

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Asadi-Ousley v. Mackey

Asadi-Ousley · No. 1:24CV1906 · Decided December 15, 2025

SUMMARY

The United States District Court for the Northern District of Ohio adopted the Magistrate Judge’s Report and Recommendation and granted the respondent’s motion to transfer Asa Asadi-Ousley’s 28 U.S.C. § 2254 habeas petition to the Sixth Circuit. The court concluded that the petition was second or successive and that authorization under 28 U.S.C. § 2244(b)(3)(A) was required before the district court could consider it.

CASE DETAILS

COURT	United States District Court for the Northern District of Ohio, Eastern Division
WRITING FOR THE COURT	Christopher A. Boyko
JURISDICTION	United States District Court for the Northern District of Ohio, Eastern Division
DECIDED	December 15, 2025
DOCKET	1:24CV1906
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought federal habeas relief under 28 U.S.C. § 2254. Respondent moved to transfer the petition to the Sixth Circuit because it was second or successive and lacked authorization under 28 U.S.C. § 2244(b)(3)(A). The district court adopted the magistrate judge's recommendation and transferred the petition.
STANDARD OF REVIEW	Because Petitioner filed no objections to the report and recommendation, the district court declined duplicative further review and treated the lack of objection as acceptance of the magistrate judge's recommendation.
PRECEDENTIAL VALUE	Nonprecedential district court memorandum opinion and order; precedential status not stated.
PARTIES	Asa Asadi-Ousley v. Misty Mackey, Warden

TOPICS

federal habeas corpus

successive petitions

post-conviction relief

appellate procedure

standard of review

PRACTICE AREAS

Federal habeas corpus

Post-conviction relief

Appellate procedure

QUESTIONS PRESENTED

1. Whether the district court could review the merits of a second or successive § 2254 petition filed without authorization from the Sixth Circuit.
2. Whether the petition should be transferred to the Sixth Circuit under 28 U.S.C. § 1631 and § 2244(b)(3) (A).
3. Whether the district court should adopt the magistrate judge's report and recommendation when Petitioner filed no timely objections.

HOLDINGS

1. A district court lacks jurisdiction to hear a second or successive habeas petition filed without authorization from the appropriate court of appeals.
2. When a second or successive habeas petition is filed in the district court without the required appellate authorization, the district court must transfer it to the appropriate court of appeals under 28 U.S.C. § 1631.
3. Because Petitioner filed no timely objections to the report and recommendation, the district court adopted the recommendation without conducting duplicative further review.

KEY QUOTATIONS

“When a petitioner ignores this provision and files a ‘second or successive’ application in the district court without authorization, the district court lacks jurisdiction to hear the petitioner’s claims.” (-2-)

“Accordingly, the Sixth Circuit has held that, “when a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief . . . is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.”” (-2-)

FACTUAL BACKGROUND

Asa Asadi-Ousley filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Respondent contended that the petition was second or successive and had been filed without the authorization required by 28 U.S.C. § 2244(b)(3)(A). Petitioner did not object to the magistrate judge's recommendation that the petition be transferred to the Sixth Circuit.

PROCEDURAL HISTORY

Asadi-Ousley filed a § 2254 petition on October 31, 2024. The matter was referred to a magistrate judge, who recommended granting Respondent's motion to transfer the petition to the Sixth Circuit. Petitioner did not object to the report and recommendation, so the district court adopted it, found that it lacked authority to review the merits, and transferred the petition for further proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The petition was transferred to the United States Court of Appeals for the Sixth Circuit for review and further proceedings under 28 U.S.C. §§ 1631 and 2244(b)(3)(A).

CASES CITED

- Askew v. Bradshaw, 636 F. App'x 342, 346 (6th Cir. 2016)
- Burton v. Stewart, 549 U.S. 147, 149 (2007) (per curiam)
- In re Sims, 111 F.3d 45, 47 (6th Cir. 1997)
- Thomas v. Arn, 474 U.S. 140, 155 (1985)
- United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981)

OPINION

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO EASTERN DIVISION ASA ASADI-OUSLEY,) CASE NO. 1:24CV1906) Petitioner,) JUDGE CHRISTOPHER A. BOYKO) vs.)) MISTY MACKEY, WARDEN,) MEMORANDUM OF OPINION) AND ORDER Respondent.) CHRISTOPHER A. BOYKO, J: Petitioner Asa Asadi-Ousley, through counsel, filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 on October 31, 2024.

(ECF DKT #1). The matter was referred to the assigned Magistrate Judge on April 1, 2025, under Local Rule 72.2 to prepare a report and recommendation. On May 16, 2025, Respondent Misty Mackey filed a motion to transfer Petitioner's Habeas Petition to the Sixth Circuit Court of Appeals as a second or successive petition pursuant to 28 U.S.C. §§ 1631 and 2244(b)(3)(A).

(ECF DKT #5). This matter is now before the Court on the Magistrate Judge's Report and Recommendation (ECF DKT #7), recommending that the Court GRANT Respondent's Motion and transfer the captioned Petition to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. §§ 1631 and 2244(b)(3)(A). Objections to the Report and Recommendation were due by September 24, 2025.

Petitioner has not filed an objection to the Report and Recommendation. LAW AND ANALYSIS Second or Successive Habeas Petitions 28 U.S.C. § 2244(b)(2), as amended by the Antiterrorism

and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (“AEDPA”), provides that a claim presented in a “second or successive” habeas petition that was not presented in a prior petition “shall be dismissed” unless: (1) the claim relies on a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court; or (2) the petitioner could not have discovered the factual predicate for the claim previously through the exercise of due diligence and the facts underlying the claim, if proven, would establish by clear and convincing evidence that no reasonable factfinder would have found the petitioner guilty absent the constitutional error.

28 U.S.C. § 2244(b)(2)(A)-(B). 28 U.S.C. § 2244(b)(3) further provides that, before a petitioner may file a second or successive petition in the district court, he or she must file a motion in the court of appeals for that district for an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). “When a petitioner ignores this provision and files a ‘second or successive’ application in the district court without authorization, the district court lacks jurisdiction to hear the petitioner’s claims.” *Askew v. Bradshaw*, 636 F. App’x 342, 346 (6th Cir.

2016) (citing *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam)). Accordingly, the Sixth Circuit has held that, “when a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief... is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this -2- court pursuant to 28 U.S.C. § 1631.” *In re Sims*, 111 F.3d 45, 47 (6th Cir.

1997). No Objection to Report and Recommendation Federal Rule of Civil Procedure 72(b) provides that objections to a report and recommendation must be filed within fourteen days after service. FED. R. CIV. P. 72(b)(2). Petitioner has failed to timely file any such objections.

Therefore, the Court must assume that Petitioner is satisfied with the Magistrate Judge’s recommendation. Any further review by this Court would be duplicative and an inefficient use of the Court’s limited resources. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981). CONCLUSION Accordingly, the Court ADOPTS the Report and Recommendation (ECF DKT #7) of the Magistrate Judge; FINDS that it is without authority to review the merits of Petitioner’s claims; GRANTS Respondent’s Motion (ECF DKT #5); and TRANSFERS Petitioner Asadi-Ousley’s Petition to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. §§ 1631 and 2244(b)(3)(A) for review and further proceedings.

IT IS SO ORDERED. s/Christopher A. Boyko CHRISTOPHER A. BOYKO United States District Judge Dated: December 15, 2025 --33--