

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

THOMAS WAYNE FLORENCE,

Petitioner,

v.

**LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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Civil No. 7:17-CV-081-O

**ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

After making an independent review of the pleadings, files, and records in this case, of the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, and of Petitioner’s objections thereto, I am of the opinion that the findings of fact, conclusions of law, and reasons for denial set forth in the Magistrate Judge’s Recommendation are correct and they are hereby adopted and incorporated by reference as the Findings of the Court.

As noted by the Magistrate Judge, Petitioner’s prior habeas action, challenging the same conviction at issue in the instant case, was dismissed and is currently pending on appeal. *See Florence v. Stephens*, No. 3:14-CV-376 (S.D. Tex. 2016), *appeal pending sub nom. Florence v. Davis*, No. 16-40615 (5th Cir.).

On April 18, 2017, the United States Court of Appeals for the Fifth Circuit denied Petitioner’s motion to file a successive habeas petition as premature because the appeal from his first petition remains pending. *See In re: Thomas W. Florence*, No. 16-41294 (5th Cir. 2017). The instant petition is therefore subject to dismissal because Petitioner does not have permission to file

a successive petition and because any such request would be premature at this time. Moreover, Petitioner might obtain the relief he seeks in the appeal of his prior habeas action which could render the grounds for relief set forth in the instant petition moot.

Accordingly, the petition for writ of habeas corpus is **DISMISSED** without prejudice to Petitioner's right to seek leave to file a successive petition after the issues pending in the appeal of his prior habeas action are resolved.

SO ORDERED this **27th day of July, 2017**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE