Miller v. Graham Doc. 21

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK			NOT FOR PUBLICATION
QUASHON MILLER,		X : :	
	Petitioner,	: : .	<u>ORDER</u>
- against -		:	10-CV-2174 (JG)
HAROLD GRAHAM,		:	
	Respondent.	: X	

JOHN GLEESON, United States District Judge:

Miller seeks relief pursuant to Rule 60(b)(1) & (6) of the Federal Rules of Civil Procedure from a final judgment, entered on December 8, 2010, denying his petition for a writ of habeas corpus. Miller filed the instant motion on November 12, 2011.

Assuming without deciding that the motion is timely, I deny it on the merits. Miller contends that my decision denying his petition was due to "plain error," failure to apply the law and failure to consider all the facts. I previously rejected Miller's claim that he had received ineffective assistance of counsel during his criminal trial, holding that he had not shown that his counsel's purported failure to investigate a justification defense had prejudiced him. *See Miller v. Graham*, No. 10-CV-2174 (JG), 2010 WL 5056315, at *6–7 (E.D.N.Y. Dec. 6, 2010). I noted that Miller's self-defense narrative had changed considerably over time and, thus, that Miller's counsel "no doubt decided that a jury would be skeptical of" his story. *Id.* at *6. Although Miller points to his videotaped confession and other evidence he claims supports a justification defense, this does not alter the conclusion that his attorney's strategic decision to forego a justification defense and recommend a guilty plea was reasonable. *See id.* at *7.

In sum, Miller has not identified any "controlling decisions or data that the court

overlooked . . . that might reasonably be expected to alter the conclusion reached by the court."

Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Accordingly, his motion is

denied.

So ordered.

John Gleeson, U.S.D.J.

Date: March 8, 2012

Brooklyn, New York

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