

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANNON ANES,

Petitioner,

CASE NO. 1:16-CV-233

v.

HON. ROBERT J. JONKER

SHERMAN CAMPBELL,

Respondent.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent’s Report and Recommendation in this matter (ECF No. 17) and Petitioner Anes’s Objection to it (ECF No. 18). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . as a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Petitioner’s Objection to it. After its review, the Court

finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends denying the habeas petition on the basis that Petitioner has failed to establish that the state court decisions on his claims of prosecutorial misconduct, ineffective assistance of counsel, juror bias, and exclusion of certain testimony were contrary to, or unreasonably applied, clearly established law as articulated by the Supreme Court. The Court finds the Magistrate Judge's Report and Recommendation to be well-reasoned and thorough, and accordingly adopts its conclusion.

PETITIONER'S OBJECTIONS

Petitioner raises two objections, both of which lack merit. First, Petitioner claims the Magistrate Judge failed to apply the correct standard of review to his claim that the trial court erred when it excluded certain testimony (ECF No. 18, PageID.1844). Specifically, Petitioner argues the Magistrate Judge should have reviewed the trial court's exclusion of evidence under the standard set forth in *Brady v. Maryland*, 373 U.S. 83 (1963). *Id.* He is incorrect. The Court finds that the Magistrate Judge applied the correct standard of review mandated by AEDPA, and correctly found that Plaintiff's claims do not warrant relief under the applicable law.

Second, Petitioner reiterates and expands arguments made in his habeas petition regarding alleged juror bias. The Report and Recommendation already carefully, thoroughly, and accurately addresses these arguments. Nothing in Petitioner's objection changes the fundamental analysis. The Court agrees with the Magistrate Judge's conclusion that Petitioner is not entitled to relief on that ground, for the very reasons the Report and Recommendation delineates.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 17) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that the habeas petition (ECF No. 1) is **DENIED** and this case is **DISMISSED**.

Dated: July 21, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE