

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

JESSIE EARL HILL

PETITIONER

v.

5:09CV00050 WRW/H/HDY

**LARRY NORRIS, Director of the
Arkansas Department of Corrections**

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

The respondent moves to dismiss the petition for writ of habeas corpus filed by Mr. Jessie Earl Hill pursuant to 28 U.S.C. § 2254. The respondent contends that the petition is successive.

The record shows that Mr. Hill sought habeas corpus relief in *Hill v. Norris*, 5:97CV00257, alleging that he was denied his right to a direct appeal, that he was denied the assistance of counsel in filing an preparing a direct appeal, that he was denied the right to file a motion for new trial, and that he was denied the assistance of counsel in filing a motion for new trial. The Court found these claims were procedurally barred or without merit, and the petition was dismissed with prejudice on July 12, 1999. *See* docket entry no. 12, exhibits 4 & 5..

The habeas corpus petition now before the Court (docket entry no. 1) alleges that Hill received ineffective assistance of counsel, that there was prosecutorial misconduct, and that Hill is actually innocent.

The current habeas corpus petition is a second or successive petition. 28 U.S.C. § 2244(3)(A) provides that a petitioner must first obtain an order “in the appropriate court of appeals” authorizing the district court to consider a second or successive petition. There is no showing that the petitioner has sought permission from the Eighth Circuit Court of Appeals to pursue this second or successive petition. Based upon the foregoing, we recommend that the respondent’s motion to dismiss (docket entry no. 12) be granted and that the petition be dismissed. The petitioner is directed to seek permission from the

Eighth Circuit Court of Appeals prior to the filing of his habeas corpus petition with this Court.

IT IS SO ORDERED this 12 day of May, 2009.



UNITED STATES MAGISTRATE JUDGE