

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL LEE GORDON,

Petitioner,

CASE NO. 2:09-cv-929

JUDGE SARGUS

MAGISTRATE JUDGE ABEL

v.

STATE OF OHIO,

Respondent.

OPINION AND ORDER


On October 23, 2009, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that this action be transferred to the United States Court of Appeals for the Sixth Circuit as a successive petition. Petitioner has filed objections to the Magistrate Judge's recommendations. See Doc. Nos. 5, 6. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as a successive petition.

Petitioner asserts that his petition is timely. Additionally, he contends that this action does not constitute a successive petition, because his previous habeas corpus petition was dismissed without prejudice as unexhausted. Further, petitioner contends that he is actually innocent of the charges.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. The

timeliness, and petitioner's alleged "actual innocence" are not at issue. Contrary to his allegation here, on October 26, 2006, his prior habeas corpus claims were dismissed as procedurally defaulted. *See Gordon v. State of Ohio*, Case No. 2:06-cv-00065 (S.D. Ohio). Therefore, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as a successive petition.

IT IS SO ORDERED.

 11-24-2009

EDMUND A. SARGUS, JR.
United States District Judge