

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

MICHAEL WAYNE LATHERS,)	
)	
Petitioner,)	
)	
v.)	Case No. 1:21-cv-00207-MHH-
)	SGC
GARY WILLIAMS, et al.,)	
)	
Respondents.)	

MEMORANDUM OPINION

The magistrate judge entered a report on April 22, 2021, recommending the Court, pursuant to 28 U.S.C. § 2244(b)(3)(A), dismiss Mr. Lathers’ petition for a writ of habeas corpus as successive. (Doc. 8). The magistrate judge also recommended the Court deny Mr. Lathers’ motion to stay. (Doc. 8). Although the magistrate judge advised Mr. Lathers of his right to file objections to the report and recommendation within 14 days, the Court has not received objections.

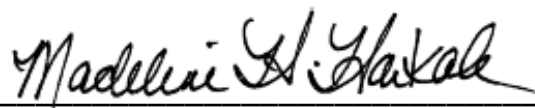
Having reviewed and considered the materials in the court file, including the report and recommendation, the Court adopts the magistrate judge’s report and accepts her recommendation. The Court dismisses Mr. Lathers’ petition for a writ of habeas corpus without prejudice for lack of jurisdiction because Mr. Lathers has not received authorization from the Eleventh Circuit to file a successive habeas petition. *See* 28 U.S.C. § 2244(b)(3)(A). For the same reason, the Court denies Mr. Lathers’ motion to stay. (Doc. 7). If the Eleventh Circuit gives Mr. Lathers

permission to pursue a second habeas petition, Mr. Lathers may file a timely petition then.

A district court may issue a certificate of appealability “only if the applicant has 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). Mr. Lathers’ petition does not satisfy either standard, so the Court will not issue a certificate of appealability.

The Court will enter a separate final order.

DONE and **ORDERED** this May 18, 2021.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE