

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

JAMES EDWARD WALLACE,)	
)	
Petitioner,)	
vs.)	Case No. 7:14-cv-918-JHH-TMP
)	
KENNETH JONES, Warden; and the)	
ATTORNEY GENERAL OF)	
THE STATE OF ALABAMA,)	
)	
Respondents.)	

MEMORANDUM OPINION

This cause is before the court on several matters related to the petitioner’s application for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. The petition was deemed filed on May 12, 2014, challenging petitioner’s 1999 convictions for second-degree kidnaping and first-degree sexual abuse, on which he received two concurrent 25-year sentences. Petitioner pleaded guilty to the offenses and did not appeal. The magistrate judge entered an Order on May 19, 2014, requiring the petitioner to show cause why the instant petition should not be dismissed without prejudice as a successive petition under 28 U.S.C. § 2244(b). The Order noted that petitioner had filed two previous petitions for *habeas corpus* with respect to these convictions in Case No. 4:03- cv-2309-TMP, which was dismissed with prejudice as untimely filed, and Case No. 4:05-cv-1030-JHH-TMP, which was dismissed as a

successive petition. Petitioner never responded to the Order, but filed a motion for a preliminary injunction on July 30, 2014, and a motion for a certificate of appealability and a motion for leave to appeal *in forma pauperis* on August 28, 2014. The magistrate judge filed his report and recommendation on October 17, 2014, recommending that the instant petition be dismissed without prejudice as a successive petition for which no preclearance has been granted by the court of appeals. Petitioner filed his objections to the report and recommendation October 21, 2014, arguing that the petition is not time barred.

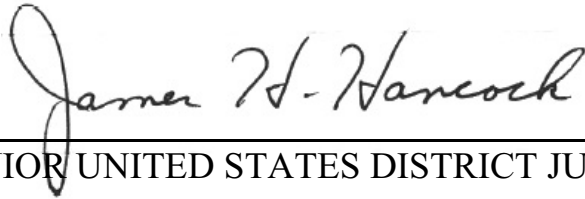
Having carefully reviewed the report and recommendation, the objections to it, and other matters in the court file, the court ADOPTS and ACCEPTS the magistrate judge's report and recommendation. Although the magistrate judge gave plaintiff the opportunity to explain how or why the successive petition provision of § 2244(b) does not bar this petition, he responded by arguing about the timeliness of the petition. It is clear that, without court of appeal pre-approval, the court has no jurisdiction to consider a successive petition. Accordingly, the court, by separate Order, will DISMISS this petition WITHOUT PREJUDICE as a successive petition.

For this reason, petitioner's motion for a preliminary injunction (doc. 9) will be DENIED. His application for leave to appeal *in forma pauperis* (doc. 12) and his motion for a certificate of appealability (doc. 11) are MOOT. The proper procedure is not an appeal from this dismissal, but the filing of an application with the court of

appeals under 28 U.S.C. § 2244(b) for pre-approval for petitioner to file a successive petition.

The Clerk is DIRECTED to mail a copy of the foregoing to the petitioner.

DONE this the 1st day of December, 2014.



James H. Hancock

SENIOR UNITED STATES DISTRICT JUDGE