IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ROBERT ANTONIO JACKSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-11-09-D
	)	
MIKE MULLIN,	)	
	)	
Respondent.	)	

O R D E R

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Robert E. Bacharach pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Judge Bacharach finds that the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus is a second or successive petition that has not been authorized pursuant to 28 U.S.C. § 2244(b)(3) and, thus, this Court lacks jurisdiction to consider it. Judge Bacharach further finds that a transfer to the court of appeals is not warranted under *In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008), and the Petition should therefore be dismissed.

Petitioner has filed a timely objection in which he does not disagree with Judge Bacharach's characterization of the Petition. Petitioner objects only to its dismissal; he contends that a transfer to the Tenth Circuit is warranted under *Spitznas v. Boone*, 464 F.3d 1213, 1227 (10th Cir. 2006) (citing *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997)). Petitioner has waived further review of all other issues. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Upon *de novo* consideration of the issue of whether the Petition should be transferred or dismissed, the Court fully concurs in Judge Bacharach's analysis. The guidance provided by the

court of appeals in *Cline* controls the resolution of this issue. There, the court of appeals urged district courts to consider carefully an exercise of discretion under 28 U.S.C. § 1631 and concluded: "Where there is no risk that a meritorious successive claim will be lost absent a § 1631 transfer, a district court does not abuse its discretion if it concludes it is not in the interest of justice to transfer the matter to this court for authorization." *Cline*, 531 F.3d at 1252. For the reasons fully explained by Judge Bacharach, the Court finds no risk that a meritorious claim will be lost absent a transfer and that a transfer would not be in the interest of justice. Accordingly, the Court finds that a dismissal for lack of jurisdiction is warranted.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 10] is adopted in its entirety. This action is dismissed for lack of jurisdiction. Judgment shall be entered accordingly.

IT IS SO ORDERED this 5th day of April, 2011.

TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE