

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

CASE NO. 16-60450-CIV-GAYLES/WHITE

LUCKENS PETIT,

Petitioner,

v.

STATE OF FLORIDA,

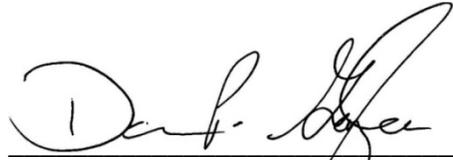
Respondent.

ORDER ON REMAND

THIS CAUSE comes before the Court on the Eleventh Circuit Court of Appeals remand for the limited purpose of the Court reissuing its Certificate of Appealability [ECF No. 21]. On February 23, 2018, the Court issued an endorsed order granting the Petitioner’s Motion for Certificate of Appealability. [ECF No. 15]. On March 29, 2018, the Eleventh Circuit Court of Appeals remanded this case for the limited purpose of having the Court explain the specific issues that would justify a certificate of appealability. [ECF No. 21]. Upon further consideration, the Court vacates its prior order as it does not find a certificate of appealability is warranted. Petitioner’s claim that the state court’s application of *Crawford v. Washington*, 541 U.S. 36, 59 (2004), was unreasonable is without merit. The Court finds that Petitioner had a meaningful opportunity to cross examine Eder Joseph. While Petitioner’s claim of actual innocence could conceivably present a viable issue on appeal, the Court is bound by Eleventh Circuit precedent which “forbids granting habeas relief based upon a claim of actual innocence.” *Jordan v. Sec’y Dep’t Corr.*, 485 F.3d 1351, 1356 (11th Cir. 2007). Accordingly, it is

ORDERED AND ADJUDGED that the Court's Endorsed Order granting Petitioner's Motion for Certificate of Appealability is VACATED. The Court denies Petitioner's request for a Certificate of Appealability as Petitioner has failed to make a substantial showing of the denial of a constitutional right.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of April, 2018.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE