

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

RONTARIAN WRIGHT,
DC # 124563,

Petitioner,

v.

4:19cv450–WS/MJF

SECRETARY OF DOC,

Respondent.

ORDER DISMISSING PETITIONER’S PETITION
FOR WRIT OF HABEAS CORPUS

Before the court is the magistrate judge's report and recommendation (ECF No. 3) docketed September 13, 2019. The magistrate judge recommends that Petitioner’s petition for writ of habeas corpus be DISMISSED for lack of jurisdiction. Petitioner has filed objections (ECF No. 5) to the magistrate judge’s report and recommendation, along with his request to invoke jurisdiction and his Individualized Service Plan.

The magistrate judge recommends dismissal of Petitioner’s § 2254 petition as an unauthorized successive petition. Petitioner’s failure to obtain permission

from the Eleventh Circuit prior to filing the his § 2254 petition operates as a jurisdictional bar that precludes this court's consideration of the petition. 28 U.S.C. § 2244(b)(3)(A); *Burton v. Stewart*, 549 U.S. 147, 152, 157 (2007). Indeed, without jurisdiction, this court "is powerless to continue" and is required to dismiss the petition. *Univ. of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999); *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004) (district court was "obliged" to dismiss petitioner's unauthorized second or successive petition because subject matter jurisdiction was lacking).

The magistrate judge also recommends that a certificate of appealability ("COA") be denied. Ordinarily, an appeal may not be taken to the circuit court from the "final order" in a habeas proceeding unless a COA has been issued. 28 U.S.C. § 2553(c)(1) The Eleventh Circuit, however, has explained that a COA is not required to appeal a dismissal for lack of subject matter jurisdiction. *United States v. Palmer*, 773 F. App'x 576, 576 (11th Cir. 2019); *Hubbard*, 379 F3d. at 1247 (holding that dismissal of a § 2254 habeas petition as an unauthorized successive petition is not a "final order" within the meaning of § 2253; no COA is required to appeal such an order of dismissal).

The court having reviewed the matter before it, it is ORDERED:

1. The magistrate judge's report and recommendation (ECF No. 3) is

ADOPTED and incorporated by reference into this order.

2. Petitioner's petition for writ of habeas corpus (ECF No. 1) is DISMISSED without prejudice for lack of subject matter jurisdiction.

3. The clerk shall enter judgment stating: "Rontarian Wright's petition for writ of habeas corpus is DISMISSED without prejudice for lack of subject matter jurisdiction."

DONE AND ORDERED this 4th day of October, 2019.

s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE