

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

BILLY JACK KAIN, JR.,
ADC #083093

PETITIONER

v.

5:15CV00286-JLH-JJV

WENDY KELLEY, Director,
Arkansas Department of Correction

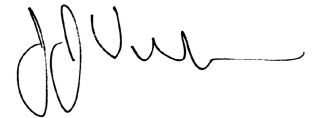
RESPONDENT

ORDER

Respondent says Mr. Kain's Petition for Writ of Habeas Corpus (Doc. No. 2) is successive and should be dismissed on that basis alone. (Doc. No. 9) I agree that most of the grounds Mr. Kain cites are successive. But Mr. Kain also says, in 2010, the Arkansas Department of Correction modified the application of his sentence to require he serve "100%" of his sentence in violation of the *ex post facto* clause of the Constitution. (Doc. No. 2 at 11.) I find this challenges the fact that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States" and is not successive. 28 U.S.C. § 2241(c)(3). *See Williams v. Hobbs*, 658 F.3d 842, 853 (8th Cir. 2011).

So, within thirty (30) days, Respondent should address the merits of this claim. It would also be helpful to have the state court's ruling on Mr. Kain's writ for error coram nobis as a part of this pleading.

IT IS SO ORDERED this 2nd day of December, 2015.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE