

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

DOUGLAS FANCHER,)
)
Petitioner,)
)
v.)
)
STATE OF ALABAMA, et al.,)
)
Respondents.)

Civil Action Number:
2:16-cv-1815-AKK-JEO

MEMORANDUM OPINION

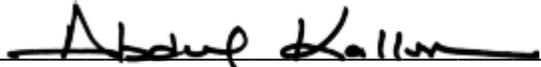
This is an action for a writ of habeas corpus filed by Petitioner Douglas Fancher, *pro se*, on or about November 5, 2016. Doc. 1. Fancher, a pre-trial detainee, claims he is being held unlawfully in the Jefferson County Jail in Bessemer, Alabama. On December 8, 2016, the magistrate judge to whom the action was referred entered a report and recommendation pursuant to 28 U.S.C. § 636(b) recommending that the court dismiss Fancher’s habeas petition without prejudice based on his failure to exhaust available state remedies. Doc. 4. The time to object to the magistrate judge’s report and recommendation has expired.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the magistrate judge’s report and recommendation, the court is of the opinion that the magistrate judge’s findings are due to be and are hereby **ADOPTED** and his recommendation is **ACCEPTED**. Accordingly, the petition

for a writ of habeas corpus is due to **DISMISSED WITHOUT PREJUDICE**.

Further, a petitioner is required to obtain a certificate of appealability in order to appeal from “the final in a habeas corpus proceeding in which the detention complained of arises out process issued by a state court.” 28 U.S.C. § 2253(c)(1)(A). That language encompasses final orders relative to habeas petitions by detainees awaiting trial in state court on criminal charges. *See Evans v. Oliver*, 2013 WL 4027766, at *4 (S.D. Ala. Aug. 7, 2013); *Stringer v. Williams*, 161 F.3d 259, 262 (5th Cir. 1998); *cf. Medberry v. Crosby*, 351 F.3d 1049, 1063 (11th Cir. 2003); *Hiteshaw v. Butterfield*, 262 F. App’x 162, 163 (11th Cir. 2008). It is appropriate for the court to either issue or deny a certificate of appealability when it enters a final order adverse to the applicant. *See* Rules 1(b), 11(a), RULES GOVERNING § 2254 HABEAS PROCEEDINGS. The court concludes that the instant petition does not present issues that are debatable among jurists of reason, so a certificate of appealability is due to be **DENIED**. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). A separate Final Judgment will be entered.

DONE the 10th day of January, 2017.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE