

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

MARK A. BAINE, Petitioner,)	
)	
)	
v.)	CIVIL ACTION NO. 10-00334-CG-N
)	
GUY NOE, <i>Warden,</i> <i>Decatur Community Based Facility/</i> <i>Community Work Center,</i> Respondent.)	
)	

ORDER

After due and proper consideration of the issues raised, and a *de novo* determination of those portions of the recommendation to which objection is made, the Report and Recommendations (Doc. 57) of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b)(1), Rule 8(b) of the Rules Governing § 2254 Cases in the United States District Courts, and S.D. Ala. GenLR 72(a)(2)(R) & (S), and dated October 26, 2016, is **ADOPTED** as the opinion of this Court with one addition. In his Objection (Doc. 58), Petitioner faults the Report and Recommendation for failure to address a fourth claim of “fraud upon the court committed by the representative for the Respondent.” (Doc 58 at 2). This claim also fails because it was untimely and is also closely linked with “Reason 2” addressed in the Report and Recommendation.

Accordingly, it is **ORDERED** that Petitioner Mark A. Baine’s Motion for Relief from Judgment under Federal Rule of Civil Procedure 60(b) (Doc. 56) is **DISMISSED** for lack of jurisdiction to the extent it is an unauthorized second or successive habeas petition, and that it is otherwise **DENIED**. It is further **ORDERED** that Baine is not entitled to a certificate of appealability. Finally, the Court certifies that any appeal by Baine of this

Order would be without merit and therefore not taken in good faith. Thus, Baine is not entitled to proceed *in forma pauperis* on appeal.¹

DONE and **ORDERED** this the 21st day of March, 2017.

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

¹ Judgment by separate document is unnecessary as to this Order. *See* Fed. R. Civ. P. 58(a)(5).