

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JERRY R. ROSE,	:	
	:	Case No. 1:15-CV-353
Petitioner,	:	
vs.	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
WARDEN, CHILLICOTHE	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 31)
AND OVERRULING RESPONDENT’S OBJECTIONS (Doc. 32)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this court, and, on June 12, 2017, submitted a Report and Recommendations. (Doc. 31). Respondent timely filed objections (“Objections”).¹ (Doc. 32).

¹ The Objections are not well-taken. First, Respondent argues that the February 18, 2015 amended judgment entry is not a “new” judgment entry entitling Petitioner to another habeas petition. (Objections at 2-3). This argument fails. The amended judgment entry makes substantive changes to Petitioner’s post-release control, and, accordingly, *is* a “new” judgment under the reasoning expressed by the Sixth Circuit in *In re Stansell*, 838 F.3d 412, 416-18 (6th Cir. 2016). Second, Respondent argues that the law of the case doctrine prevents Petitioner from proceeding on his second and fourth claims because the Sixth Circuit held they could not proceed as “successive” claims pursuant to 28 U.S.C. § 2244(b). This argument fails. Under the reasoning of *Stansell*, the Magistrate Judge properly concluded that these claims can proceed as *initial* claims pursuant to the “new” amended judgment entry, not *successive* claims pursuant to 28 U.S.C. § 2244(b).

As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted in its entirety and the Objections should be and are overruled. Accordingly:

1. The Report and Recommendations (Doc. 31) is **ADOPTED**;
2. The Objections (Doc. 32) are **OVERRULED**;
3. Petitioner is permitted to proceed on all four grounds for relief alleged in his habeas corpus petition in light of the Sixth Circuit's decision in *In re Stansell*, 828 F.3d 412 (2016), which made clear that the instant petition is not successive within the meaning of 28 U.S.C. § 2244(b) and, therefore, none of petitioner's claims should have been transferred to the Sixth Circuit, and
4. Petitioner's motion to amend the petition to include an additional argument in support of the ineffective-assistance-of-counsel claim alleged in ground four (Doc. 27) is **GRANTED**.

IT IS SO ORDERED.

Date: 9/20/17



Timothy S. Black
United States District Judge