

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL DEWAYNE WHALEY,)
)
 Petitioner,)
)
v.)
)
COURT OF CRIMINAL APPEALS, *et al.*,)
)
 Respondent.) Civil Action No. 3:18-CV-144-C

ORDER¹

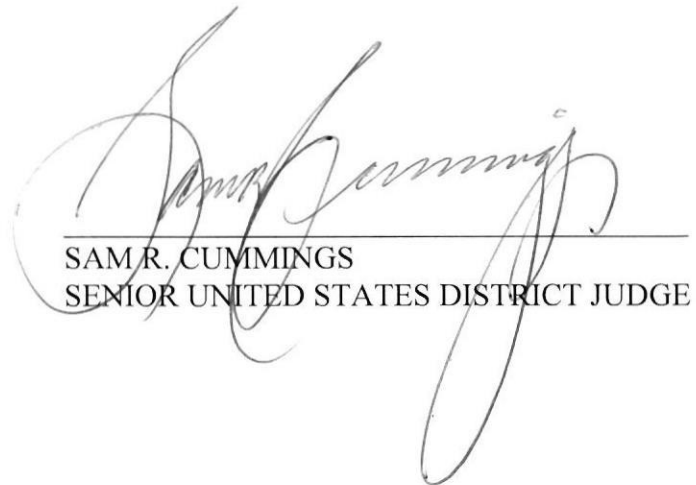
Before the Court are the Findings, Conclusions, and Recommendation of the United States Magistrate Judge advising the Court that Petitioner’s Motion to Vacate and Reverse Sentence(s) should be construed as a successive petition and transferred to the United States Court of Appeals for the Fifth Circuit.

The Court has reviewed the Findings, Conclusions, and Recommendation for clear error and finds none. It is therefore **ORDERED** that the Findings, Conclusions, and Recommendation are hereby **ADOPTED** as the findings and conclusions of the Court. For the reasons stated therein, Petitioner’s Motion to Vacate and Reverse Sentence(s), received October 4, 2019, is **CONSTRUED** as a successive petition and **TRANSFERRED** to the United States Court of Appeals for the Fifth Circuit. The Clerk of Court is **DIRECTED** to: (1) terminate the motion in this civil rights case; (2) open a new habeas case for administrative purposes only; (3) docket the motion in that new case as a § 2254 petition, filed October 4, 2019; (4) directly assign the new

¹ The Court need not consider objections from Petitioner prior to the entry of this Order, as the outcome remains the same, as a matter of law, regardless of whether objections are filed.

case to the undersigned Senior United District Judge and same Magistrate Judge as in this case; (5) file in the new case a copy of these Findings, Conclusions, and Recommendation of the United States Magistrate Judge, and the order accepting these Findings, Conclusions, and Recommendation; and (6) without further judicial action, immediately **TRANSFER** the newly opened § 2254 action to the United States Court of Appeals for the Fifth Circuit under *Henderson v. Haro*, 282 F.3d 862, 864 (5th Cir. 2002) and *In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997).²

SO ORDERED this 9th day of October, 2019.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE

² A certificate of appealability (COA) is not required to appeal an order transferring a successive habeas petition. See *In re Garrett*, 633 F. App'x 260, 261 (5th Cir. 2016); *United States v. Fulton*, 780 F.3d 683 (5th Cir. 2015).