

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANTONIO SANCHEZ FRANKLIN,	:	Case No. 3:12-cv-312
	:	
Petitioner,	:	District Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
WARDEN, CHILLICOTHE	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 27)**

This capital habeas corpus case is before the Court on the Report and Recommendations of United States Magistrate Judge Michael R. Merz, to whom this case is referred pursuant to 28 U.S.C. § 636(b). (Doc. 27). On November 23, 2015, the Court denied Petitioner's motion for leave to file an amended habeas petition and, having determined that this case was a second or successive application for a writ of habeas corpus, the case was transferred to the Sixth Circuit Court of Appeals for a determination as to whether Petitioner may file said application under 28 U.S.C. § 2244(b)(2). (Doc. 25). However, on February 23, 2016, the Sixth Circuit issued an order dismissing the action for want of prosecution, as Petitioner failed to cure identified defaults, despite being given notice and time to do so. *In re: ANTONIO FRANKLIN*, No. 16-3008 (6th Cir. Feb. 23, 2016); (Doc. 26). Accordingly, the Magistrate Judge issued the Report and Recommendations at bar, noting that this Court lacks jurisdiction to adjudicate a second

or successive habeas application unless Petitioner first obtains authorization from the Court of Appeals. (Doc. 27); *Burton v. Stewart*, 549 U.S. 147, 152 (2007). As Petitioner “obtained neither a reversal of this Court[’s] determination that the case was second or successive nor permission to proceed,” the Magistrate Judge recommended that the case be dismissed without prejudice. (Doc. 27 at 1). No objections have been filed to the Report and Recommendations, and the time for doing so has expired.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court determines that the Report and Recommendations (Doc. 27) should be, and is hereby, adopted in its entirety. Accordingly:

1. The Report and Recommendation (Doc. 27) is **ADOPTED**; and
2. This case is **DISMISSED without prejudice**, and **the Clerk shall enter judgment accordingly**, whereupon this case shall be **TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

Date: 3/26/2016

s/ Timothy S. Black
Timothy S. Black
United States District Judge