

**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.

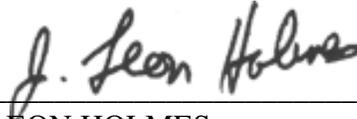
Hussey argues that his current petition is not a successive petition because the previous petition was dismissed as untimely, so it was not adjudicated on the merits. That argument is mistaken. When a first habeas petition is dismissed as time barred, a later habeas petition challenging the same conviction 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