

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

REGINALD EARLY

PETITIONER

vs.

Civil Case No. 5:09CV00009 HLJ

LARRY NORRIS, Director,  
Arkansas Department of Correction

RESPONDENT

**PROPOSED FINDINGS AND RECOMMENDATIONS**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Court Judge William R. Wilson, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite A149  
Little Rock, AR 72201-3325

#### **DISPOSITION**

Now before the court is Respondent's Motion to Dismiss (DE #5) this petition for a writ of habeas corpus under 28 U.S.C. § 2254 by Reginald Early, an inmate of the Arkansas Department of Correction. Petitioner was convicted in 1992 of first degree murder and aggravated robbery, for which he is now serving two sentences of life imprisonment. Brown, et al v. State, 315 Ark. 466 (1994). He did not seek post-conviction relief in state court. On May 10, 1996, he filed his first federal habeas petition, Early v. Norris, No. 5:96-CV-00280 (Respondent's Exhibit B). This court entered proposed findings on June 12, 1998, recommending the petition be dismissed, and the District Court adopted the recommendation and dismissed the petition on June 29, 1998 (Respondent's Exhibit C).

In the present proceeding, Petitioner raises the following grounds for relief:

1. The evidence was insufficient to support his conviction and
2. The trial court constructively amended the information by instructing the jury on an uncharged theory of prosecution, accomplice liability.

The record indicates the present petition is successive and that at least the broad issues of the above claims were perhaps litigated in the previous petition. In his Motion to Dismiss, Respondent correctly argues the petition should be dismissed without further examination because Petitioner has not received authorization from the Eighth Circuit Court of Appeals to proceed, as required by 28 U.S.C. § 2244(b)(3)(A). If Petitioner wishes to pursue these claims, he must submit them in a petition to the Eighth Circuit at the following address:

Eighth Circuit Court of Appeals  
Michael Gans, Clerk  
Thomas F. Eagleton Courthouse  
111 South 10<sup>th</sup> Street  
St. Louis, Mo 63102

IT IS THEREFORE ORDERED that Respondent's Motion to Dismiss (DE #5) be, and it is hereby, granted, and the petition is dismissed without prejudice.

SO ORDERED this 11<sup>th</sup> day of February, 2009.

  
United States Magistrate Judge