

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>RICHARD BELSER, AIS # 154937,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 2:08-cv-285-WKW</b>
	)	
<b>STATE OF ALABAMA, et al.,</b>	)	
	)	
<b>Respondents,</b>	)	

**ORDER**

This case is before the court on the Petition for Writ of Habeas Corpus (Doc. # 1) filed by Richard Belser, a state inmate, in which he challenges his convictions for theft of property and attempted assault and the sentence imposed upon him in August 998 by the Circuit Court of Montgomery County, Alabama. On April 16, 2008, the Magistrate Judge filed a Recommendation (Doc. # 4) that the petition for habeas relief be denied and the case dismissed. The court lacks jurisdiction to grant the requested relief where the petitioner has not sought and received an order from the Eleventh Circuit Court of Appeals authorizing this court to consider a successive application for habeas relief.

On April 24, 2008, the petitioner filed an Objection (Doc. # 5) to the Recommendation. Throughout his Objection, Belser argues that the court should treat the instant successive habeas petition “as a first petition because the first [2003 petition] was dismissed without prejudice.” (Doc. # 5, at 1.) This assertion is patently incorrect as the first habeas action was dismissed by this court “with prejudice as time barred.”<sup>1</sup> Belser’s argument that a jurisdictional defect at sentencing

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<sup>1</sup> See the Recommendation of the Magistrate Judge (Doc. # 18), which was adopted as the opinion of the court by Order (Doc. # 27) dated December 16, 2003, in *Belser v. Alabama, et al.*, Case No. 2:03-CV-328.

