

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

ANDREW JAMES GASTON,)	
)	
Petitioner,)	
)	
vs.)	Civil Action No. 12-0014-KD-B
)	
GARY HETZEL,)	
)	
Respondent.)	

ORDER

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 recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated July 2, 2012, is **ADOPTED** as the opinion of this Court. The Court finds that Gaston's appeal is not taken in good faith. Therefore, he is not entitled to appeal in forma pauperis.¹

Gaston filed a letter to Magistrate Judge Sonja Bivins which this Court construes as his objection to the report and recommendation (doc. 14). Gaston states that he has paid the \$5.00 filing fee (doc. 14). Review of the docket indicates that Gaston filed two substantively identical petitions: In this action and in *Gaston v. Hetzel*, Civil Action No. 12-0040-WS-N. The Court has received one \$5.00 filing fee and that fee has been paid in 12-0040-WS-N. Also, defendant Gary Hetzel has filed an answer in 12-0040-WS-N. Therefore, Gaston's claims will be addressed in that action.

DONE this 18th day of July, 2012.

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

¹ The Court denied Gaston's motion for a Certificate of Appealability (doc. 13).