

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

**ROBERT DELANO KITCHEN,**

**Petitioner,**

**Case No. : 2:13-cv-1435-KOB-SGC**

**v.**

**LEPOSEY DANIALS,<sup>1</sup> Warden, et al.,**

**Respondents.**

**MEMORANDUM OPINION**

On August 9, 2016, the magistrate judge entered a report (doc. 9), recommending that the court deny this petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, as time-barred and procedurally defaulted. On August 24, 2016, Petitioner filed objections to the magistrate judge's report and recommendation. (Doc. 10).

The magistrate judge's report addresses the substance of Petitioner's objections, and he presented no evidence or arguments to overcome the conclusion that his claims are procedurally defaulted and time-barred. While Petitioner's objections make a passing reference to actual innocence, he has not stated an actual innocence claim because he has presented no new evidence that was unavailable at trial. Accordingly, Petitioner's objections (doc. 10) are **OVERRULED**.

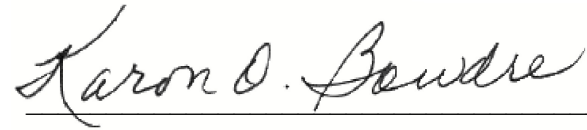
After careful consideration of the record in this case and the magistrate judge's report, the court hereby **ADOPTS** the report of the magistrate judge and **ACCEPTS** her recommendations. In accordance with the recommendation, the court finds that the petition is due to be denied as time-barred and procedurally defaulted. A certificate of appealability is due to be denied.

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<sup>1</sup> Although Respondent's name is actually "Leeposey Daniels," the court has used Petitioner's spelling.

The court will enter a separate Final Order.

DONE and ORDERED this 30th day of August, 2016.

A handwritten signature in cursive script that reads "Karon O. Bowdre". The signature is written in black ink and is positioned above a horizontal line.

KARON OWEN BOWDRE  
CHIEF UNITED STATES DISTRICT JUDGE