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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JIMMY LEROY RAMSEYER,

Petitioner,

v.

PAT GLEBE,

Respondent.

CASE NO. C13-5616 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

10 This matter comes before the Court on the Report and Recommendation (“R&R”)
11 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 4), and
12 Petitioner Jimmy Leroy Ramseyer’s (“Ramseyer”) objections to the R&R (Dkt. 5).

13 In 2005, Ramsayer filed a habeas corpus petition that challenged the same
14 conviction as the one he challenges today. *See Ramseyer v. Smelser*, C05-5006 FDB. The
15 Court denied the petition on the merits (05-5006 FDB Dkt. 49). Ramseyer’s third ground
16 for relief in his prior petition contained a claim that his conviction violated due process
17 because the Washington Court held that stipulated facts agreed to pursuant to Cr.R. 4.5(g)
18 were not binding on the state at trial (05-5006 FDB Dkt. 1 at 8). On April 12, 2012,
19 Ramseyer filed another petition raising the same ground for relief (12-5317 BHS Dkt. 5).
20 That petition was transferred to the Ninth Circuit (12-5317 BHS Dkt. 23).

21 As Judge Strombom found, Ramseyer’s current petition “raises the same ground
22 for relief.” Dkt. 4 at 1. The Court agrees with Judge Strombom’s R&R, just as the Court

1 | agreed with it in Ramseyer's prior case (12-5317 BHS Dkt. 23). Thus, despite
2 | Ramseyer's objection that his case was not adjudicated on the merits, as Judge Strombom
3 | found, a review of his prior petitions and orders indicates otherwise. Thus, the Court
4 | finds that Ramseyer's petition is a second or successive petition for which the petitioner
5 | must seek authorization from the Court of Appeals before filing with the district court.
6 | Dkt. 4 at 2 (*citing* 28 U.S.C. § 2244(b)(3)(A) and Ninth Circuit Rule 22-3).

7 | Ramseyer's other arguments, that the Court should consider his objections (or
8 | perhaps his petition) as a "Refiling of First Petition For Writ of Habeas Corpus" and that
9 | equitable tolling should apply because Judge Burgess erred in adopting Judge
10 | Strombom's previous R&R, are not relief which this Court can grant. Dkt. 5 at 1 and 3-4.
11 | The record in Ramseyer's prior case before Judge Burgess reflects that the Ninth Circuit
12 | denied his certificate of appealability (05-5006 FDB Dkt. 67) in that case.

13 | The Court having considered the R&R, Petitioner's objections, and the remaining
14 | record, does hereby find and order as follows:

- 15 | (1) The R&R is **ADOPTED**;
- 16 | (2) Ramsayer's 28 U.S.C. § 2254 petition (Dkt. 1-1) is **TRANSFERRED** to
17 | the Ninth Circuit as a second or successive petition; and
- 18 | (3) Ramseyer's motion for leave to proceed *in forma pauperis* (Dkt. 1) is
DENIED.

19 | Dated this 6th day of September, 2013.

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21 | BENJAMIN H. SETTLE
22 | United States District Judge