

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

DARRYL MONTGOMERY, JR.,

Petitioner,

v.

CASE NO. 6:14-cv-1578-Orl-37GJK

SECRETARY, DEPARTMENT  
OF CORRECTIONS, et al.,

Respondents.

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**ORDER**

This case is before the Court on the following:

1. Petitioner's "Motion for Additional Evidence of Fraud" (Doc. 25), construed as a motion for reconsideration. Petitioner seeks reconsideration of the Court's January 27, 2016 Order denying the petition for writ of habeas corpus and dismissing the case without prejudice (Doc. 15). Petitioner appealed the Court's Order, and the Eleventh Circuit denied a certificate of appealability (Doc. 23). Additionally, the Supreme Court of the United States denied a petition for writ of certiorari (Doc. 24).

Rule 60(b) of the Federal Rules of Civil Procedure permits a court to grant relief from judgment if the movant can demonstrate mistake, excusable neglect, newly discovered evidence, fraud, a void judgment, or any other reason that justifies relief. Fed. R. Civ. P. 60(b). Petitioner asserts that the Court abused its discretion and committed fraud when it determined his claims were unexhausted and concluded that he failed to


make a showing of actual innocence (Doc. 25 at 8-14). The Court has considered Petitioner's allegations and concludes that Petitioner has failed to satisfy the requirements of 60(b). Plaintiff merely reiterates arguments that the Court has already considered and rejected or raises new arguments that could have been asserted prior to the entry of judgment. Accordingly, it is **ORDERED** that Petitioner's motion is **DENIED**.

Additionally, the Court should grant an application for certificate of appealability only if the Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has failed to make a substantial showing of the denial of a constitutional right. Accordingly, Petitioner is **DENIED** a certificate of appealability.

2. Petitioner's Motion for Leave to Proceed in Forma Pauperis on Appeal (Doc. 27). An appeal would not be taken in good faith pursuant to Federal Rule of Appellate Procedure 24(a) and 28 U.S.C. § 1915(a)(3) because Petitioner has failed to demonstrate the deprivation of any federal constitutional right. Petitioner is not entitled to appeal as a pauper and shall pay the full appellate filing fee as required by 28 U.S.C. § 1915(a). Accordingly, it is **ORDERED** that Petitioner's motion is **DENIED**.

**DONE AND ORDERED** in Orlando, Florida this 18th day of April, 2017.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:  
OrIP-3 4/18  
Darryl Montgomery, Jr.  
Counsel of Record