

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CARL BRAD WARD,]
]
 Petitioner,]
]
 vs.]
]
 WARDEN CARTER DAVENPORT, et al.,]
]
 Respondents.]

5:12-cv-3418-KOB-RRA

MEMORANDUM OPINION

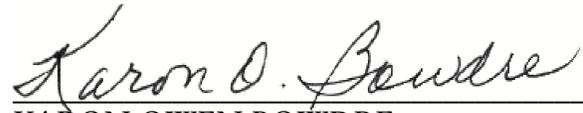
The magistrate judge entered a report and recommendation (doc. 6) in this habeas action recommending that the court dismiss this action as a successive petition because the petitioner failed to obtain the required authorization from the Eleventh Circuit Court of Appeals to file a successive petition in this court.

The petitioner has filed objections to the report and recommendation (doc. 7), in which he requests that “the instant petition be held in abeyance, instead of being dismissed, until he receives a ruling from the 11th Circuit on [h]is 2244(b) application.” However, 28 U.S.C. § 2244(b)(3)(A) states that “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” (Emphasis added). The clear effect of this provision establishes a statutory pre-condition to the filing of a “second or successive” habeas petition, requiring the applicant to obtain the authorization of the United States Court of Appeals for the Eleventh Circuit before petitioner

files it. The purpose of the statute is to prevent the filing of successive petitions and to deprive the district court of jurisdiction to consider successive petitions unless and until the appropriate court of appeals has authorized the filing of the petition. This court lacks jurisdiction over the petitioner's successive habeas petition until the appeals court grants him permission to file a successive petition. Therefore, the court cannot hold the petition in abeyance.¹

Having carefully reviewed and considered de novo all the material in the court file, including the petitioner's objections and the report and recommendation, the court ADOPTS the report of the magistrate judge and ACCEPTS his recommendation. This court finds that this habeas petition is due to be dismissed without prejudice to allow the petitioner to obtain authorization from the Eleventh Circuit Court of Appeals to file a successive petition in this court. The court will enter an appropriate order.

DONE and ORDERED this 5th day of November, 2012.


KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE

¹ The petitioner has requested that the "court return to him the three copies of the petition which he filed" in this case. However, any copies of the petition submitted along with the original petition were not retained by the court because of space limitations.