

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

JAMES MCCONICO, JR.,)	
Datitionan)	
Petitioner,)	
v.)	Case Number:
)	
WARDEN CHERYL PRICE AND)	2:14-cv-01036-VEH-JHE
THE ATTORNEY GENERAL OF)	
THE STATE OF ALABAMA,)	
)	
Respondents.)	

MEMORANDUM OPINION

On November 21, 2014, the magistrate judge entered a Report and Recommendation, (doc. 23), recommending that this petition for writ of habeas corpus treated as a Rule 60(b) motion for relief from judgment and that the motion be denied. Petitioner has filed objections. (Doc. 26). The court has considered the entire file in this action, together with the report and recommendation, and has reached an independent conclusion that the report and recommendation is due to be adopted and approved.

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 a reasonable jurist would find the district court's assessment of the constitutional claims debatable and 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 29th day of December 2014.

VIRGINIA EMERSON HOPKINS

United States District Judge