

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

SANWAN TINELLE SUMMERS,	:	
AIS 216735,	:	
	:	
Petitioner,	:	
	:	
vs.	:	CA 08-0273-KD-C
	:	
KENNETH JONES,	:	
	:	
Respondent.	:	

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the recommendation to which objection is made¹, the recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated August 14, 2008, is **ADOPTED, with the following amendments**, as the opinion of this Court.

Page 19 paragraph 7, sentence 1 is amended to read as follows:

It is clear to the undersigned that Summers has procedurally defaulted all claims raised by petitioner.

Page 19 - footnote 4 is STRICKEN

Page 20 is amended to ADD the following language at the end of paragraph 7:

¹ Respondent does not object the ultimate conclusion reached by the Magistrate Judge, but, rather, seeks a modification of certain conclusions contained in the Report and Recommendation. (See doc. 15)

As to the jury instruction claim, the petitioner failed to meet Alabama's procedural rule that this issue be presented pre-trial. Moreover, this was the alternative basis on which the jury instruction claim was denied by the Alabama Court of Criminal Appeals.

Pages 22-28: Section B is STRICKEN in its entirety.

DONE this 9th day of September, 2008.

/s/ Kristi K. DuBose

KRISTI K. DuBOSE

UNITED STATES DISTRICT JUDGE