

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DWAYNE FOLSE

CIVIL ACTION

VERSUS

JASON KENT

NO. 18-00121-BAJ-SDJ

RULING AND ORDER

Before the Court is Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge has issued a **Report and Recommendation (Doc. 30)**, recommending that the Court deny petitioner's application. The Magistrate Judge further recommended that the Court deny Petitioner a certificate of appealability if one is sought.

The Magistrate Judge found that Petitioner's claims that the prosecution failed to produce exculpatory evidence, that he received ineffective assistance of counsel, and that the prosecution engaged in "deliberate perjury," are procedurally defaulted, and therefore that the Court is barred from undertaking review. (Doc. 30, p. 7–10). Further, the Magistrate Judge found that Petitioner's claim that he was improperly sentenced as a habitual offender was without merit, in light of *Jackson v. Virginia*, 99 S. Ct. 2781, 2789 (1979). (Doc 30, p. 12). Finally, the Magistrate Judge found that Petitioner's federal claim that his sentence was excessive was not properly presented to the Louisiana First Circuit Court of Appeal, therefore the claim is technically exhausted and procedurally barred. (Doc. 30, p. 13). While Petitioner filed an

opposition to the Recommendation, (Doc. 31), he failed to submit any evidence to counter the findings of the Magistrate Judge.

Having carefully considered the underlying Petition and related filings, the Court **APPROVES** the Magistrate Judge's Report and Recommendation, and **ADOPTS** it as the Court's opinion herein.

Accordingly,

**IT IS ORDERED** that Petitioner's application for habeas corpus relief is **DENIED**, and the proceeding is **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that, if Petitioner seeks to pursue an appeal in this case, a certificate of appealability shall be **DENIED**.

A separate judgment will be issued.

Baton Rouge, Louisiana, this 28<sup>th</sup> day of June, 2021



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**JUDGE BRIAN A. JACKSON**  
**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF LOUISIANA**