

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

EARNEST J. FILES, JR.,

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Petitioner,

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v.

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Civil Action Number
2:18-cv-00871-AKK-HNJ

LEON BOLLING, et al.,

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Respondents.

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MEMORANDUM OPINION

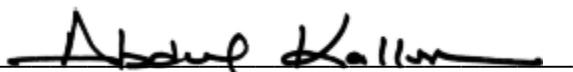
Petitioner Earnest J. Files, Jr., filed this action for a writ of habeas corpus, *pro se*, on or about February 20, 2018, in the Middle District of Alabama. Doc. 1. By way of a fourth amended petition, Files challenges his December 2017 conviction and sentence for six counts of capital murder. Docs. 6 at 1; 6-1 at 1. The Middle District transferred this action to this court, and on June 6, 2018, the magistrate judge to whom the case was referred filed a report recommending the petition be dismissed without prejudice to allow Files to pursue and exhaust his state law remedies. Doc. 12. Files was notified of his right to file objections to the report and recommendation and filed another petition, which the court construes as an opposition to the report and recommendation.¹ Doc. 13.

¹ Even if the court considered this “opposition” as a fifth amended petition for habeas corpus relief, this case would still be subject to dismissal as Files fails to demonstrate he has exhausted available state law remedies.

Files disputes neither the existence of state remedies available to him nor his failure to exhaust those remedies. Rather, he once again details perceived constitutional errors he contends occurred during his prosecution for the underlying convictions. Unless and until Files pursues and exhausts his state law remedies, he cannot seek federal habeas relief. *See e.g., O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the response thereto, the magistrate judge's report is hereby **ADOPTED** and his recommendation is **ACCEPTED**. Accordingly, the petition for writ of habeas corpus is due to be dismissed without prejudice due to Files' failure to exhaust his state law remedies. A separate Final Order will be entered.

DONE the 31st day of July, 2018.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE