

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

JOHN D. DUPREE, )  
)  
Petitioner, )  
)  
v. )  
)  
BILLY MITCHEM and THE )  
ATTORNEY GENERAL FOR THE )  
STATE OF ALABAMA, )  
)  
Respondents. )

Case Number: 4:09-cv-00964-KOB-JHE

**MEMORANDUM OPINION**

On May 5, 2015, the magistrate judge entered a Report and Recommendation, (doc. 26), recommending that the remaining claim in this petition for writ of habeas corpus be dismissed with prejudice. No objections have been filed.<sup>1</sup> 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.

The court finds that, to the extent Dupree raised his claims of ineffective assistance of counsel by Bone in his Rule 32 proceeding, the dismissal of such claim by the Alabama Court of

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<sup>1</sup>When the magistrate judge entered his report and recommendation, the court sent an electronic notice to the attorney of record listed on the docket sheet. The court later learned that the petitioner may not have received the notice. On May 27, 2015, the court sent a an order explaining what happened and a copy of the report and recommendation to the petitioner. (Doc. 27). This Order gave the petitioner an additional fourteen days to file objections to the report and recommendation. On June 10, 2015, the court received a letter from the petitioner explaining he received the order and providing an updated mailing address. (Doc. 28). The petitioner stated that he had not received a copy of the report and recommendation. By Order entered June 11, 2015, the court sent another copy of the report and recommendation to the petitioner, this time at the updated address he provided. (Doc. 29). The court gave the petitioner fourteen days from the entry date of that Order to file objections to the report and recommendation. (*Id.*).

Criminal Appeals was not contrary to or an unreasonable application of *Strickland*. Alternatively, the court finds that if the specific challenges to Bone's representation were not encompassed in his Rule 32 proceeding, then that claim is procedurally barred.

Accordingly, the court 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 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 claim does not satisfy either standard and will not issue a certificate of appealability.

**DONE and ORDERED** this 14<sup>th</sup> day of July, 2015.



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KARON OWEN BOWDRE  
CHIEF UNITED STATES DISTRICT JUDGE