

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

WESLEY JEFFERSON
ADC #104933

PETITIONER

VS.

5:10CV00321 JMM/JTR

LARRY NORRIS, Director
Arkansas Department of Correction

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION
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 Clerk no later than fourteen (14) 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 United States District Judge, you must, at the same time that you file your written objections, include a “Statement of Necessity” that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States 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 402
Little Rock, AR 72201-3325

I. Introduction

Petitioner, Wesley Jefferson (“Jefferson”), is currently confined in the Varner Unit of the Arkansas Department of Correction. He has filed a Petition for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, and a Motion to Proceed *In Forma*

Pauperis. (Docket entries #1 and 2). In 2006, Jefferson was convicted of fleeing, aggravated robbery, theft of property, and capital murder in St. Francis County Circuit Court. He was sentenced to life imprisonment, without parole, for the capital murder conviction, to run concurrent with an aggregate 432-month sentence on the remaining convictions.

In Jefferson's habeas Petition in this case, he challenges his conviction and sentence in St. Francis County. However, in an earlier habeas Petition, filed on June 1, 2010, Jefferson attacks the *same conviction and sentence*. See *Jefferson v. Norris*, E.D. Ark. No. 5:10CV00167 JMM/JTR.

For the reasons set forth below, the Court recommends that the Motion to Proceed *In Forma Pauperis* be denied, as moot, and that the habeas Petition be dismissed, without prejudice.

II. Discussion

A claim presented in a second or successive § 2254 habeas petition must be dismissed unless the Petitioner can make a prima facie showing of the requirements of 28 U.S.C. § 2244(b)(2). Ordinarily, this determination is made by the appropriate Circuit Court of Appeals. See 28 U.S.C. § 2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate *court of appeals* for an order authorizing the

district court to consider the application.”).

It appears that Jefferson is attempting to add a *new claim* to the already pending habeas claims asserted in No. 5:10CV00167 JMM/JTR.¹ Accordingly, Jefferson should file a Motion, in No. 5:10CV00167 JMM/JTR, requesting permission to amend, rather than filing a successive habeas Petition.

III. Conclusion

IT IS THEREFORE RECOMMENDED THAT:

1. Petitioner's Motion to Proceed *In Forma Pauperis* (docket entry #1) be DENIED, AS MOOT.
2. The Petition for a Writ of Habeas Corpus, under 28 U.S.C. § 2254 (docket entry #2), be DISMISSED, WITHOUT PREJUDICE.

Dated this 12th day of November, 2010.


UNITED STATES MAGISTRATE JUDGE

¹In No. 5:10CV00167 JMM/JTR, Jefferson asserts two ineffective assistance of counsel claims. In this case, he claims that his capital murder conviction was somehow unlawful under the definition of the capital murder statute, Ark. Code Ann. § 5-10-101.