

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JAMES RUFUS PERRY, JR.,

Petitioner

VS.

FREDERICK J. HEAD, Warden,

Respondent.

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1 : 05-CV-128 (WLS)

RECOMMENDATION

On August 13, 2008, the undersigned issued a recommendation on the merits of this federal habeas petition. Although the district judge to whom this matter is assigned has not yet ruled upon this recommendation, a subsequently filed Motion to Dismiss filed by the petitioner remains pending herein. In this motion, the petitioner seeks to have this matter dismissed without prejudice so that he can refile the petition with the added support of allegedly newly discovered evidence.

Inasmuch as the undersigned has issued a recommendation on the merits of the petition, it is the recommendation that petitioner’s Motion to Dismiss without prejudice be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, **WITHIN TEN (10) DAYS** of receipt thereof.

SO RECOMMENDED, this 23rd day of October, 2008.

/s/ *Richard L. Hodge*
RICHARD L. HODGE
UNITED STATES MAGISTRATE JUDGE