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

JAMES MCCONICO JR.,)
)
      Petitioner,)
)
v.   )   Case Number: 2:15-cv–00320-LSC-JHE
)
WARDEN CHERYL PRICE and THE)
ATTORNEY GENERAL FOR THE)
STATE OF ALABAMA,)
)
      Respondents.

MEMORANDUM OPINION

On April 2, 2015, the magistrate judge entered a Report and Recommendation, (doc. 5), recommending that this petition for writ of habeas corpus be dismissed without prejudice to allow Petitioner an opportunity to petition the Eleventh Circuit Court of Appeals for authorization to file a successive habeas petition. Petitioner has filed what appear to be objections to the Report and Recommendation, styled as a "Motion to Alter, Amend and Vacate Judgment or in the Alternative, Motion for Relief of Judgment Pursuant to Rule 60(b) Fed. R. Civ. P." (Doc. 8). Petitioner argues the magistrate judge erred because the underlying criminal case doesn't have anything to do with the present habeas petition and the magistrate judge didn't attempt to locate the prior habeas petition he is attacking, *McConico v. Hall, et al.*, CV-96-00094.[1] (*Id.*).

To the extent McConico is challenging his convictions and sentence as it appears in his petition and response to the magistrate judge's March 5, 2015 Order, (*see* docs. 1 & 4), the petition

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[1] McConico refers to this case as *McConico v. Hightower*, but review of the record reveals the defendants were Sheriff Thomas E. Hall and the Attorney General of the State of Alabama in the referenced case.

is successive for the reasons explained in the Report and Recommendation. To the extent attempts to attack the district court's ruling in his prior habeas petition, he is not entitled to relief.
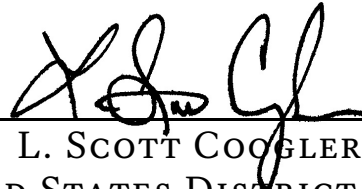
Petitioner initiated *McConico v. Hall, et al.*, CV-96-00094 on January 12, 1996, by filing a petition pursuant to 28 U.S.C. § 2254. The petition was dismissed On August 21, 1996. On October 19, 1998, the Eleventh Circuit Court of Appeals affirmed the dismissal of the petition. Subsequently, the United States Supreme Court denied Petitioner's petition for a writ of certiorari. On July 5, 2001, Petitioner filed a Rule 60(b) motion for relief from judgment in the 1996 case. The court denied that motion on August 24, 2001. On August 27, 2001, McConico filed a motion to consolidate his application for permission to file a successive habeas petition with his motion for relief from judgment. That motion was denied on August 31, 2001. On September 14, 2001, McConico filed a notice of appeal from the court's August 24, 2001 denial of his Rule 60(b) motion. The Eleventh Circuit Court of Appeals dismissed the appeal on October 18, 2001 for want of prosecution. On March 11, 2010, McConico filed a "Motion Relief of Judgment - Rule 60(b) F.R. Civ. P." requesting the court's August 21, 1996 judgment be set aside because the court "acted in excess of it's [sic] jurisdiction when it denied McConico's habeas corpus relief prusuant to the PLRA." Finding the motion stated no claim for relief, the court denied the motion on March 18, 2010. McConico appealed, and the Eleventh Circuit Court of Appeals dismissed his appeal on April 23, 2010 for want of prosecution.

To the extent McConico now seeks the same relief through his recently filed habeas petition or the motions presented in his objection, such relief is due to be denied.

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 with the additional findings presented herein. 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.

Done this 27th day of April, 2015.

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L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE

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