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

CHARLES ROBINSON,	:	
Petitioner,	:	
vs.	:	**CIVIL ACTION 09-00488-WS-B**
J. C. GILES,	:	
Respondent.	:	

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issue raised, and there having been no objections filed, the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. §636(b)(1)(B) is **ADOPTED** as the opinion of this Court. It is **ORDERED** that this action be and is hereby **DISMISSED** due to Petitioner's failure to comply with 28 U.S.C. § 2244(b)(3)(A).

Pursuant to Rule 11(a) of the Rules Governing § 2254 Cases, "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) of the Rules Governing 2254 Cases (December 1, 2009). "A certificate of appealability may issue only where "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a habeas petition is dismissed on procedural grounds, such as in the instant case, without reaching the merits of any underlying constitutional

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claim, "a COA should issue [only] when the prisoner shows...that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); see Miller -EL v. Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039, 154 L.Ed. 2d 931 (2003); Farris v. U.S., 333 F.3d 1211, 1216 (11th Cir. 2003)("Without authorization, the district court lacks jurisdiction to consider a second or successive petition."). Under the facts of this case, a reasonable jurist could not conclude either that this Court is in error in dismissing the instant petition or that Petitioner should be allowed to proceed further. Slack, 529 U.S. at 484, 120 S. Ct. at 1604. Accordingly, it is **ORDERED** that because reasonable jurists could not debate whether Petitioner's petition should be dismissed, he is not entitled to a certificate of appealability.

DONE this 1st day of March, **2010**.

s/WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE