

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

SILAS MARTIN, # 145 609,)
)
Petitioner,)
)
v.) CASE NO. 3:14-CV-1261-WKW
) [WO]
CHRISTOPHER GORDY, *et al.*,)
)
Respondents.)

ORDER

On January 22, 2015, the Magistrate Judge filed a Recommendation in this case. (Doc. # 4.) On February 4, 2015, Petitioner Silas Martin filed an objection to the Recommendation. (Doc. # 5.) After an independent and *de novo* review of those portions of the Recommendation to which objection is made, the court finds that Mr. Martin's objection is due to be overruled and the Recommendation adopted. *See* 28 U.S.C. § 636(b).

Mr. Martin filed this 28 U.S.C. § 2254 petition challenging his state-court conviction for attempted sodomy in the second degree entered by the Circuit Court of Lee County, Alabama, on December 20, 2014. This is not Mr. Martin's first § 2254 challenge. In September 2009, Mr. Martin filed a previous petition for habeas corpus relief under § 2254. *Martin v. Hetzel*, No. 3:09-CV-875-ID (M.D. Ala. Sept. 14, 2009). As the Magistrate Judge highlighted in her Recommendation, Mr. Martin's previous collateral attack was dismissed with prejudice in 2011.

Because this is Mr. Martin's second § 2254 petition, the Magistrate Judge determined that § 2244(b)(3)(A) applies, requiring Mr. Martin to first receive approval from a three-judge panel of the Eleventh Circuit Court of Appeals "authorizing the district court to consider" a second or successive § 2254 petition. 28 U.S.C. § 2244(b)(3)(A). In his objection to the Recommendation, Mr. Martin argues that his petition does not constitute a "second or successive collateral attack" because it is based on newly discovered evidence and information. (Doc. # 5.) Section 2244(b)(3)(A) is triggered, however, regardless of whether an individual's second § 2254 petition is based on a previously submitted claim or on newly discovered evidence. *See* 28 U.S.C. § 2255(h). Accordingly, because Mr. Martin has not applied for or received an order from a three-judge panel of the Eleventh Circuit Court of Appeals, this court lacks jurisdiction to consider his second petition for habeas corpus relief.

Accordingly, it is ORDERED as follows:

1. Mr. Martin's objection (Doc. # 5) is OVERRULED.
2. The Recommendation (Doc. # 4) is ADOPTED.
3. The petition for writ of habeas corpus is DENIED.
4. This cause of action is DISMISSED without prejudice under 28 U.S.C. § 2244(b)(3)(A) as Mr. Martin has failed to obtain the requisite order from

the Eleventh Circuit Court of Appeals authorizing this court to consider his successive habeas application.

A final judgment will be entered separately.

DONE this 12th day of February, 2015.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE