

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

<b>DAVID LEE FRANK,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 16-00362-WS-N</b>
	)	
<b>NOAH PRICE OLIVER, <i>Warden,</i></b>	)	
<b><i>Mobile County Metro Jail,</i></b>	)	
<b>Respondent.</b>	)	

**ORDER**

After due and proper consideration of the issues raised, and there having been no objections filed, the Report and Recommendations of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B)-(C), Rule 8(b) of the Rules Governing § 2254 Cases in the United States District Courts, and S.D. Ala. GenLR 72(a)(2)(R), and dated October 4, 2016, is **ADOPTED** as the opinion of this Court.

Accordingly, it is **ORDERED** that Petitioner David Lee Frank's operative Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 (Doc. 5) is **DISMISSED** for lack of jurisdiction as an unauthorized second or successive petition and that his pending motions (Docs. 7, 8) are therefore **MOOT**. The Court also certifies that any appeal by Frank of the dismissal of the present habeas petition would be without merit and therefore not taken in good faith. Thus, Frank is not entitled to proceed *in forma pauperis* on appeal.

**DONE** and **ORDERED** this the 3rd day of November, 2016.

**s/WILLIAM H. STEELE**  
**CHIEF UNITED STATES DISTRICT JUDGE**