

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION**

|                                 |   |                                       |
|---------------------------------|---|---------------------------------------|
| <b>DAVID JUNIOR UPSHAW,</b>     | ) |                                       |
|                                 | ) |                                       |
| <b>Petitioner,</b>              | ) |                                       |
|                                 | ) |                                       |
| <b>vs.</b>                      | ) | <b>Case No. 1:14-CV-01668-CLS-JEO</b> |
|                                 | ) |                                       |
| <b>JOHN T. RATHMAN, Warden,</b> | ) |                                       |
|                                 | ) |                                       |
| <b>Respondent.</b>              | ) |                                       |

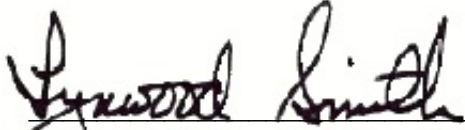
**MEMORANDUM OPINION**

This is a habeas corpus case filed pursuant to 28 U.S.C. § 2241 by David Junior Upshaw, a federal prisoner acting *pro se*. (Doc. 1). The magistrate judge to whom the case was referred entered a report and recommendation (“R&R”) on June 2, 2016, *see* 28 U.S.C. § 636(b), in which he concluded that this action is due to be dismissed without prejudice, because this court lacks jurisdiction to hear petitioner’s habeas claim pursuant to the “savings clause” of 28 U.S.C. § 2255(e). (Doc. 20). Petitioner was allotted fourteen days in which to file objections to the R&R, and failed to do so prior to the expiration of that period.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the magistrate judge’s report and recommendation, the court is of the opinion that the magistrate judge’s findings are due to be and hereby are ADOPTED, and his recommendation is ACCEPTED. Accordingly, the petition for a writ of habeas

corpus is due to be DISMISSED WITHOUT PREJUDICE for want of jurisdiction. A separate Final Order will be entered.

**DONE** this 22nd day of June, 2016.

  
United States District Judge