

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

ALEXANDER M ALBRITTON,

Petitioner,

v.

CASE NO. 1:11-cv-00014-MP-GRJ

J ELLIS,

Respondent.

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**ORDER**

This matter is before the Court on Doc. 3, the Report and Recommendation of the Magistrate Judge, recommending that this petition be dismissed as an unauthorized successive petition under 28 U.S.C. § 2254. The petitioner has filed objections, Doc. 4, in which he claims that the instant petition is not successive because the first, in 1:00-cv-00099-MP-WCS, was dismissed as untimely under the Antiterrorism and Effective Death Penalty Act, rather than on the merits. This argument has been expressly rejected by the Eleventh Circuit. See, e.g., In re Hutcherson, 468 F.3d 747 (11th Cir. 2006)(deeming second petition under 28 U.S.C. § 2254 to be successive when the first was dismissed as untimely under the Antiterrorism and Effective Death Penalty Act.) Accordingly, it is hereby

**ORDERED AND ADJUDGED:**

1. The Report and Recommendation of the Magistrate Judge is adopted and incorporated herein. The petition in this case is dismissed as an unauthorized successive petition. The Clerk is directed to close the file.

**DONE AND ORDERED** this 21st day of June, 2011

*s/Maurice M. Paul*

Maurice M. Paul, Senior District Judge