

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

VINCENT HUSSEY  
ADC #109212

PETITIONER

v.

NO. 5:13CV00352 JLH/BD

RAY HOBBS, Director,  
Arkansas Department of Correction

RESPONDENT

**ORDER**

The Court has reviewed the Recommended Disposition (“Recommendation”) filed by Magistrate Judge Beth Deere. In addition, the Court has considered Vincent Hussey’s objections to the Recommendation and has reviewed *de novo* those portions of the Recommendation to which Hussey objects.

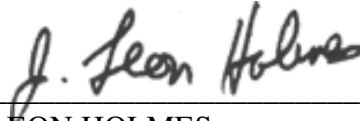
Hussey argues that his current petition is not a successive petition because the previous petition was dismissed as untimely, so it was not adjudicated on the merits. That argument is mistaken. When a first habeas petition is dismissed as time barred, a later habeas petition challenging the same conviction is a second or successive petition for which the petitioner must obtain permission from the court of appeals. *In re: Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011) (collecting cases); *Lamar v. Hobbs*, No. 5:12CV00182-DPM-JTR, 2012 WL 2571243 (E.D. Ark. July 3, 2012).

After careful consideration, this Court adopts the Recommendation as its own. Vincent Hussey’s petition for writ of habeas corpus (docket entry #2) is denied, without prejudice, and all pending motions are denied as moot.

When entering a final order adverse to a habeas corpus petitioner, the Court must issue or deny a certificate of appealability. Rule 11 of the Rules Governing Section 2254 Cases. A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a

constitutional right. 28 U.S.C. § 2253(c)(1)-(2). In this case, there is no basis for this court to issue a certificate of appealability. Accordingly, a certificate of appealability is denied.

IT IS SO ORDERED this 10th day of December, 2013.

A handwritten signature in black ink that reads "J. Leon Holmes". The signature is written in a cursive style with a horizontal line underneath it.

J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE