

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

BERNARD JOHNSON,)
216638,)

Petitioner,)

v.)

CASE NO. 1:18-CV-575-WKW
[WO]

PATRICE RICHIE, Warden,)
STEVEN T. MARSHALL,)
Attorney General of the State of)
Alabama, and the STATE OF)
ALABAMA,)

Respondents.)

ORDER

On June 21, 2018, the Magistrate Judge filed a Recommendation (Doc. # 2), to which Petitioner Bernard Johnson has timely objected (Doc. # 3). Mr. Johnson objects to the Magistrate Judge’s characterization of his habeas corpus application as a second or successive petition subject to the limitations of 28 U.S.C. § 2244(b). Relying on *Insignares v. Secretary, Florida Department of Corrections*, 755 F.3d 1273, 1278 (11th Cir. 2014), Mr. Johnson contends that his present application challenges a different judgment than did his previous petitions and is therefore not a “second or successive” application. But unlike the petitioner in *Insignares*, who was re-sentenced and thus subject to a new judgment, *see* 755 F.3d at 1278, Mr.

Johnson's alleged "new judgment" is the denial by the Alabama state court of his Rule 32 post-conviction petition. Thus, the underlying conviction and sentence that Mr. Johnson seeks to attack in his present petition are the same ones he challenged in his state-court Rule 32 motion and the same ones he has challenged in this court twice before. (*See* Doc. # 2, at 2.)

Accordingly, it is ORDERED that the Recommendation is ADOPTED in part and MODIFIED in part, and that this case is DISMISSED without prejudice in accordance with the provisions of 28 U.S.C. § 2244(b)(3)(A) because Mr. Johnson has failed to obtain the requisite order from the Eleventh Circuit Court of Appeals authorizing a federal district court to consider his successive habeas application. *See Burton v. Stewart*, 549 U.S. 147, 157 (2007) (explaining that the requirements of 28 U.S.C. § 2244(b) are jurisdictional in nature); *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1235 (11th Cir. 2008) (holding that a court lacking jurisdiction should issue a dismissal without prejudice).

Final judgment will be entered separately.

DONE this 10th day of July, 2018.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE