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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

8 ROBERT JOHN THIERY, JR.,

9 Plaintiff,

10 v.

11 MARGARET GILBERT,

12 Defendants.

CASE NO. 3:16-cv-06034 RBL

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

13 The Court, having reviewed the Report and Recommendation of Magistrate Judge J.
14 Richard Creatura, objections to the Report and Recommendation, if any, and the remaining
15 record, does hereby find and **ORDER:**

- 16 (1) The Court adopts the Amended Report and Recommendation [Dkt. #9].
- 17 (2) Petitioner filed a second or successive petition for relief under 28 U.S.C. § 2254
18 without the Ninth Circuit's permission. He argues his 1994 conviction is
19 unconstitutional after the Washington Supreme Court's 2014 ruling in *State v.*
Williams, 336 P.3d 1152 (2014). Justice does not demand that the Court transfer
20 his petition to the Ninth Circuit. *See* CTA9 Rule 22-3.
- 21 (3) Therefore, Petitioner's 28 U.S.C. § 2254 petition [Dkt. #4] is **DISMISSED**
WITHOUT PREJUDICE.
- 22 (4) The Clerk is directed to send copies of the Ninth Circuit Court of Appeals Form
23 12-Application for Leave to File Second or Successive Petition Under 28 U.S.C.
24 § 2254 or Motion Under 28 U.S.C. § 2255 and a copy of Ninth Circuit Rule 22.3.

1 (5) The Clerk is also directed to send copies of this Order to Petitioner and to the
2 Hon. J. Richard Creatura.

3 **DATED** this 13th day of March, 2017.

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5 Ronald B. Leighton
6 Ronald B. Leighton
7 United States District Judge
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