

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

BILLY RICHARD MARTS, II

PLAINTIFF

v.

Case No. 2:13-CV-02074

LARRY NORRIS, Director  
Arkansas Department of Corrections

DEFENDANT

**ORDER**

The Court has received proposed findings and recommendations (Doc. 5) from Chief United States Magistrate Judge James R. Marschewski. The Court has conducted a careful review of the findings and recommendations and of the timely objections filed by Plaintiff. After reviewing the record *de novo* as to Plaintiff's objections, the Court finds the Magistrate's reasoning to be sound and further finds that Plaintiff's objections offer neither law nor fact requiring departure from the Magistrates' findings.

The Magistrate determined that Mr. Marts's claims were barred as they constituted a second or successive application for habeas for which Mr. Marts had not obtained authority to file pursuant to 28 U.S.C. § 2244(b)(3)(A). Mr. Marts objects to the Magistrate's finding that his Rule 60(b)(6) motion was a second or successive habeas petition. However, a Rule 60(b) motion that seeks to assert one or more substantive claims is in substance a successive habeas petition, and must be treated accordingly. *Gonzalez v. Crosby*, 545 U.S. 524, 530-32 (2005).

The Court therefore concludes that the findings and recommendations should be, and hereby are, approved and adopted as this Court's findings with one exception. The Court finds that the dismissal of Mr. Marts's petition should be without prejudice for lack of jurisdiction.

IT IS THEREFORE ORDERED that the report and recommendation (Doc. 5) is ADOPTED, with the exception that dismissal of Mr. Marts's petition is without prejudice.

IT IS FURTHER ORDERED that the Mr. Marts's petition is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Mr. Marts's motion (Doc. 8) to amend his petition is DENIED, as an amended petition would also be subject to dismissal for the same reason that Mr. Marts has not obtained authority to file it.

Judgment will be entered accordingly.

IT IS SO ORDERED this 19th day of September, 2013.

*P. K. Holmes, III*

P.K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE