

# APPENDIX A

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 18-14465-D

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THERIAN CORNELIA WIMBUSH,

Petitioner-Appellant,

versus

GOVERNOR OF STATE OF GEORGIA, et al.,

Respondents,

WARDEN, PULASKI STATE PRISON,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Georgia

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ORDER:

Therian Wimbush is a Georgia prisoner serving a 20-year sentence after being convicted in January 2017 of 3 counts of cruelty to children in the second degree, in violation of O.C.G.A. § 16-5-70(c). She seeks a certificate of appealability (“COA”) in order to appeal the district court’s dismissal of her 28 U.S.C. § 2254 habeas corpus petition for lack of exhaustion. Wimbush also has filed additional motions for leave to proceed *in forma pauperis* (“IFP”), to consolidate her appeal with her husband’s,<sup>1</sup> for bond pending appeal, and for a copy of the non-public docket.

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<sup>1</sup> Recardo Wimbush, Therian’s husband, separately appeals the dismissal of his § 2254 petition in Appeal No. 18-14467.

To obtain a COA, a § 2254 petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When a district court denies a habeas corpus petition on procedural grounds, the petitioner must show that jurists of reason would find debatable (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). If the petitioner fails to satisfy either prong, this Court should deny a COA. *Id.*

Before bringing a habeas action in federal court, a petitioner must exhaust all state court remedies that are available for challenging her conviction, either on direct appeal or in a state post-conviction motion. 28 U.S.C. § 2254(b), (c). To exhaust state remedies, the petitioner must fairly present every issue raised in her federal petition through “one complete round of the State’s established appellate review process,” either on direct appeal or on collateral review. *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).

Presenting a federal claim in state court “in a procedural context in which its merits will not be considered” does not “constitute ‘fair presentation’” and, therefore, does not satisfy the exhaustion requirement. *Castille v. Peoples*, 489 U.S. 346, 351 (1989). In Georgia, a court may not entertain a premature state habeas petition until the petitioner’s direct appellate review is complete and her conviction is final. *Horton v. Wilkes*, 302 S.E.2d 94, 96 (Ga. 1983). A state court’s delay in ruling on a petitioner’s claim does not allow that petitioner to avoid the exhaustion requirement. *See, e.g., Hughes v. Stafford*, 780 F.2d 1580 (11th Cir. 1986) (holding that an eight-year delay did not render the Georgia prisoner’s state remedies unavailable).

Here, reasonable jurists would not debate whether the district court correctly dismissed Wimbush’s § 2254 petition for her failure to exhaust her state court remedies. She did not raise the instant claims in her direct appeal. To the extent she raised these claims in her first state habeas

petition, the state court determined that her petition was premature, so she did not present her claims in a context where the state courts were empowered to decide them. Therefore, she had not yet exhausted her state court remedies at the time she filed her § 2254 petition. *See Castille*, 489 U.S. at 351; *Horton*, 302 S.E.2d at 96. Finally, the state court's delay in ruling on her state petition has not rendered the state post-conviction remedies or procedure ineffective. *See Hughes*, 780 F.2d 1580. Accordingly, Wimbush's motion for COA is DENIED. Wimbush's motions for leave to proceed IFP, to consolidate her appeal with her husband's, for bond pending appeal, and for a copy of the non-public docket are DENIED AS MOOT.

/s/ Kevin C. Newsom  
UNITED STATES CIRCUIT JUDGE

# APPENDIX B

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

THERIAN WIMBUSH,	:	
Petitioner,	:	
v.	:	CIVIL ACTION NO.
	:	1:18-CV-2085-LMM
WILLIE SUE MICKENS,	:	
Respondent.	:	

**ORDER**

Presently before the Court is the Magistrate Judge's Report and Recommendation (R&R) recommending that the instant habeas corpus petition be denied and the case dismissed without prejudice. [Doc. 17]. Petitioner has filed her objections in response to the R&R. [Doc. 24].

A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report and Recommendation that is the subject of a proper objection on a *de novo* basis and any non-objection portion under a "clearly erroneous" standard.

In the R&R, the Magistrate Judge recommends that Petitioner's 28 U.S.C. § 2254 petition for a writ of habeas corpus be denied without prejudice as unexhausted because her state habeas corpus action is currently pending before the Pulaski County

Superior Court, and Petitioner raises the same grounds for relief in her amended § 2254 petition that she presents in her currently pending state habeas petition.

As noted by the Magistrate Judge, 28 U.S.C. § 2254(b)(1)(A)-(B) requires that prisoners serving a sentence pursuant to the judgment of a state court must exhaust all available remedies before they can bring a § 2254 action. Moreover, because Petitioner's habeas corpus action is currently pending in state court, this Court may not entertain a petition for federal habeas relief until that action has concluded. To review Petitioner's habeas petition on the merits at this time would create parallel state and federal proceedings which would offend the notion of comity which underlies § 2254's exhaustion requirement. See Rose, 455 U.S. at 518; C.f. Thompson v. Wainwright, 714 F.2d 1495, 1503 (11th Cir. 1983) ("[E]xcept in extraordinary circumstances, a federal court must abstain from deciding issues implicated in an ongoing criminal proceeding in state court."); Moorer v. Demopolis Waterworks & Sewer Bd., 374 F.3d 994, 997 (11th Cir. 2004) (noting that "[t]he Colorado River doctrine of exceptional circumstances authorizes a federal district court to dismiss or stay an action when there is ongoing parallel action in state court") (internal quotation marks and citation omitted).

Nothing in Petitioner's extensive objections establishes that (1) she has properly exhausted her state court remedies, (2) she has no access to a state court process to

vindicate her rights, or (3) the available state court process is ineffective to protect her rights. See Slater v. Chatman, 147 F. App'x 959, 960 (11th Cir. 2005) (when state process is moving forward, it is available and effective).

Accordingly, the R&R, [Doc. 17], is hereby **ADOPTED** as the order of this Court, and the petition is **DENIED** and **DISMISSED** without prejudice. Once Petitioner's state habeas corpus proceeding is completed, which includes her receiving a final ruling on an application for a certificate of probable cause from the Supreme Court of Georgia, her claims will be exhausted, and she can submit her § 2254 petition before this Court.

The Clerk is **DIRECTED** to close this action.

This Court further agrees with the Magistrate Judge that Petitioner has failed to raise any claim of arguable merit, and a Certificate of Appealability is **DENIED** pursuant to 28 U.S.C. § 2253(c)(2).

**IT IS SO ORDERED**, this 12<sup>th</sup> day of October, 2018.

  
LEIGH MARTIN MAY  
UNITED STATES DISTRICT JUDGE

**Orders on Motions**1:18-cv-02085-LMM Wimbush v. Deal et al

0months,2241,HABEAS,REOPEN,SLC3,SUBMDJ

**U.S. District Court****Northern District of Georgia****Notice of Electronic Filing**

The following transaction was entered on 10/12/2018 at 2:52 PM EDT and filed on 10/12/2018

**Case Name:** Wimbush v. Deal et al

**Case Number:** 1:18-cv-02085-LMM

**Filer:**

**Document Number:** 25

**Docket Text:**

**ORDER: It is hereby ADOPTED as the order of this Court, and the petition is DENIED and DISMISSED without prejudice. Once Petitioner's state habeas corpus proceeding is completed, which includes her receiving a final ruling on an application for a certificate of probable cause from the Supreme Court of Georgia, her claims will be exhausted, and she can submit her§ 2254 petition before this Court. The Clerk is DIRECTED to close this action. This Court further agrees with the Magistrate Judge that Petitioner has failed to raise any claim of arguable merit, and a Certificate of Appealability is DENIED pursuant to 28 U.S.C. § 2253(c)(2). Signed by Judge Leigh Martin May on 10/12/18. (bnw)**

**1:18-cv-02085-LMM Notice has been electronically mailed to:**

Meghan Hobbs Hill mhhill@law.ga.gov, psmith@law.ga.gov

Paula K. Smith psmith@law.ga.gov

**1:18-cv-02085-LMM Notice has been delivered by other means to:**

Therian Wimbush  
1001955340  
Pulaski State Prison  
373 Upper River Road  
Hawkinsville, GA 31036

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

THERIAN WIMBUSH,  
Petitioner,

vs.

WILLIE SUE MICKENS, *Warden, Pulaski  
State Prison*  
Respondent.

CIVIL ACTION FILE

NO. 1:18-cv-02085-LMM

**JUDGMENT**

This action having come before the court, Honorable Leigh Martin May, United States District Judge, for consideration of the Magistrate Judge's Final Report and Recommendation and the Respondent's Motion to Dismiss, and the Court having **ADOPTED** said recommendation and **GRANTED** Respondent's motion, it is  
**Ordered and Adjudged** that this action is **DISMISSED WITHOUT PREJUDICE** and Certificate of Appealability is **DENIED**.

Dated at Atlanta, Georgia, this 12th day of October, 2018.

JAMES N. HATTEN  
CLERK OF COURT

By: s/ B. Walker  
Deputy Clerk

Prepared, Filed, and Entered  
in the Clerk's Office  
October 12, 2018  
James N. Hatten  
Clerk of Court

By: s/ B. Walker  
Deputy Clerk

**Other Events**1:18-cv-02085-LMM Wimbush v. Deal et al

0months,2241,HABEAS,REOPEN,SLC3,SUBMDJ

**U.S. District Court****Northern District of Georgia****Notice of Electronic Filing**

The following transaction was entered on 10/12/2018 at 2:54 PM EDT and filed on 10/12/2018

**Case Name:** Wimbush v. Deal et al

**Case Number:** 1:18-cv-02085-LMM

**Filer:**

**Document Number:** 26

**Docket Text:**

**CLERK'S JUDGMENT: It is Ordered and Adjudged that this action is DISMISSED WITHOUT PREJUDICE and Certificate of Appealability is DENIED. (bnw)--Please refer to <http://www.ca11.uscourts.gov> to obtain an appeals jurisdiction checklist--**

**1:18-cv-02085-LMM Notice has been electronically mailed to:**

Meghan Hobbs Hill mhill@law.ga.gov, psmith@law.ga.gov

Paula K. Smith psmith@law.ga.gov

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1001955340  
Pulaski State Prison  
373 Upper River Road  
Hawkinsville, GA 31036

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

THERIAN WIMBUSH, Petitioner,	:: HABEAS CORPUS
	:: 28 U.S.C. § 2254
	::
v.	::
	::
	::
WILLIE SUE MICKENS, <i>Warden,</i> <i>Pulaski State Prison,</i> Respondent.	:: CIVIL ACTION NO. :: 1:18-CV-2085-LMM-RGV
	::

**ORDER AND FINAL REPORT AND RECOMMENDATION**

Petitioner Therian Wimbush, an inmate at the Pulaski State Prison in Hawkinsville, Georgia, has filed this amended 28 U.S.C. § 2254 petition to challenge her February 1, 2017, convictions entered in the Superior Court of Gwinnett County. This matter is currently before the Court on the amended petition, [Doc. 4], respondent's motion to dismiss petition for lack of exhaustion, [Doc. 12], and petitioner's response, [Doc. 15]. Petitioner has also filed an "Emergency Motion for an Emergency Hearing," [Doc. 16], complaining about the conditions of her confinement. However, "the proper vehicle for a prisoner to challenge [her] conditions of confinement is a civil rights, rather than a habeas corpus, action." Tejeda v. Jones, No. 5:15-cv-2, 2016 WL 3546379, at \*2 (June 23, 2016), (citations omitted), report and recommendation adopted, 2016 WL 3963931, at \*1 (S.D. Ga. July

19, 2016). Accordingly, petitioner's "Emergency Motion for an Emergency Hearing," [Doc. 16], is **DENIED**. Additionally, for the reasons that follow, it is **RECOMMENDED** that respondent's motion to dismiss, [Doc. 12], be **GRANTED** and that this action be **DISMISSED WITHOUT PREJUDICE** for lack of exhaustion.

## **I. PROCEDURAL HISTORY**

After a Gwinnett County grand jury indicted petitioner on seven counts of cruelty to children, and the trial court denied her statutory demand for speedy trial, petitioner filed a motion for discharge and acquittal, which the trial court denied on January 6, 2017. [Doc. 14-1 at 42]. On January 27, 2017, a Gwinnett County jury convicted petitioner of three counts of cruelty to children in the second degree. [Id.]. On January 30, 2017, petitioner filed a notice of appeal from the trial court's denial of her motion for discharge and acquittal. [Doc. 4-3]. The trial court entered judgment on February 1, 2017, sentencing petitioner to twenty years of imprisonment followed by ten years on probation. [Doc. 4-4].

On appeal, petitioner argued that: (1) the trial court erred in denying her motions for discharge and acquittal and her constitutional right to a speedy trial; (2) her due process rights were violated when the trial court denied her bond prior to

trial and again pending appeal; (3) the trial court erred in denying her motions to recuse all judges; (4) the evidence was insufficient to support her convictions; (5) the trial court erred in failing to merge counts three and four for sentencing purposes; (6) the trial court erred in admitting evidence that violated the child hearsay statute; (7) the trial court erred in denying petitioner's demurrers to the indictments; and (8) the trial court erred in denying her motion to suppress evidence, as the search warrants were invalid and the photos taken of her home were improperly admitted. [Doc. 14-3 at 23-61]. On March 8, 2018, the Georgia Court of Appeals affirmed the trial court's judgment. Wimbush v. State, 812 S.E.2d 489, 506 (Ga. Ct. App. 2018).

On March 3, 2017, while her direct appeal was pending, petitioner filed a pro se habeas corpus petition in the Superior Court of Pulaski County. [Doc. 14-1 at 2-22]. The state habeas court initially denied the petition on the merits. [Id. at 42-45]. However, on June 18, 2018, the Georgia Supreme Court vacated the habeas court's order and remanded with instructions to dismiss the habeas petition without prejudice as premature. [Id. at 72-73]. Accordingly, on June 29, 2018, the state habeas court dismissed the petition without prejudice. [Id. at 74].

In the meantime, petitioner had filed a second pro se habeas corpus petition in the Superior Court of Pulaski County on June 30, 2017, arguing that the trial court's

judgment is void and she has been denied due process and subjected to “forced slavery” because her notice of direct appeal deprived the Superior Court of Gwinnett County of jurisdiction to execute the sentence. [Doc. 13-2]; see also [Doc. 4 at 3]. On October 9, 2017, the state habeas court stayed the petition pending resolution of petitioner’s direct appeal. [Doc. 13-3]. On May 16, 2018, approximately thirteen days after petitioner filed a motion requesting a hearing because her direct appeal had been resolved, the state habeas court scheduled an evidentiary hearing for October 2, 2018. [Id.].

Petitioner submitted this federal habeas action on May 7, 2018. [Doc. 1 at 23]. She raises the same grounds for relief in her amended § 2254 petition that she presents in her currently pending state habeas petition. [Doc. 4 at 5-6]. Respondent moves to dismiss the petition for lack of exhaustion. [Doc. 12-1 at 2-5]. Petitioner responds, in pertinent part, that she has fully exhausted her state court remedies because she raised her federal grounds for relief in her first state habeas petition and on direct appeal. [Doc. 15 at 3-7].

## **II. DISCUSSION**

A district court may not grant a habeas corpus petition unless it appears that either (1) the petitioner “has exhausted the remedies available in the courts of the

State"; (2) "there is an absence of available State corrective process"; or (3) "circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(A)-(B). A petitioner "shall not be deemed to have exhausted" the available state court remedies "if he has the right under the law of the State to raise, by any available procedure, the question presented." 28 U.S.C. § 2254(c). Before seeking federal habeas corpus relief, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999). "[O]nce a federal claim has been *fairly presented* to the state courts, the exhaustion requirement is satisfied." Castille v. Peoples, 489 U.S. 346, 351 (1989) (citation omitted).

Contrary to petitioner's assertion, it does not appear that she raised the exact claims she presents in this federal petition on direct appeal. See [Doc. 4; Doc 14-3 at 23-61]. Furthermore, petitioner's first state habeas petition was ultimately dismissed without prejudice as premature because her direct appeal was pending at the time she filed it. [Doc. 14-1 at 72-74]. Presenting a federal claim in state court "in a procedural context in which its merits will not be considered" does not "constitute 'fair presentation'" and, thus, does not satisfy the exhaustion requirement. Castille,

834 F3d 1227  
137 Sct 1203 (5)

489 U.S. at 351 (citations omitted). See also Fambro v. Taylor, No. 1:17-cv-1455-WSD, 2018 WL 300551, at \*2 (N.D. Ga. Jan. 5, 2018) (“The premature filing of a state habeas petition does not fairly present an issue to the state habeas courts because they may not entertain a state habeas proceeding until Petitioner’s direct review is complete and his conviction is final.” (citing Horton v. Wilkes, 302 S.E.2d 94, 96 (Ga. 1983))).

Petitioner has not shown that the state habeas court’s scheduling of an evidentiary hearing approximately five months after petitioner notified the court that her direct appeal had been resolved has somehow rendered that process ineffective. See Hughes v. Stafford, 780 F.2d 1580, 1581-82 (11th Cir. 1986) (per curiam) (refusing to waive exhaustion despite eight-year delay); Joyner v. Baker, No. 1:07-CV-3737-TWT, 2008 WL 513390, at \*3 (N.D. Ga. Feb. 22, 2008) (finding that ten-month period that elapsed since filing of state habeas petition is not unreasonable), report and recommendation adopted, at \*1. Should the state court deny petitioner’s habeas petition, she must then seek a certificate of probable cause from the Supreme Court of Georgia in order to fully exhaust her state court remedies. Pope v. Rich, 358 F.3d 852, 854 (11th Cir. 2004) (per curiam) (citing O.C.G.A. § 9-14-52). “To allow simultaneous federal and state habeas proceedings would offend the principles of

comity that form the basis for the exhaustion requirement.” Brown v. Walker, No. 1:09-cv-2534-WSD, 2010 WL 3516820, at \*1 (N.D. Ga. Aug. 31, 2010) (citing Horowitz v. Wainwright, 709 F.2d 1403, 1404 (11th Cir. 1983) (per curiam)). Accordingly, this habeas action is due to be dismissed without prejudice for failure to exhaust available state court remedies. See 28 U.S.C. § 2254(b)(1); O’Sullivan, 526 U.S. at 845; Pope, 358 F.3d at 854.

### **III. CERTIFICATE OF APPEALABILITY**

Under Rule 22(b)(1) of the Federal Rules of Appellate Procedure, “the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts provides that “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Section 2253(c)(2) of Title 28 states that a certificate of appealability (“COA”) shall not issue unless “the applicant has made a substantial showing of the denial of a constitutional right.” A substantial showing of the denial of a constitutional right “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement

*DUE PROCESS*

to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (internal quotation marks omitted).

Where, as here, a habeas petition is denied on procedural grounds without reaching the prisoner’s underlying constitutional claim, “a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (internal quotations marks omitted) (citing Slack, 529 U.S. at 484). Because petitioner cannot show that reasonable jurists could debate the dismissal of this habeas action for lack of exhaustion, she should be denied a COA.

#### IV. CONCLUSION

For the reasons stated, petitioner’s “Emergency Motion for an Emergency Hearing,” [Doc. 16], is **DENIED**, and **IT IS RECOMMENDED** that respondent’s motion to dismiss, [Doc. 12], be **GRANTED**, that this action be **DISMISSED WITHOUT PREJUDICE** for lack of exhaustion, and that a COA be **DENIED**.

C:\

The Clerk is **DIRECTED** to terminate the referral to the Magistrate Judge.

**SO ORDERED AND RECOMMENDED**, this 10th day of AUGUST, 2018.

*Russell G. Vineyard*

RUSSELL G. VINEYARD

UNITED STATES MAGISTRATE JUDGE

**Other Orders/Judgments**1:18-cv-02085-LMM-RGV Wimbush v.Deal et al

0months,2241,HABEAS,SLC3,SUBMMG

**U.S. District Court****Northern District of Georgia****Notice of Electronic Filing**

The following transaction was entered on 8/10/2018 at 3:56 PM EDT and filed on 8/10/2018

**Case Name:** Wimbush v. Deal et al

**Case Number:** 1:18-cv-02085-LMM

**Filer:**

**Document Number:** 17

**Docket Text:**

**FINAL REPORT AND RECOMMENDATION** recommending [12] MOTION to Dismiss *Petition for Lack of Exhaustion* be GRANTED and this action be DISMISSED WITHOUT PREJUDICE. Signed by Magistrate Judge Russell G. Vineyard on 8/10/18. (hfm)

**1:18-cv-02085-LMM Notice has been electronically mailed to:**

Meghan Hobbs Hill mhill@law.ga.gov, psmith@law.ga.gov

Paula K. Smith psmith@law.ga.gov

**1:18-cv-02085-LMM Notice has been delivered by other means to:**

Therian Wimbush  
1001955340  
Pulaski State Prison  
373 Upper River Road  
Hawkinsville, GA 31036

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

[STAMP\_dcecfStamp\_ID=1060868753 [Date=8/10/2018] [FileNumber=9461242-0] [664db0157045aeeef9a94ffdd74d218ec915c0331a660c508558312a5acfe4cb4c8891ebb3ec5cc9520fbe1b6b7bf43ac88394949120169d6d677b43499cea21]]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

THERIAN WIMBUSH,	::	HABEAS CORPUS
Petitioner,	::	28 U.S.C. § 2254
	::	
v.	::	
	::	
WILLIE SUE MICKENS, <i>Warden,</i>	::	CIVIL ACTION NO.
<i>Pulaski State Prison,</i>	::	1:18-CV-2085-LMM-RGV
Respondent.	::	

**ORDER FOR SERVICE OF ORDER AND  
REPORT AND RECOMMENDATION**

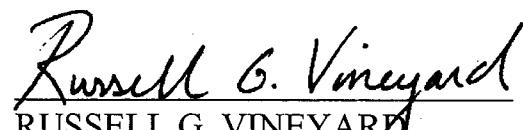
Attached is the Order and Final Report and Recommendation of the United States Magistrate Judge made in accordance with 28 U.S.C. § 636(b)(1) and this Court's Local Rule 72. Let the same be filed and a copy, with a copy of this order, be served upon counsel for the parties, or if a party is not represented, then directly upon said party.

Each party may file written objections, if any, to the report and recommendation within fourteen (14) days of receipt of this order. 28 U.S.C. § 636(b)(1). Should objections be filed, they shall specify with particularity the alleged error(s) made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the district court. If

no objections are filed, the report and recommendation may be adopted as the opinion and order of the district court and on appeal, the Court of Appeals will deem waived any challenge to factual and legal findings to which there was no objection, subject to interests-of-justice plain error review. 11th Cir. R. 3-1.

The Clerk is **DIRECTED** to submit the report and recommendation with objections, if any, to the district court after expiration of the above time period.

**IT IS SO ORDERED** this 10th day of AUGUST, 2018.



RUSSELL G. VINEYARD  
UNITED STATES MAGISTRATE JUDGE

**Other Orders/Judgments**1:18-cv-02085-LMM Wimbush v.Deal et al

0months,2241,HABEAS,SLC3

**U.S. District Court****Northern District of Georgia****Notice of Electronic Filing**

The following transaction was entered on 8/10/2018 at 3:58 PM EDT and filed on 8/10/2018

**Case Name:** Wimbush v. Deal et al

**Case Number:** 1:18-cv-02085-LMM

**Filer:**

**Document Number:** 18

**Docket Text:**

**ORDER for Service of [17] Final Report and Recommendation by Magistrate Judge Russell G. Vineyard. Each party may file written objections to the Report & Recommendation within 14 days of service. If no objections are filed, the Report & Recommendation may be adopted as the opinion and order of the District Court. Signed by Magistrate Judge Russell G. Vineyard on 8/10/18. (hfm)**

**1:18-cv-02085-LMM Notice has been electronically mailed to:**

Meghan Hobbs Hill mhill@law.ga.gov, psmith@law.ga.gov

Paula K. Smith psmith@law.ga.gov

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The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1060868753 [Date=8/10/2018] [FileNumber=9461260-0] [7c3e741f152c7b5328b9b223053c1314557ed3f33c0c56ac21538e1de78cc3d840677112afd9535b003fc47740432331689994606c038b90ea27c815e21de77d]]

**Utility Events**

1:18-cv-02085-LMM Wimbush v.  
Deal et al

0months,2241,HABEAS,SLC3

**U.S. District Court**

**Northern District of Georgia**

**Notice of Electronic Filing**

The following transaction was entered on 8/10/2018 at 3:59 PM EDT and filed on 8/10/2018

**Case Name:** Wimbush v. Deal et al

**Case Number:** 1:18-cv-02085-LMM

**Filer:** Therian Wimbush

**Document Number:** No document attached

**Docket Text:**

**Clerk's Certificate of Mailing as to Therian Wimbush re [17] FINAL REPORT AND RECOMMENDATION, [18] Order for Service of Report and Recommendation. (hfm)**

**1:18-cv-02085-LMM Notice has been electronically mailed to:**

Meghan Hobbs Hill mhill@law.ga.gov, psmith@law.ga.gov

Paula K. Smith psmith@law.ga.gov

**1:18-cv-02085-LMM Notice has been delivered by other means to:**

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Hawkinsville, GA 31036

**Additional material  
from this filing is  
available in the  
Clerk's Office.**