

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

KENNETH SMITH,	:	Case No. 1:12-cv-196
	:	
Petitioner,	:	Judge Thomas M. Rose
	:	
v.	:	
	:	
FRANCISCO PINEDA, Warden, Franklin Medical Center,	:	
	:	
Respondent.	:	

**ENTRY AND ORDER OVERRULING APPEAL (DOC. 105) AND OBJECTIONS
(DOC. 111), AFFIRMING TRANSFER ORDER (DOC. 103), AND DIRECTING
TRANSFER OF THIS CASE TO THE SIXTH CIRCUIT COURT OF APPEALS**

This case is before the Court on Petitioner Kenneth Smith’s Appeal (Doc. 105) from the Magistrate Judge’s Transfer Order (Doc. 103), which ordered the transfer of this case to the Sixth Circuit Court of Appeals as a second-or-successive habeas application under 28 U.S.C. § 2244(b). After Smith filed an Appeal from the Transfer Order, the Court recommitted the matter to the Magistrate Judge for further consideration under Federal Rule of Civil Procedure 72(b)(3). (Doc. 106.) The Magistrate Judge considered Smith’s objections in a Supplemental Memorandum Opinion (Doc. 108) and, once again, determined that the case is a second-or-successive habeas application that must be transferred to the Sixth Circuit. Smith filed Objections (Doc. 111) to the Supplemental Memorandum Opinion; and Respondent, the Warden of the

Franklin Medical Center, filed an Opposition (Doc. 112) to Smith's Objections. This matter is therefore ripe for the Court's review.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), and due to the application of the law-of-the-case doctrine as set forth in the Magistrate Judge's Supplemental Memorandum Opinion (Doc. 108 at PAGEID # 2645), the Court has made a *de novo* review of the record in this case. Upon said review, the Court finds that the Appeal (Doc. 105) and Objections (Doc. 111) to the Transfer Order (Doc. 103) are not well-taken and are hereby **OVERRULED**. Accordingly, the Court hereby **AFFIRMS** the Transfer Order and **ORDERS** the Clerk to transfer this case to the Sixth Circuit for determination of whether it may proceed under 28 U.S.C. § 2244(b).

DONE and **ORDERED** in Dayton, Ohio, this Monday, July 17, 2017.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE