

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

RODERICK L. HORTON, #223 403	*	
Petitioner,	*	
v.	*	2:09-CV-330-TMH (WO)
KENNETH JONES, WARDEN, <i>et al.</i> ,	*	
Respondents.	*	

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This matter is pending before the court on a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. Petitioner filed the petition on March 27, 2009.<sup>1</sup> In this petition, Petitioner challenges the conviction for attempted murder entered against him by the Circuit Court for Etowah County, Alabama, in 2002. Petitioner is currently serving a term of 20 years' 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 which the State court was held which convicted" Petitioner. 28 U.S.C. § 2241(d). Petitioner

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<sup>1</sup> Although the Clerk of this court stamped the present petition "filed" on April 14, 2009, Petitioner certified the petition for mailing on March 27, 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 27, 2009 as the date of filing.

seeks to challenge a conviction entered against him by the Circuit Court for Etowah County, Alabama. Etowah County is located within the jurisdiction of the United States District Court for the Northern 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.

### **CONCLUSION**

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be TRANSFERRED to the United States District Court for the Northern 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 June 10, 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 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 27<sup>th</sup> day of May, 2009.

/s/ Susan Russ Walker  
SUSAN RUSS WALKER  
CHIEF UNITED STATES MAGISTRATE JUDGE