

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

**GARY LEWIS MARSHALL,
AIS 193639,**

:

:

Petitioner,

:

vs.

CA 08-0521-CG-C

:

KENNETH JONES,

:

Respondent.

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed¹, the recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated November 20, 2008 is **ADOPTED** as the opinion of this Court.

DONE this 22nd day of December, 2008.

/s/ Callie V. S. Granade
CHIEF UNITED STATES DISTRICT JUDGE

¹ Although the petitioner did not file an objection to the R&R, he did file, after the R&R was issued, a motion to dismiss the petition “without prejudice” (Doc. 11). Because this order adopting the R&R dismisses petitioner’s case, the court finds that the motion to dismiss is MOOT. Any dismissal, whether termed with or without prejudice, does not negate petitioner’s need to obtain the court of appeals’ permission to file a successive petition.