

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

**ROY LEE SMITH  
ADC #091858**

**PETITIONER**

**v.**

**CASE NO. 5:15-CV-00234 BSM**

**WENDY KELLEY, Director,  
Arkansas Department of Correction**

**RESPONDENT**

**ORDER**

The recommended disposition (“RD”) submitted by United States Magistrate Judge Patricia Harris [Doc. No. 21] and Smith’s untimely objections [Doc. No. 27] have been reviewed. After careful consideration, the RD is adopted with the exception of footnote five.

While addressing Smith’s ineffective assistance of counsel claim, footnote five hypothesizes about Smith’s reasons for not testifying in his own defense. The Fifth Amendment protects Smith from being compelled to testify and his reasons for exercising his Fifth Amendment rights are immaterial.

Therefore, the RD is adopted without consideration of footnote five, and his petition is dismissed with prejudice. A certificate of appealability will not issue.

IT IS SO ORDERED this 25th day of March 2016.

  
UNITED STATES DISTRICT JUDGE