

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JOHN HORACE MALONE,
Petitioner,

v.

Case No.: 3:12cv540/MCR/EMT

MICHAEL D. CREWS,
Respondent.

ORDER

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated May 6, 2013 (doc. 16). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). No timely objections have been filed.¹

Having considered the Report and Recommendation, and the record, the court has determined that the Report and Recommendation should be adopted.

Accordingly, it is now **ORDERED** as follows:

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order.
2. The motion to dismiss (doc. 12) is **GRANTED**, and this habeas action is **DISMISSED** for lack of jurisdiction.

¹ The court notes that Petitioner filed a notice of appeal to the Eleventh Circuit from "the final judgment of an order (Report and Recommendation)." (Doc. 17). This attempted appeal was premature because the Report and Recommendation is not a final order, and in any event, the court has found no basis for granting a certificate of appealability.

3. A certificate of appealability is **DENIED**.
DONE AND ORDERED this 7th day of June, 2013.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE