

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

Randy Dillon,

Petitioner,

v.

Case NO. 2:17-cv-117

Warden, Ross Correctional
Institution

Respondent.

ORDER

Petitioner, a state inmate, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254. This matter is before the court for consideration of the June 2, 2017, 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 previously filed a §2254 petition challenging the constitutionality of the same convictions. The petition was denied by the district court, see *Dillon v. Warden, Ross Correctional Institution*, Case No. 2:10-cv-638, 2012 WL 1123525 (S.D. Ohio April 3, 2012), and the judgment of the district court was affirmed on appeal, see *Dillon v. Warden, Ross Correctional Institution*, 541 F. App'x 599 (6th Cir. 2013). 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. 7, 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. 7). The motion to dismiss (Doc. 3) is granted. This case is dismissed, 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.

Date: July 17, 2017

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