

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

MORRIS FELTON, #292689, )  
 )  
 Petitioner, )  
 )  
 v. ) Civil Action No. 2:16cv87-WHA  
 ) [WO]  
 KENNETH JONES, )  
 )  
 Respondent. )

**ORDER**

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #13), the Petitioner's Objections thereto (Doc. #14), and the Respondent's Response to the Objections (Doc. #17).

Upon an independent review of the record and consideration of the Recommendation, the Objections to the Recommendation, and the Respondent's Response to the Objections, the court finds the Objections to be without merit.

The Petitioner has sought relief pursuant to 28 U.S.C. §2254, challenging convictions and sentences in the Circuit Court of Crenshaw County, Alabama. The Petitioner challenges his conviction as a violation of the right to confrontation under the Sixth and Fourteenth Amendments to the United States Constitution. The Magistrate Judge recommended that the petition be denied and dismissed with prejudice.

In his Objections to the Recommendation, the Petitioner states that he disagrees with the Alabama Court of Criminal Appeals rejection of his argument that during his trial, the victim's out-of-court statements were improperly admitted. The Alabama Court of

Criminal Appeals rejected this argument based on its finding that the victim testified at trial and was subject to cross-examination.

The court agrees with the Recommendation of the Magistrate Judge, and the argument of the Respondent that the claim is procedurally defaulted and cannot proceed on that basis. However, even assuming that his claim has not been defaulted, the Petitioner has not shown that the state court decision was based on an unreasonable determination of the facts in light of the evidence presented, or that the presumption of correctness is rebutted by clear and convincing evidence. *See* 28 U.S.C. §2254(d)(2), (e)(1).

Accordingly, it is ORDERED that:

1. The Objections are OVERRULED.
2. The Magistrate Judge's Recommendation (Doc. # 13) is ADOPTED; and
3. The Petition is DENIED and the case is DISMISSED with prejudice.

A final judgment will be entered separately.

DONE this 26th of March, 2018.

/s/ W. Harold Albritton  
W. HAROLD ALBRITTON  
SENIOR UNITED STATES DISTRICT JUDGE