

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

SAMUEL TURNER, # 144302,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 2:12cv974-TMH
)	(WO)
LEEPOSEY DANIELS, <i>et al.</i> ,)	
)	
Respondents.)	

ORDER

Petitioner has filed a document with this court in which he states, “Please omit or dismiss filing status in Case No. 2:12-cv-974-TMH.” (Doc. No. 3.) It is unclear whether Petitioner, by this document, seeks to dismiss his petition under 28 U.S.C. § 2254 for writ of habeas corpus. Under the circumstances, and in an abundance of caution, this court hereby advises Petitioner of the potential consequences of dismissal of his action pursuant to his apparent request.

Petitioner should be aware of 28 U.S.C. § 2244(d), which establishes a one-year period of limitation for applications for writs of habeas corpus challenging state court judgments. The one-year period normally runs from the date upon which the conviction became final, *see* § 2244(d)(1), but the time during which a “properly filed” application for state post-conviction or other collateral review is pending is not counted. *See* § 2244(d)(2); *Artuz v. Bennett*, 531 U.S. 4 (2000). Furthermore, Petitioner is advised that the pendency of the instant federal habeas action does not toll the one-year limitation period set forth in 28 U.S.C. § 2244(d)(1). *See Duncan v. Walker*, 533 U.S. 167, 181(2001) (construing 28

U.S.C. § 2244(d)(2)). Finally, Petitioner is advised that the fact a § 2254 petition is dismissed without prejudice does not preclude a determination that a subsequently filed § 2254 petition is untimely or otherwise procedurally barred.

Accordingly, it is

ORDERED that on or before December 4, 2012, Petitioner shall advise this court whether, in light of the potential consequences of dismissal, he wishes to maintain his apparent request that the instant action be dismissed.

Done this 19th day of November, 2012.

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