

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

Eric Sean Jordan,

Petitioner,

v.

Case NO. 2:15-cv-629

Rhonda Richard, Warden,

Respondent.

ORDER

Petitioner, a state inmate, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254, seeking to challenge his March 2005 convictions in the Court of Common Pleas of Harrison County, Ohio, on two counts of rape. This matter is before the court for consideration of the February 20, 2015, report and recommendation of the magistrate judge, recommending that the petition be transferred to the Sixth Circuit Court of Appeals as a successive petition. The magistrate judge noted that petitioner had previously filed a §2254 petition challenging the constitutionality of the same convictions. The petition was denied by the district court, *see Jordan v. Warden, Lebanon Correctional Institution*, Case No. 2:08-cv-632, 2010 WL 58244 (S.D. Ohio Jan. 5, 2010), and the judgment of the district court was affirmed on appeal, *see Jordan v. Warden, Lebanon Correctional Institution*, 675 F.3d 586 (6th Cir. 2012). The magistrate judge correctly noted that unless the court of appeals has given approval for the filing of a second or successive petition, a district court in the Sixth Circuit must transfer a subsequent petition to the United States Court of Appeals for the Sixth Circuit. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

The report and recommendation specifically advised plaintiff that objections to the report and recommendation were due within fourteen days, and that the failure to object to the report and recommendation "will result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*." Doc. 2, p. 4.

The time period for filing objections to the report and recommendation has expired, and no objections to the report and recommendation have been filed. Accordingly, the court adopts the report and recommendation (Doc. 2), and the instant petition for a writ of habeas corpus is hereby transferred to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition. Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 1) is denied without prejudice, subject to being reopened in the event that the Sixth Circuit authorizes this court to consider the petition.

Date: March 26, 2015

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