

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

ANTHONY LAMAR WINSTON,)	
)	
Petitioner,)	
)	
vs.)	CIVIL ACTION NO. 3:12cv765-WHA
)	
UNITED STATES OF AMERICA)	(WO)
)	
Respondent.)	

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #8), the Petitioner’s Objection (Doc. #11), and Petitioner’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. #12).

It is hereby ORDERED that the Application (Doc. #12) is GRANTED.

Upon an independent evaluation and *de novo* review of this case, the court finds the Objection to be without merit and is hereby OVERRULED. This court has no jurisdiction while the Petitioner’s criminal conviction is on appeal. The court agrees with the Magistrate Judge that this motion should be denied without prejudice, and that the Petitioner may file a new § 2255 motion when his appeal is concluded and jurisdiction is again vested in the district court. Therefore, the court ADOPTS the Recommendation of the Magistrate Judge, and it is hereby

ORDERED that this 28 U.S.C. § 2255 motion is DENIED without prejudice.

DONE this 6th day of November, 2012.

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