

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

NICHOLAS TARKINGTON  
ADC #145954

PETITIONER

v.

No. 5:16CV00220-JLH-JJV

WENDY KELLEY, Director,  
Arkansas Department of Correction

RESPONDENT

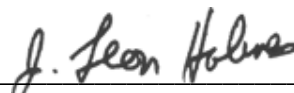
**ORDER**

The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge Joe J. Volpe and Petitioner's objections. After carefully considering the objections and making a *de novo* review of the record, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects. The denial of a first habeas petition on procedural default grounds constitutes disposition on the merits and renders a subsequent habeas petition "second or successive." *Moua v. Minnesota*, Civil File No. 14-3158 (JRT/SER), 2014 WL 4659645 (D. Minn. Sept. 17, 2014).

IT IS, THEREFORE, ORDERED that:

1. Petitioner's cause of action is DISMISSED, and the requested relief is DENIED.
2. A certificate of appealability is DENIED.

SO ORDERED this 9th day of September, 2016.

  
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J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE