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

STEPHEN H. WHITT,

Petitioner,

v.

ERNIE MOORE, WARDEN, LEBANON CORRECTIONAL INSTITUTION,

Respondent.

CASE NO. 2:15-CV-560
JUDGE JAMES L. GRAHAM
Magistrate Judge Elizabeth A. Preston Deavers

OPINION AND ORDER

On May 6, 2015, the Magistrate Judge issued a *Report and Recommendation*, ECF 13, recommending that Respondent's *Motion to Transfer*, ECF 12, be granted, and that the instant petition for a writ of habeas corpus be transferred to the United States Court of Appeals for the Sixth Circuit as a successive petition. Petitioner has filed a *Response in Opposition*, ECF 14, and *Motion to Amend and Supplemental Pleading*, ECF 15, which the Court construes as *Objections* to the Magistrate Judge's *Report and Recommendation*.

Petitioner maintains that the Court should address the merits of this habeas corpus petition because he has exhausted claims he raised in his prior habeas corpus petition, and because, he maintains that he asserts a new ground for relief regarding re-imposition of sentence. However, this is Petitioner's second habeas corpus petition in which he challenges his April 13, 2010 convictions in the Coshocton County Court of Common Pleas on rape and gross sexual imposition. *See Whitt v. Warden, Lebanon Correctional Facility*, Case No. 2:12-cv-00731.

Although the Court in Case No. 2:12-cv-00731 initially recommended that the petition be dismissed as unexhausted, Petitioner later exhausted state court remedies. The Court dismissed

the action as procedurally defaulted and without merit. The United States Court of Appeals for the Sixth Circuit denied Petitioner's petition for a certificate of appealability. ECF 69. Further, Petitioner does not now assert a new claim regarding re-imposition of sentence. Rather, he raises the same argument that he did in his prior federal habeas corpus petition.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, and for the reasons addressed in the Magistrate Judge's *Report and Recommendation*, Petitioner's *Objection*, ECF 14, 15, is **OVERRULED**. The *Report and Recommendation*, ECF 13, is **ADOPTED** and **AFFIRMED.** Respondent's *Motion to Transfer*, ECF 12, is **GRANTED.** **T**he instant petition for a writ of habeas corpus hereby is **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as a successive petition.

IT IS SO ORDERED.

Date: June 1, 2015

s/James L. Graham
JAMES L. GRAHAM
United States District Judge