

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

ELBERT LEE DOOLITTLE §
VS. § CIVIL ACTION NO. 5:11cv124
DIRECTOR, TDCJ-CID §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Elbert Lee Doolittle, an inmate confined at the Ellis Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court referred this matter to the Honorable Caroline Craven, United States Magistrate Judge, in Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the petition be dismissed as a successive petition.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court concludes petitioner's objections should be overruled. Petitioner contends his previous petition was dismissed without prejudice to refile. One of petitioner's previous petitions was, in fact, dismissed based on petitioner's failure to exhaust state habeas remedies. *See Doolittle v. Director*, Civil Action No. 5:10cv40 (E.D. Tex. May 18, 2010). However, petitioner fails to recognize or acknowledge that the petition relied upon by the magistrate

judge, Civil Action No. 5:10cv228, styled *Doolittle v. Director*, filed December 16, 2010, remains pending before this court. As Civil Action No. 5:10cv228 involves an attack on the same conviction as this petition and the claims in this petition were or could have been raised in the previous petition, this petition was improvidently filed. Thus, this petition should be dismissed. The dismissal of this action is without prejudice to petitioner's ability to amend his petition in Civil Action No. 5:10cv228 to include claims in this petition not presented in the previous petition, if any.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 18th day of January, 2012.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE