

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

DAVE THOMAS, #104278,)	
)	
Petitioner,)	
)	CASE NO. 3:11-CV-214-ID
v.)	
)	(WO)
J.C. GILES, <i>et al.</i> ,)	
)	
Respondents.)	

ORDER

Before the court are the Recommendation of the Magistrate Judge, (Doc. #4), and Petitioner’s objection, (Doc. #5). Having conducted a *de novo* determination of those portions of the Recommendation to which objections are made, it is CONSIDERED and ORDERED as follows:

1. Petitioner’s objection (Doc. #5) be and the same is hereby OVERRULED;
2. The Recommendation of the Magistrate Judge (Doc. #4) be and the same is hereby ADOPTED, APPROVED and AFFIRMED;
3. The Petitioner’s 28 U.S.C. § 2254 petition for habeas corpus relief (Doc. #1) be and the same is hereby DENIED; and
4. This cause be and the same is hereby DISMISSED in accordance with the provisions of 28 U.S.C. § 2244(b)(3)(A) because Thomas has failed to obtain the requisite order from the Eleventh Circuit Court of Appeals

authorizing this court to consider his successive habeas application.

Furthermore, a prisoner seeking relief under 28 U.S.C. § 2254 must obtain a certificate of appealability (“COA”) before appealing the denial of his application for a writ of habeas corpus. This court “must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11(a) to the Rules Governing Section 2254 Proceedings. This court should grant a COA only if the prisoner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth in the Recommendation of the Magistrate Judge, and in consideration of the standards enunciated in *Slack v. McDaniel*, 529 U.S. 473, 482–84 (2000), the court finds that the Petitioner has failed to make the requisite showing. Accordingly, a COA is DENIED in this case.

DONE this the 22nd day of April, 2011.

/s/ Ira DeMent
SENIOR UNITED STATES DISTRICT JUDGE