attention to this matter.

Respectfully,

Donald Edward Smith
Pros Se Litigant
62 Almond Road
Ocala, Florida 34472
PH: 352-659-1719
EM: smithdon741 @gmail.co

Additional material from this filing is available in the Clerk's Office.