

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

WATY RYLAND,

Petitioner,

v.

CASE NO. 4:08-cv-00053-MP-WCS

WALTER A MCNEIL,

Respondent.

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ORDER

This matter is before the Court on Doc. 29, Motion for Certificate of Appealability by Waty Ryland. Mr. Ryland's Amended Petition for Writ of Habeas Corpus was denied with prejudice, Doc. 24, in an order adopting the Report and Recommendation of the Magistrate Judge, Doc. 23. Mr. Ryland did not file any objection to the Report and Recommendation. A state prisoner's failure to object to the Magistrate's Report and Recommendation before they were accepted by the district court constitutes waiver of the right to appeal from the judgment based on the Report and Recommendation. Nettles v. Wainwright, 656 F.2d 986 (5th Cir. 1981).

Nettles v. Wainwright was decided on September 21, 1981, and since then has not been overturned or modified by the Eleventh Circuit, which split from the Fifth Circuit after September 30, 1981. On November 3, 1981, the Eleventh Circuit held that the decisions of the Fifth Circuit, as that court existed on September 30, 1981, handed down by that court prior to close of business on that date, are binding as precedent on all federal courts within the Eleventh Circuit. Bonner v. City of Prichard, Ala., 661 F.2d 1206 (11th Cir. 1981). Therefore, Nettles binds this Court. Because Petitioner failed to object to the Magistrate's Report and

Recommendation, he has therefore waived his right to appeal from the judgment based on that Report and Recommendation, and the Motion for a Certificate of Appealability is hereby DENIED.

DONE AND ORDERED this 30th day of September, 2009

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge