

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 20-11688-RGS

KEITH M. ERICSON,  
Petitioner

v.

COMMONWEALTH OF MASSACHUSETTS,  
Respondent

ORDER ON REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE

November 18, 2020

STEARNS, D.J.

Magistrate Judge Kelley correctly identifies this Petition as “a second or successive § 2254 . . . petition . . . filed . . . without the requisite authorization by the court of appeals . . .” Dkt # 13 at 1. Consequently, I will adopt her recommendation that the Petition be dismissed pursuant to 28 U.S.C. §2244(3) (A).<sup>1</sup> I further agree with the Magistrate Judge that it is not

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<sup>1</sup> Petitioner Ericson brought a § 2254 petition (First Petition), *Ericson v. Mitchell*, 15-13677-FDS, (*Ericson I*), in this court in 2015. The First Petition was dismissed on an unopposed motion for failure to prosecute the action. *Ericson I*, Motion to Dismiss for Lack of Prosecution (Dkt #32), April 14, 2017 Electronic Order (Dkt #39), and April 18, 2017 Order of Dismissal (Dkt #40). A dismissed for failure to prosecute operates as an adjudication on the merits pursuant to Fed. R. Civ. P. 41(b).

in the interest of justice to transfer the Petition pursuant to 28 U.S.C. § 1631.<sup>2</sup>

For the foregoing reasons, the petition is DISMISSED with prejudice. Any request for the issuance of a Certificate of Appealability pursuant to 28 U.S.C. § 2253 is DENIED, the court seeing no meritorious or substantial basis supporting an appeal. The Clerk is instructed to enter the dismissal and close the case.

SO ORDERED.

/s/ Richard G. Stearns  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Ericson has not filed an Objection to the Magistrate Judge's Report and Recommendation within the time allotted.