

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

**JAMES E. SMITH
ADC #121300**

PETITIONER

v.

5:09-cv-00207-JMM-JJV

**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 Judge James M. Moody. 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 to be 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

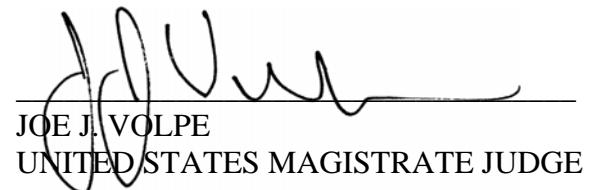
This is Petitioner James E. Smith’s second federal habeas petition filed July 24, 2009 in this Court; his first petition was denied on the merits by this Court on August 22, 2007. Respondent notes that a federal habeas petitioner must seek leave under 28 U.S.C. § 2244(b)(3)(A) from the appropriate United States Court of Appeals before filing a second petition. In responding on August 20, 2009, Respondent contends that this petition is successive and therefore Petitioner must first seek authorization from the Eighth Circuit Court of Appeals before filing the instant petition.

Petitioner then sought authorization from the United States Court of Appeals for the Eighth Circuit to file a successive habeas application. The Court denied Petitioner’s application on November 2, 2009 (Doc. Nos. 10-11). Therefore, without such authorization, this Court cannot consider the petition.

IT IS THEREFORE RECOMMENDED that:

1. The Petition for Writ of Habeas Corpus be DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this 10th day of November, 2009.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE