

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

CURTIS EDWARD NELSON,	}	
	}	
Petitioner,	}	
	}	
v.	}	Case No.: 2:18-cv-838-MHH-JHE
	}	
LEON BOLLING, et al.,	}	
	}	
Respondents.	}	

MEMORANDUM OPINION

On May 31, 2018, Mr. Nelson filed a petition for writ of habeas corpus seeking his release from state custody. Mr. Nelson is serving concurrent 25-year sentences for his convictions for first-degree burglary and attempted murder. (Doc. 1; *see also* Doc. 6, p. 3). Mr. Nelson filed an amended petition on July 6, 2018. (Doc. 6).

On July 12, 2018, the magistrate judge ordered Mr. Nelson to show cause why the Court should not dismiss his habeas petition because he previously filed a habeas petition relating to the same state charges, and he did not ask the Eleventh Circuit Court of Appeals for permission to file a successive habeas petition before he filed the current petition in this district court. (Doc. 3, p. 1). Mr. Nelson has not responded to that order.

On August 8, 2018, the magistrate judge filed a report in which he recommended that the Court dismiss Mr. Nelson's petition without prejudice for the reason stated in the show cause order. (Doc. 11, p. 3). The magistrate judge notified Mr. Nelson of his right to object to the report. (Doc. 11, pp. 3-4). To date, Mr. Nelson has not objected to the magistrate judge's report and recommendation.

A district court "may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A district court reviews legal conclusions in a report de novo and reviews for plain error factual findings to which no objection is made. *Garvey v. Vaughn*, 993 F.2d 776, 779 n. 9 (11th Cir. 1993); *see also LoConte v. Dugger*, 847 F.2d 745, 749 (11th Cir. 1988); *Macort v. Prem, Inc.*, 208 Fed. Appx. 781, 784 (11th Cir. 2006).

Based on its review of the record in this case, the Court finds no misstatements of law in the report and no plain error in the magistrate judge's findings concerning Mr. Nelson's previous habeas petition or his failure to ask the Eleventh Circuit Court of Appeals for permission to file a second petition relating to the state charges that are the subject of his first petition. Therefore, the Court adopts the magistrate judge's report and accepts his recommendation. The Court will issue a separate dismissal order consistent with this memorandum opinion.

This Court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.

2253(c)(2). To satisfy that standard, 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 Mr. Nelson’s petition does not satisfy either test.

DONE this 13th day of November, 2018.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE