

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

JAMES LEE FOLEY
ADC #79350

PETITIONER

VS.

5:11CV00065 SWW/JTR

RAY HOBBS, Director,
Arkansas Department of Correction

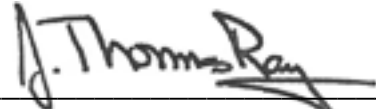
RESPONDENT

ORDER

Respondent has filed a Response (docket entry #9) asserting, among other things, that this 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus should be dismissed without prejudice as a “mixed” petition containing some claims that Petitioner has *not* exhausted in state court (his claims of ineffective assistance of counsel) and some that he has exhausted (his prosecutorial misconduct claims). On May 24, 2011, the Pulaski County Circuit Court denied Petitioner’s Ark. R. Crim. P. 37 petition for post-conviction relief in Case No. CR 2008-2880 and, when the Response was filed in this federal habeas action, the time had not expired for Petitioner to file a notice of appeal of the denial. *See* Ark. R. App. P.-Crim. 2(a)(4) (notice of appeal must be filed within thirty days from entry of order denying Rule 37 petition). It appears that the appeal time has now expired, and the website for the Pulaski County Circuit Court does not indicate that a notice of appeal has been filed.

Petitioner is directed to file a Reply, **on or before July 11, 2011**, advising whether he filed a notice of appeal of the denial of his Rule 37 petition in Pulaski County Circuit Court Case No. 2008-2880. If he filed a notice of appeal, he should attach a copy to his Reply.

DATED THIS 27th DAY OF June, 2011.

A handwritten signature in black ink that reads "J. Thomas Ray". The signature is written in a cursive style with a long horizontal stroke at the end.

UNITED STATES MAGISTRATE JUDGE