

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

DEAN ERIC MAHONE, #214 209	*	
Petitioner,	*	
v.	*	3:07-CV-600-WKW (WO)
WILLIE THOMAS, WARDEN, <i>et al.</i> ,	*	
Respondents.	*	

ORDER AND RECOMMENDATION OF THE MAGISTRATE JUDGE

The above-captioned action was filed in this court on June 28, 2007. Upon review of the petition, the undersigned is persuaded that Petitioner's June 28 pleading is actually his compliance with an order entered on June 8, 2007 in *Mahone v. Thomas*, Civil Action No. 3:07-CV-500-MEF. In that order, the court directed Petitioner to supplement his petition by completing a form used in filing petitions pursuant to 28 U.S.C. § 2254. The order further directed Petitioner to return the completed form to the court for filing on or before June 22, 2007. A review of the Petitioner's June 28 pleading also reflects that he referenced the case number for his pending habeas corpus case on the first page of the form petition. (*See* Doc. No. 1 at 1.)

In light of the foregoing, the court finds it appropriate to recommend that the instant petition be dismissed. The court further deems it appropriate to direct the Clerk to file a copy of Petitioner's June 28, 2007 pleading in Civil Action No. 3:07-CV-500-MEF and

docket said pleading as a supplement in that action in accordance with the court's June 8, 2007 order entered in that case.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the instant complaint be DISMISSED without prejudice.

It is ORDERED that:

1. The Clerk file a copy of Document Number 1 from the present action in Civil Action Number 3:07-CV-500-MEF and docket said pleading as a supplement to the petition in that case;

2. The Clerk FILE a copy of this order in Civil Action No. 3:07-CV-500-MEF;

3. Petitioner's Motion for Leave to Proceed *In Forma Pauperis* (Doc. No. 2), filed on June 28, 2007, be DENIED as moot.

It is further

ORDERED that the parties are DIRECTED to file any objections to the Recommendation on or before **July 17, 2007**. 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 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th 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 5th day of July 2007.

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