

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

JOSEPH STEPHEN WEST,)
)
 Petitioner,)
)
 v.)
)
 SHERIFF LARRY AMERSON, et al.,)
)
 Respondents.)

Case Number: 1:15-cv-00708-RDP-JHE

MEMORANDUM OPINION

On June 12, 2015, the Magistrate Judge entered a Report and Recommendation, recommending that this petition for writ of habeas corpus be dismissed without prejudice for failure to exhaust. (Doc. 8). On June 19, 2015, the court received Petitioner’s objections. (Doc. 9). The court has considered the entire file in this action, together with the Report and Recommendation and objections thereto, and has reached an independent conclusion that the Report and Recommendation is due to be adopted and approved.


While Petitioner attempts to attack the Report and Recommendation on several grounds, he fails to point to any error in the Magistrate Judge’s conclusion that his petition is premature. (See Doc. 9). Therefore, because Petitioner’s claims are unexhausted and the petition is premature, the undersigned will not address Petitioner’s arguments regarding the merits of his claims. To the extent Petitioner challenges the court’s procedure, it is routine practice in this court to construe Respondent’s Answer as a motion for summary dismissal when there is no need for an evidentiary hearing. Petitioner was provide an opportunity to file affidavits or other materials in opposition and was advised of the possible consequences of not responding. (See Doc. 6). Furthermore, to the extent Petitioner challenges the statement that he “committed two

new crimes” while in jail, that challenge is well-taken. At the time of filing, warrants had been issued, but Petitioner had not been convicted of these crimes. This, however, does not change the outcome of his petition.

Accordingly, the court hereby **ADOPTS** and **APPROVES** the findings and recommendation of the Magistrate Judge as the findings and conclusions of this court. The petition for writ of habeas corpus is due to be dismissed. A separate Order will be entered.

This court may issue a certificate of appealability “only if the applicant has a made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, a “petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that “the issues presented were adequate to deserve encouragement to proceed further,” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted). This court finds Petitioner’s claims do not satisfy either standard.

DONE and **ORDERED** this June 22, 2015.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE