

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

RONALD EVANS,)
)
 Petitioner,)
)
 v.)
)
 WARDEN DEWAYNE ESTES and)
 THE ATTORNEY GENERAL OF)
 THE STATE OF ALABAMA,)
)
 Respondents.)

Civil Action Number
2:16-cv-00465-AKK-JHE

MEMORANDUM OPINION

On May 20, 2016, the magistrate judge entered a report and recommendation, recommending that the petition for writ of habeas corpus be dismissed without prejudice. Doc. 5. On June 10, 2016, Petitioner Ronald Evans filed objections. Doc. 8.

The only issue Evans takes with the magistrate judge’s report and recommendation is that its “Procedural History” section did not go into detail of the alleged violations of his constitutional rights in all of the state collateral actions he has filed challenging his conviction. *Id.* at 2-10. The objections do not challenge any of the magistrate judge’s factual findings or legal conclusions regarding successiveness. In fact, Evans concludes his objections with a request to

“hold dismissal in abeyance until [he] seeks to obtain permission from the Eleventh Circuit Court of Appeals to file a successive petition.” Doc. 8 at 10-11. However, authorization under 28 U.S.C. § 2244(b)(3)(A) must be obtained *before* filing a petition and is, therefore, jurisdictional. *See Burton v. Stewart*, 549 U.S. 147, 153 (2007). To the extent Evans is alleging his petition is based on any new constitutional violations in his state collateral proceedings, it is still due to be dismissed. Such claims fail to state a claim for habeas relief because they are an attack on the fairness of the collateral proceeding and not on the conviction or sentence itself. *Quince v. Crosby*, 360 F.3d 1259, 1261-62 (11th Cir. 2004). Accordingly, Evans’s objections are **OVERRULED** and his request to stay the petition is **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. Accordingly, the court hereby adopts and approves the findings and recommendation of the magistrate judge, along with this memorandum opinion, 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 the 16th day of June, 2016.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE