

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

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DOROTHY LA'SHAY WALLACE,  
#209 172

Petitioner,

v.

WARDEN ELLINGTON, *et al.*,

Respondents.

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2:09-CV-274-TMH  
(WO)

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This matter is pending before the court on a 28 U.S.C. § 2254 petition for habeas corpus filed by Petitioner on March 29, 2009.<sup>1</sup> In this petition, Petitioner challenges her conviction for murder - intent to kill entered against her by the Circuit Court for Mobile County, Alabama, on May 15, 2000. Petitioner is currently serving a 20-year term of imprisonment.

**DISCUSSION**

This court, “in the exercise of its discretion and in furtherance of justice,” may transfer Petitioner's application for writ of habeas corpus to “the district court for the district within

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<sup>1</sup> Although the Clerk of this court stamped the present petition “filed” on April 1, 2009, Petitioner certified the petition for mailing on March 29, 2009. The law is well settled that a *pro se* inmate’s petition is deemed filed the date it is delivered to prison officials for mailing. *Houston v. Lack*, 487 U.S. 266, 271-272 (1988); *Adams v. United States*, 173 F.3d 1339, 1340-41 (11<sup>th</sup> Cir. 1999); *Garvey v. Vaughn*, 993 F.2d 776, 780 (11<sup>th</sup> Cir. 1993). In light of the foregoing and for purposes of this Recommendation, the court considers March 29, 2009 as the date of filing.

which the State court was held which convicted” Petitioner. 28 U.S.C. § 2241(d). Petitioner seeks to challenge a conviction entered against her by the Circuit Court for Mobile County, Alabama. Mobile County is located within the jurisdiction of the United States District Court for the Southern District of Alabama. In light of the foregoing, the court concludes that the transfer of this case to such other court for review and disposition is appropriate.<sup>2</sup>

### CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be TRANSFERRED to the United States District Court for the Southern District of Alabama pursuant to the provisions of 28 U.S.C. § 2241(d).

It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **April 15, 2009**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual

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<sup>2</sup>A decision on Petitioner’s application for *in forma pauperis* status is reserved for ruling by the United States District Court for the Southern District of Alabama.

findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981 ) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 2<sup>nd</sup> day of April 2009.

/s/ Wallace Capel, Jr  
WALLACE CAPEL, JR.  
UNITED STATES MAGISTRATE JUDGE