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

BILL ADAM SANDERS,

Petitioner,

CASE NO. 2:15-CV-2304 JUDGE JAMES L. GRAHAM MAGISTRATE JUDGE KEMP

 \mathbf{v} .

CHILLICOTHE CORRECTIONAL INSTITUTION,

Respondent.

OPINION AND ORDER

On June 23, 2015, 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 the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be transferred to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition. (ECF No. 2.) Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. (ECF No. 3.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, Petitioner's *Objection* (ECF No. 3) is **OVERRULED**. The *Report and Recommendation* (ECF 2) is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition.

Petitioner objects to the Magistrate Judge's recommendation. He acknowledges that this is not his first federal habeas corpus petition relating to his March 1995

convictions in Pickaway County on three counts of attempted murder, but argues that

this action does not constitute a successive petition because he previously challenged

his commitment and he now challenges the imposition of sentence.

In his prior federal habeas corpus petition, Petitioner raised claims that he is

being held under "void commitment papers" because the trial court denied his motion

for a change of venue and he is actually innocent. He also claimed that the judgment is

void because he was denied his right to a speedy trial, the prosecutor failed to disclose

exculpatory evidence, and he is innocent of the charges. See Sanders v. Warden,

Chillicothe Correctional Institution, Case No. 2:12-cv-00423.1 No objections were filed, and

on June 8, 2012, this Court dismissed that action as untimely. Id. Petitioner now asserts

that his sentence violates Ohio's law on allied offenses of similar import. Thus, both of

these cases challenge the validity of Petitioner's convictions and sentence. As noted by

the Magistrate Judge, Petitioner's claim relating to alleged sentencing errors could have

been, but was not, raised by Petitioner in his prior federal habeas corpus petition. This

action thereby constitutes a successive petition.

Therefore, Petitioner's Objection (ECF No. 3) is OVERRULED. The Report and

Recommendation (ECF 2) is ADOPTED and AFFIRMED. This action is hereby

DISMISSED.

Date: July 13, 2015

s/James L. Graham

JAMES L. GRAHAM

United States District Judge

¹ Petitioner indicates that his prior federal habeas petition was filed under Case No. 08-cv-423, but this appears to

have been an error.

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