

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

DAVID LEE FRANK,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION 16-0362-WS-N
)	
NOAH PRICE OLIVER, etc.,)	
)	
Respondent.)	

ORDER

After the Court entered an order adopting the report and recommendation (“R&R”) entered by the Magistrate Judge, (Doc. 11), as the opinion of the Court and entering judgment against the petitioner, (Docs. 12, 13), the petitioner filed a motion for additional time to object to the R&R, on the grounds he had not received that document. (Doc. 14). The Court granted the motion and provided the petitioner until January 10, 2017, to file his objections. (Doc. 16).

The petitioner has now filed his objections. (Doc. 17). He has also filed a motion to subpoena records from the underlying state criminal proceedings in 1992 and 1995. (Doc. 18).

Because the Court provided the petitioner additional time to object, and because the petitioner timely filed objections, the Court’s order adopting the R&R, and its judgment, are **vacated**. The Court has now fully considered the petitioner’s objections, which do not address the plainly correct conclusion of the R&R that this is a second or successive petition, which the Court has no jurisdiction to consider due to the petitioner’s failure to obtain advance permission from the Eleventh Circuit to pursue it. For the same reason, the petitioner’s motion to subpoena records must be, and is, **denied**.

After due and proper consideration of the issues raised, and considering *de novo* those portions of the R&R to which objection has been made, the R&R is again **adopted** as the opinion of this Court.

Accordingly, it is **ordered** that the petition is **dismissed** for lack of jurisdiction and that his pending motions, (Docs. 7, 8), are therefore **moot**. The Court also certifies that any appeal by the petitioner of this dismissal would be without arguable merit and therefore not taken in good faith. Thus, the petitioner is not entitled to proceed *in forma pauperis* on appeal.

DONE and ORDERED this 19th day of January, 2017.

s/WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE