

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

Case No. 1:19-cv-22671-KMM

PAUL R. BROSKY,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER ON REMAND

THIS CAUSE came before the Court upon the Eleventh Circuit’s Order of Limited Remand (ECF No. 36), instructing this Court to determine whether a Certificate of Appealability (“COA”) should issue with respect to this Court’s denial of *pro se* Petitioner Paul R. Brosky’s (“Petitioner”) Motion to Alter and Amend Judgment and Make Additional Findings (“Mot.”) (ECF No. 31) pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Magistrate Judge Lisette M. Reid issued a Report and Recommendation recommending that a COA should not issue. (“R&R”) (ECF No. 37). No objections were filed, and the time to do so has passed. The matter is now ripe for review. As set forth below, the Report and Recommendation is ADOPTED.

In 2008, Petitioner, a former police officer, was sentenced to fifty years’ imprisonment for armed sexual battery by a law enforcement officer and armed kidnapping. *See* (ECF No. 21-2) at 4–9. He appealed, and Florida’s Third District Court of Appeal affirmed without comment. *Brosky v. State*, 26 So. 3d 591 (Fla. Dist. Ct. App. 2010). Petitioner did not further appeal. *See* (ECF No. 24) at 8. Petitioner filed a petition for a writ of habeas corpus with this Court pursuant

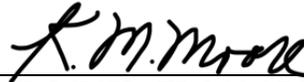
to 28 U.S.C. § 2254 in which he asserted eight grounds for relief from his state court conviction. (“Pet.”) (ECF No. 1). Magistrate Judge Reid submitted a report recommending that the Court deny the petition on procedural grounds as well as on the merits and that no COA be issued. (ECF No. 20). The Court adopted Magistrate Judge Reid’s report and recommendation over Petitioner’s objection and denied the § 2254 Petition without issuing a COA. (ECF No. 30). Petitioner thereafter filed a motion to alter and amend the Court’s judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. (ECF No. 31). The Court, construing Petitioner’s Rule 59(e) motion as a motion for reconsideration of the Court’s denial of the § 2254 Petition, denied the motion on the grounds that Petitioner did not present any newly discovered evidence or point to any manifest errors of law that would merit reconsideration. *See* (ECF No. 32).

As set forth in the R&R, Magistrate Judge Reid finds that no COA should issue on the Court’s denial of Petitioner’s Rule 59(e) motion. R&R at 4–7. The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Magistrate Judge Reid recognizes that a COA is required to appeal from the denial of a Rule 59(e) motion and that a COA may only issue if the Petitioner has made a substantial showing of a denial of a constitutional right. R&R at 3. Although the Court determined that Petitioner’s claims were procedurally barred, the Court nonetheless addressed the merits of Petitioner’s substantive constitutional claims. *Id.* at 5. Magistrate Judge Reid finds that, because Petitioner’s Rule 59(e) motion failed to raise any new issues and Petitioner did not make a substantial showing of the denial of a constitutional right, no COA should issue on this Court’s denial of Petitioner’s Rule 59(e) motion. *Id.* at 7. This Court agrees.

Accordingly, UPON CONSIDERATION of the Motion (ECF No. 31), the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED

AND ADJUDGED that Magistrate Judge Reid's R&R (ECF No. 37) is ADOPTED. A Certificate of Appealability SHALL NOT ISSUE as to the Court's Order (ECF No. 32) denying Petitioner's Motion to Alter and Amend Judgment and Make Additional Findings (ECF No. 31). The Clerk of Court is INSTRUCTED to MAIL a copy of this Order to Petitioner.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th day of May, 2022.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: Clerk of Court, United States Court of Appeals for the Eleventh Circuit

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