

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-60108-CIV-COHN/WHITE

DALE B. GARNSEY,

Petitioner,

v.

KENNETH TUCKER,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

THIS CAUSE is before the Court upon the Report and Recommendation [DE 4] of United States Magistrate Judge Patrick A. White. The Court notes that Petitioner Dale B. Garnsey has not filed any objections to the Report and Recommendation, and the time for filing objections has passed.

Even though no timely objections were filed, the Court has conducted a *de novo* review of the Report and Recommendation, Mr. Garnsey's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody [DE 1] ("Petition"), the record in this case, and is otherwise fully advised in the premises. Judge White recommends dismissal under 28 U.S.C. § 2244(b)(3), because Mr. Garnsey's Petition is successive, and there is no indication that Mr. Garnsey obtained an order from the appropriate court of appeals authorizing this Court to consider his Petition.¹ This undersigned agrees with Judge White.

As Judge White notes, Mr. Garnsey already filed a petition for writ of habeas corpus, in Case No. 01-7525-Civ-Hurley, and his petition was dismissed as time barred on January 8, 2002. Also, this Petition is barred by the one-year statute of limitations

¹ Section 2244 precludes successive applications for writs of habeas corpus. See 28 U.S.C. § 2244(a). The statute provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3).

provided by 28 U.S.C. § 2244. Judge White already provided Mr. Garnsey with a form to apply for authorization to pursue this case. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation [DE 4] is hereby **ADOPTED**;
2. Petitioner Dale B. Garnsey's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody [DE 1] is **DISMISSED** as successive under 28 U.S.C. § 2244(b)(3);
3. Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, Mr. Garnsey is hereby **DENIED** a certificate of appealability because he has not shown "that jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 478 (2000). Pursuant to Rule 22(b)(1) of the Federal Rules of Appellate Procedure, Mr. Garnsey may request issuance of a certificate of appealability from the Eleventh Circuit;
4. Any pending motions are **DENIED as moot**, and the Clerk of Court is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 29th day of February, 2012.


JAMES I. COHN
United States District Judge

Copy sent via CM/ECF regular mail to:
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