

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

LEONARD RACKLEY,)	
)	
Petitioner)	
vs.)	NO. CIV-14-0721-HE
)	
STATE OF OKLAHOMA, <i>et. al.</i> ,)	
)	
Respondents.)	

ORDER

Plaintiff Leonard Rackley, a state prisoner appearing *pro se* and *in forma pauperis*, filed this application for habeas corpus relief pursuant to 28 U.S.C. § 2254, challenging his conviction and sentence for Attempted Grand Larceny in the District Court of Custer County, Oklahoma. Consistent with 28 U.S.C. § 636(b)(1)(B), this matter was referred for initial proceedings to Magistrate Judge Suzanne Mitchell. Defendants subsequently filed a motion to dismiss the petition as second and successive [Doc. #13], which Judge Mitchell recommends should be granted [Doc. #18]. Plaintiff has objected to the Report and Recommendation, requesting that the court transfer the case to the Tenth Circuit instead of dismissing it [Doc. #19]. Having conducted a *de novo* review in light of plaintiff's objections, the court concludes the Report should be adopted for substantially the reasons stated in the Report, as further addressed here.


This is the second habeas application that has been filed on plaintiff's behalf challenging the conviction referenced above. *Cf. Rackley v. Keith*, No. CIV-10-0131-HE. As noted by Judge Mitchell, this court lacks jurisdiction over petitioner's second application

because he did not obtain an order from the Tenth Circuit Court of Appeals authorizing the this court to consider his petition, as is required by 28 U.S.C. § 2244(b)(3)(A). See In re Cline, 531 F.3d 1249, 1251 (10th Cir. 2008). Though the court may, as plaintiff has requested, transfer the case to the Tenth Circuit rather than dismiss the application altogether, it need not do so here because plaintiff's claims are time-barred, as was determined in this court's previous order dismissing plaintiff's original application [Doc. #17 in CIV-10-0131-HE]. Accordingly, the court concludes that it would be a waste of judicial resources and therefore not in the interest of justice to transfer the case to the Tenth Circuit.

Having conducted a *de novo* review, the court concludes, substantially for the reasons stated by Magistrate Judge Suzanne Mitchell, that the Report and Recommendation [Doc. #18] should be and is adopted. Accordingly, defendants' motion to dismiss [Doc. #13] is **GRANTED** and the petition is **DISMISSED**.

IT IS SO ORDERED.

Dated this 20th day of February, 2015.



JOE HEATON
UNITED STATES DISTRICT JUDGE