

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FREDERICK JAMES BURNEY, JR.,

Petitioner,

v.

Case No.: 8:21-cv-1879-CEH-UAM

Case No.: 8:18-cr-99-CEH-UAM

UNITED STATES OF AMERICA,

Respondent.

ORDER

A prior order dismissed as untimely Frederick James Burney, Jr.’s motion under 28 U.S.C. § 2255. (Civ. Doc. 21) Subsequently, Burney filed a notice of appeal that includes a request for a certificate of appealability. (Civ. Doc. 25)

Burney is not entitled to a certificate of appealability. Contrary to Burney’s assertion, the § 2255 motion was not dismissed “based upon personal animus toward [him]” (Civ. Doc. 25 at 2) but because, as explained in the order, his claims were time-barred. To obtain a certificate of appealability, the petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir 2001). Because Burney fails to show that reasonable jurists would debate either the merits of the claims or the procedural issues, he is not entitled to a certificate of appealability or to appeal *in forma pauperis*.

Burney's request for a certificate of appealability (Civ. Doc. 25) included in the notice of appeal is **DENIED**. Leave to appeal *in forma pauperis* is **DENIED**. Burney must obtain permission from the circuit court to appeal *in forma pauperis*.

DONE and **ORDERED** in Tampa, Florida on July 22, 2024.


Charlene Edwards Honeywell
United States District Judge

Copies to:
Pro Se Petitioner
Counsel of Record