

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

MARIO ANDJUAN PEEPLES,)	
Petitioner,)	
vs.)	Civil Action 09-0614-KD-N
MOBILE COUNTY SHERIFF'S DEPARTMENT,)	
Respondent.)	

JUDGMENT

In accordance with the order entered on this date, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that petitioner's federal habeas corpus petition, filed pursuant to 28 U.S.C. § 2254, be **DISMISSED WITHOUT PREJUDICE**.

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." 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. § 2243(c)(2). When a habeas petition is dismissed on procedural grounds without reaching the merits of any underlying constitutional 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, 1604 (2000).

Peoples filed his petition against the Mobile County Sheriff's Department. However,

“[u]nder Alabama law, a county sheriff’s department lacks the capacity to be sued.” Dean v. Barber, 951 F.2d 1210,1215 (11th Cir. 1992) (citation omitted) (finding that the district court correctly dismissed Dean's case against the Jefferson County Sheriff's Department) (citing White v. Birch, 582 So.2d 1085, 1087 (Ala. 1991); see also Warren v. Perkins, 2009 WL 2882139 (S.D. Ala. September 1, 2009). Because Peeples filed suit against an entity which is not a legal entity subject to suit or liability, reasonable jurists could not find it debatable whether the Court erred in dismissing the petition without prejudice. Accordingly, a certificate of appealability is denied.

DONE this 7th day of January, 2010.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE