

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

BURNICE TAFT DREDING, JR.)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 10-00525-KD-M
)	
DEBORAH TONEY,)	
Respondent.)	

ORDER

This matter is before the Court on the Petitioner’s Petition for Writ of Habeas Corpus (Doc. 1), the U.S. Magistrate Judge’s Report & Recommendation regarding same (Doc. 22) and the Petitioner’s Objection thereto (Doc. 23).

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 made, the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. § 636 and dated February 17, 2011 is hereby **ADOPTED with revisions**, as the opinion of this Court, as follows:

This is an action under 28 U.S.C. § 2254 by an Alabama inmate which was referred for report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), Local Rule 72.2(c)(4), and Rule 8 of the Rules Governing Section 2254 Cases. This action is now ready for consideration. The state record is adequate to determine Petitioner's claims; no federal evidentiary hearing is required. It is recommended that the habeas petition be denied and that this action be dismissed.

Petitioner was convicted of criminally negligent homicide and leaving the scene of an accident in the Circuit Court of Mobile County on April 8, 2009 for which he received concurrent terms of split sentences of ten years each, with three years to be served, in the state

penitentiary (Doc. 1 at 2; cf. Doc. 16 at 1-2). Appeal was made to the Court of Criminal Appeals of Alabama which affirmed the conviction and sentence (Doc. 16, Exhibit C). The only issue raised in the appeal was whether the trial court properly allowed the expert opinion of Dr. Barbieri. (Doc. 16-1). Petitioner's writ of *certiorari* to the Alabama Supreme Court was denied. (Doc. 16-6).

Petitioner then filed a Rule 32 Petition alleging ineffective assistance of counsel and an improper variance claim. The Rule 32 Petition was denied. Petitioner did not appeal the denial.

Petitioner filed a complaint with this Court on September 22, 2010, raising the following claims: (1) There was insufficient evidence to establish the crimes for which he was convicted; (2) the trial court was without jurisdiction to sentence him; and (3) Petitioner received ineffective assistance of counsel (Docs. 1-2, 9, 12).¹

Respondent has answered the Complaint, asserting that Dreding is procedurally defaulted on all of the claims raised in this action because Petitioner did not pursue his federal claims to full review by the Alabama Supreme Court (Doc. 16).

Alabama law clearly provided Petitioner the opportunity to seek review of the dismissal of his appeal by the Alabama Court of Criminal Appeals, following the denial of a motion for rehearing by the same Court, by way of *certiorari* to the Alabama Supreme Court. Ala.R.App.P. 39(a)(1). Furthermore, Alabama law allows for appeal of the denial of a Rule 32 petition. Ala.R.App.P. 3(a)(2). Because Petitioner did not pursue his federal claims in a timely fashion before Alabama's appellate courts, the claims are procedurally defaulted under *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999) (“[W]e conclude that state prisoners must give the state

¹ Petitioner has also requested help in getting back certain personal items which were taken from him by prison authorities (Doc. 11). As that request is not appropriate to a § 2254 action, Petitioner will have to file a separate action in State Court or under 42 U.S.C. § 1983.

courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process"). The Court finds that Petitioner's claims are all procedurally defaulted.

Therefore, based on the evidence of record, it is **ORDERED** that the Petition (Doc. 1) is **DENIED** and this action is hereby **DISMISSED**.

Judgment shall be issued in favor of Respondent, Deborah Toney, and against Petitioner Burnice Taft Dreding, Jr., by separate order.

DONE and ORDERED this the 2nd day of **March 2011**.

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