

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

GREGORY MICHAEL HERNANDEZ,)
)
 Petitioner,)
)
 v.)
)
 JASON BRYANT, Warden,)
)
 Respondent.)

CIV-15-436-R

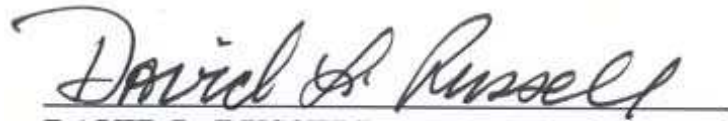
ORDER

Petitioner his filed a Motion to Stay in response to the Report and Recommendation issued by Magistrate Judge Gary M. Purcell on April 27, 2015, wherein he recommends the petition be dismissed because it is a second or successive petition and Petitioner has not received permission from the Tenth Circuit to file such. (Doc. No. 8). Petitioner contends he has submitted a request to the Tenth Circuit seeking the required authorization and asks that this Court stay these proceedings pending a decision on his request.

28 U.S.C. § 2244(b)(3) provides that "[b]efore a second or successive application authorized by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Although the Court may transfer an application to the Circuit for consideration of the issue of whether such authority should be granted, in the interests of justice, the Court is unaware of any authority that would permit it to stay an action pending the § 2244(b)(3) authorization process. The Tenth Circuit has instructed that district courts may either transfer the action to that court for prior authorization or dismiss the petition for lack of jurisdiction.

The Court agrees with Judge Purcell's recommendation that the action be dismissed for lack of jurisdiction. As such, the Report and Recommendation is hereby ADOPTED in its ENTIRETY and this action is DISMISSED for lack of jurisdiction.

IT IS SO ORDERED this 7th day of May, 2015.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE