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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ARTHUR LEE SMITH Jr.,
Petitioner,
v.
KELLY CUNNINGHAM,
Respondent.

CASE NO. C09-5575 FDB
ORDER ADOPTING REPORT AND
RECOMMENDATION
TRANSFERRING SUCCESSIVE
PETITION

The Magistrate Judge recommends that this petition for habeas corpus relief be transferred to the Ninth Circuit Court of Appeals as a successive petition. Petitioner has filed response disputing the characterization of the petition as successive. Petitioner, nonetheless, “has no difficulty with this matter being sent to the Ninth Circuit Court of Appeals ...”

The Court, having reviewed the petition and amended petition, the motion to dismiss or transfer, the response, the Report and Recommendation of the Hon. J. Richard Creatura, United

1 States Magistrate Judge, Petitioner's Response to the Report and Recommendation, and the
2 remaining record, does hereby find and Order:

- 3 (1) The Court adopts the Report and Recommendation;
- 4 (2) This petition is transferred to the Ninth Circuit Court of Appeals pursuant to
5 Circuit Rule 22-3(a).
- 6 (3) This file should be administratively closed.
- 7 (4) The Clerk is directed to send copies of this Order to Petitioner.
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9 DATED this 3rd day of February, 2010.

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FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE